BE IT RESOLVED, that a special meeting of the Elberta Village Council, held on Monday July 27, 1987, the Village Council did move to approve and adopt the Village Council By-laws presented by the Village Attorney.

Motion offered by Rommell and Supported by Kirbach. Roll call vote: Kirbach, yea; McClellan, yea; Gatrell, yea; Rommell, yea; Noffsinger, yea. Motion carried.

Absent: Ikens and Schneider.

CERTIFICATION

Elberta, Michigan

STATE OF MICHIGAN)
) ss.
COUNTY OF BENZIE )

I, Dale J. Hunsberger, Clerk of the Village of Elberta, do hereby certify that the above resolution is a true and accurate copy passed by the Village Council on the 27th day of July 1987.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of July , 1987.

Dale J. Hunsberger

(Ms.) Dale J. Hunsberger

RESOLUTION

AMENDMENT OF BY-LAWS OF THE VILLAGE OF ELBERTA

BE IT RESOLVED, that at a regular meeting of the Village of Elberta Council on the 21st day of March, 1991, the Council did move to adopt Section 7.0., Introduction and Consideration of Ordinance as amended of the Village By-Laws, pages nine and ten.

Motion by Thompson supported by McClellan. Yeas - 7.

I, Barabara Harju, Clerk of the Village of Elberta do certify this to be a true and accurate copy of a resolution passed at a regular Council meeting on the 21st day of March, 1991.

Barbara Harju

Barbara Harju, Clerk

VILLAGE OF ELBERTA

VILLAGE COUNCIL

## RULES OF PROCEDURE FOR MEETINGS

The following rules of procedure are hereby adopted by the Council for the Village of Elberta to facilitate the performance of its duties as outlined in Public Act 3 of 1895, as amended.

### Section 1.0 MEETINGS

1.1 Regular Meetings. The Council shall meet on the third Thursday of each month in regular session. If any regularly scheduled meeting falls on any one of the following legal holidays (New Years Day, Presidents Day, Martin Luther King's Birthdate, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Eve, Christmas Day, New Years Eve) the regular meeting shall be held on the next secular day that is not a holiday.

1.2 Special Meetings. The Council shall meet in special session at the call of the President, or, in the absence of such officer, the President pro tem, or three members of the Council. Notice of special meetings shall be given at least 18 hours in advance of the special meeting. Such notice shall be served personally or left at the member's usual place of residence by the Clerk or a designee. The notice shall also contain the time, place, and purpose of the special meeting.

1.3 Place of Meetings. All meetings shall be held in the Village office located at 108 W. Sheridan in the Village of Elberta. Whenever a regular meeting or special meeting shall appear to be inadequate for members of the public to attend, the President and Clerk may change the meeting to a larger facility located in the Village of Elberta. A notice of such change shall be prominently posted at the regular meeting place. The Clerk shall also give notice of such change in a newspaper, if time permits.

1.4 Time of Meetings. Regularly scheduled meetings shall begin at 7:00 o'clock in the evening unless the Council shall by majority vote in session set a later starting time. The Council shall not begin considering any matter on the Agenda not yet under consideration by the hour of

10:30 p.m., except by unanimous consent of the members present. Matters on the agenda and not yet acted upon at the time of adjournment shall be placed on the agenda of the next regular meeting or special meeting if one is called.

Section 2.0 PUBLIC NOTICE OF MEETINGS

2.1 Notice for Regular Meetings. The Clerk shall post a notice within ten days after the first meeting of the Council in each fiscal year, indicating the dates, times, and places of the regular meeting scheduled.

2.2 Scheduled Change. Whenever the Council shall change its regular schedule of meetings, the Clerk shall post a notice of the change within three days following the meeting in which the change was made.

2.3 Notice for Rescheduled Meeting or Special Meeting. If the Council shall reschedule a regular meeting where a quorum is not present or call a special meeting, the Clerk shall post a notice of such meeting stating the public body to which the notice applies, its telephone number, its address, the date, time and place of the meeting, and the items on the agenda for that meeting. The public notice shall be posted at least 18 hours before the meeting on the window of the Village meeting place so as to be visible to the public at all times.

2.4 All posting of notices shall be placed on the front window of the Village office.

Section 3.0 AGENDA FOR MEETINGS

3.1 Regular meeting agenda. The Village Clerk shall prepare the agenda of business for all regular scheduled council meetings. Any other member or representative of committees, boards, or private citizens desiring to place a matter on the agenda shall notify the Village Clerk of such items by 4:00 o'clock p.m. on the Friday preceding the next regular meeting. The order of such items on the agenda shall be the same as they were received by the Clerk and shall be placed under the heading of unfinished business if such was under discussion at the time of the adjournment of the past regular meeting, or under the heading of new business. Items that the clerk does not receive by the stated deadline shall not be considered by the Council, except upon the unanimous consent of the members present.

3.2 Special Meeting agenda. Whenever the Council shall be called into a special meeting, the matter to be set forth shall be considered in the call of the meeting.

3.3 Distribution of Agenda and materials. Upon completion of the agenda, the Village Clerk shall on the Monday preceding the next regular meeting, place copies of the agenda in the mail to Council Members, together with copies of reports, explanations, etc., that relate to the business matters coming to the Council. A copy of the agenda shall also be posted for public viewing on the date of mailing.

3.4 Order of Business. The agenda shall be arranged in the following order of business:

1. Call to Order
2. Roll call.
3. Approval of minutes.
4. Approval of agenda.
5. Inquiry of Conflict on Agenda Items.
6. Advertised public hearing. The chair will declare such a public hearing open and state its purpose.
7. Recognition of communications to the Council. (Either read or provide copies to each Trustee).
8. Brief public comment on other agenda items (three minutes).
9. Approval of Bills
10. Report of office holders. (No action to be taken. If action is required it shall be placed on the agenda as new business in accordance with Section 3.0).
11. Committee Reports.
12. Pending business.
13. New business.
14. Announcements.
15. Extended general public comment (five minutes).
16. Adjournment.

Section 4.0 CONDUCT OF MEETINGS

4.1 President. The chair shall moderate all meetings of the the Council. In the absence of this officer, the President Pro Tem shall moderate. In their absence, the Clerk shall open the meeting, take roll call and immediately ask for a motion to appoint a moderator for that meeting.

4.2 Conflict of Interest. The Chair shall at the "inquiry of conflict" agenda time inquire whether any member has any financial or any other private interest in any matter which shall come before the Council at the meeting which places them in a conflict of interest. Such council member shall

at this time declare their conflict and then, when such agenda conflict item is called upon, the member shall remove theirself from any and all discussion, action or voting, except for the public comment rights of a general citizen. Such council member shall remove theirself from the council table and join the public seating during any discussion, action or voting. Any comments made as a general citizen shall be made from the general public seating area. The Clerk shall note that such action has been taken.

4.3 Member. Those Council members wishing to speak shall first attain the approval of the Chair and shall address the chair unless permission is otherwise received. Other persons at the meeting shall not speak unless recognized by the Chair during periods of public comment or when requested by the Chair.

4.4 Public Comment. The Council members are the elected representatives of the People of Elberta. No member of the general public has the right to speak whenever they desire. Members of the general public shall have the right to address the Chair at two appointed agenda times. All statements shall be made to the Chair, unless permission is otherwise given by the Chair. A third appointed agenda time shall be given if an advertised Public Hearing is being held on a specific item. The public comment times are described as follows:

1. Brief public comment on agenda items. Any person who wishes to address the Council shall give their name and address and speak on any item or items on the agenda other than the topic of the advertised hearing or hearings just held. They shall have the right to speak once during this time with a three minute limitation. The limitation of time may be extended by a majority vote of the Council present. Chair shall declare when public comment is completed.

2. Extended general public comment. Any person who wishes to address the Council shall give their name and address and may speak on any topic germane to the rights and powers of the Council. They shall have the right to speak once during this time with a five minute presentation. The limitation of time may be extended by a majority vote of the Council present. Chair shall declare when public comment is completed.

3. Advertised Public hearing. Any person may speak after giving their name and address during the public presentation time of a public hearing. They shall have the right to speak once during this time with a five

minute limitation, or as time is extended by a majority vote of the Council present. Action by the Council on any matter on which a public evidenciary hearing is held shall not be taken until the public evidenciary hearing has been concluded. The Chair shall declare when the public evidenciary hearing has been concluded.

4.5 Quorum. A total of four, is required for a quorum to transact business.

4.6 Voting. Voting shall be by voice and shall be recorded by yeas and nays. The record shall also state whether the vote was by voice or by roll call and the record shall show the "yes", "no" and abstention for each member. Any member may call for a roll call vote. There shall be no secret voting.

An Ordinance or Resolution appropriating money shall not be adopted, except by a concurring vote of four, (see Charter for other items which require a 2/3 vote of Council members) and other motions shall require a majority vote of the members present (not less than a quorum) in order to be approved.

No member who has not declared a conflict, and subsequently join the general public, may abstain from voting "yes" or "no", unless excused by majority consent of the other members present.

4.7 Disorderly conduct at meetings. The Chair may call to order any person who is being disorderly by speaking when there is no right to speak or is otherwise disrupting the proceedings, by failing to address the chair, by failing to be germane, by speaking longer than the alloted time or by speaking vulgarities. Such person shall thereupon be seated until the chair shall have determined whether the person is in order. If a person so engaged in presentation shall be called out of order, they shall not be permitted to continue to speak at the same meeting except on special leave by the Council. If the person shall continue to be disorderly and disrupt the meeting, the Chair may order the person to be removed from the meeting. No person shall be removed from a public meeting except for an actual breach of the peace committed at the meeting.

4.8 Record of Meetings. The Clerk shall be responsible for maintaining a written record or summary written record of the discussion or comments of the council and comments made by members of the public. The Clerk shall be responsible for making an electronic tape recording of each entire meeting and each such recording shall be maintained in the office of the Clerk for a period not less than one year following the date of the meeting. Thereafter, the recording may be erased unless the recording shall be pertinent to any legal proceeding then underway, pending or expected.

4.9 Public Access to Meeting Records. The clerk shall make available to members of the public the records and minutes of official meetings in accordance with the Freedom of Information Act. Minutes prepared by the Clerk, but not approved by the body, shall be available for public inspection not more than eight business days following the meeting. Minutes approved by the body shall be available within five business days of the meeting at which they were approved. The Clerk shall also promptly send copies of minutes to persons who have subscribed and paid the fee therefor as determined by the Council. As required by Michigan Compiled Laws 65.5, within fifteen (15) days after a meeting of the Council, the proceedings had or taken at the meeting, together with the vote of the members, shall be published in a newspaper circulated in the Village. There is no requirement that the minutes shall be posted.

4.10 Parliamentary Procedure. Parliamentary Procedure in a Council meeting shall be governed by Robert's Rules of Order, except where a State Statute or local ordinance directs otherwise.

Section 5.0 COMMITTEES

5.1 Appointment. Annually, at the regular meeting in each April the President shall appoint members of the Council to standing committees as listed under Rule 5.2.

5.2 Committee Chair. The person first listed on the roster of each committee shall be the committee chair. In the absence of the committee chair at any committee meeting, the person next listed shall assume the Chair.

5.3 Committee Duties and Responsibilities. The standing committees and the responsibilities are stated as follows:

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

5.4 Committee Meetings. A majority of the committee members shall constitute a quorum. A committee meeting may only develop recommendations which shall be reported to the Council. All alternate recommendations shall be reported to the Council.

Each committee that does not consist of a quorum of the council may determine by majority vote whether its meetings shall be open to members of the public. Any committee consisting of a quorum of the Council shall comply with the requirements of the Open Meetings Act.

Each committee shall maintain a written record of its meetings and shall deliver such record to the Clerk. The Clerk shall maintain a separate file for each committee. The record of each committee shall include at least the following: the date and place of the meeting, members attending, and any final recommendations that the committee has approved. Such meeting record shall constitute a public record in the meaning of the Freedom of Information Act and shall be made available to any persons as required by that act.

No committee shall sit during a session of the Council unless the Council grant it leave to do so.

5.5 Committee of the Whole. Whenever the Council shall meet in "working meetings," the body shall meet as a committee of the whole and the regular chairperson shall preside. In the absence of the chairperson, the chairperson pro tempore shall preside.

Meetings of the committee of the whole shall conform to the requirements of the Open Meetings Act with respect to public notice except when the Council shall devolve into a committee of the whole at one of its regular meetings.

The rules of the body shall be observed in meetings of the committee of the whole as far as they are applicable, except with respect to limiting debate, moving to vote immediately, and taking a roll call vote.

Whenever the committee of the whole shall have completed its deliberations, a member shall move that the committee rise and report to the Council. The option to rise is always in

order and shall be decided without debate. Motions recommending action by the body shall take precedence in the same order as similar motions in regular meetings.

## Section 6.0 EXECUTIVE SESSIONS

6.1 Procedure. The Council may meet in executive session, closed to the public, upon the motion of any member and concurrence of two-thirds of the members present. The vote shall be recorded in the minutes of the meeting at which the decision to hold an executive session was made.

6.2 Purposes. The Council shall hold executive sessions only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of a public officer, employee, staff member, or individual; or to hear complaints or charges against such a person, but only when the subject of the proposed action or charges requests the meeting to be closed.

(b) To consider strategy connected with the negotiation of collective bargaining agreement.

(c) To consider the purchase or lease of real property prior to the time that an option to lease or purchase such real property is secured.

(d) To consult with legal counsel regarding trial or settlement strategy in connection with specific pending legislation but only when an open meeting would have a detrimental effect on the Council's litigating or settlement position.

(e) To review the specific contents of an application for employment to position and the applicant requests that the application remain confidential. Whenever the Council shall meet to interview an applicant it shall be in open session.

6.3 Minutes. At each executive session, the Clerk shall keep a separate record. This record of minutes shall not be disclosed to the public except upon court order. The Clerk may destroy said minutes after one year and one day have passed following the approval of the minutes of the meeting at which the Council approved the closed session.

## Section 7.0 INTRODUCTION AND CONSIDERATION OF ORDINANCE

7.1 Introduction. Any Village member may introduce an ordinance at any regular meeting of the Village in the regular course of business.

7.2 Order for Consideration. The regular order for consideration of proposed ordinances shall be:

(1) Introduction, first reading by title, and reference to the appropriate committee as determined by the President.

(2) Written report by the committee considering the ordinance and placement on the agenda under pending business.

(3) First reading and review by Council.

(4) Review by Village attorney. Each ordinance shall be reviewed for comments, after being reviewed by the Council, by the Village attorney.

(5) Final reading and vote. Final readings shall be in full unless otherwise ordered by a majority of those members present.

7.3 Committee Review. The President shall refer all proposed ordinances to an appropriate Council committee. The Committee shall review the proposal and make its written recommendation to the Council.

7.4 Review by Committee of the Whole. The Council, meeting as the committee of the whole, may consider each proposed ordinance and the committee's written recommendation thereon.

7.5 Final Adoption. Following the final reading, a motion to adopt shall be in order.

Ordinances which appropriate money, create or abolish an office, create or abolish a tax or an assessment,

create or abolish a street, alley or public ground or any vacation thereof, or which purchase or sell real estate or an interest in real estate or in any public improvement shall require a concurring vote of two-thirds of the Trustees elected. All other ordinances shall only call for a majority vote.

7.6 Publication and Effective Date. No ordinance shall be effective unless within fifteen days after the passage of an ordinance the ordinance or a synopsis of the ordinance shall be published in a newspaper circulated in the Village. An ordinance which imposes a penalty shall not take effect in less than twenty days after its date of publication.

7.7 Copies. The Clerk shall be responsible for reproducing proposed ordinances, after they have been introduced, in quantity sufficient to meet demand for copies.

7.8 Record of Ordinances. All ordinances, when regularly enacted, shall be recorded by the Clerk in a book to be called "The Record of Ordinances" and it shall be the duty of the President and Clerk to authenticate the same by their official signatures upon such record. A copy of the publication notice shall also be placed in "The Record of Ordinances".

## Section 8.0 MOTIONS AND RESOLUTIONS

8.1 Statement by chair, written motions, and resolutions. No motion or resolution shall be adopted until the motion or resolution is stated by the person chairing the meeting. All motions except procedural motions and resolutions may be required to be in writing upon the demand of any member. A request to recess for the purpose of writing out a motion or resolution shall be in order. Each written motion or resolution in writing shall be read by the Village Clerk before being debated.

8.2 Order of Motions. Whenever a question is under debate, no motion shall be received except a motion to:

(a) Fix the time to adjourn
(b) Adjourn
(c) Recess

(d) Clear the floor
(e) Vote immediately
(f) Lay on the table
(g) Postpone to a certain time
(h) Commit or recommit
(i) Amend

These motions shall take precedence in the order in which they are stated above.

8.3 Nondebatable motions. The motion to adjourn, to clear the floor, to recess, to lay on the table, to vote immediately, and all questions relating to the priority of business, shall be ordered and voted upon without debate.

8.4 Rules on procedural motions. A decision to lay on the table shall carry with it all questions to which it is attached, except in the case of laying an appeal on the chair.

(a) A motion to vote immediately may be limited by the mover to one or more questions preceding the main question itself. A roll call vote may be demanded on the question to vote immediately. Whenever the question to vote immediately is ordered, any question, order, or appeal from the decision of the chair shall be decided without debate. If the Council rejects a motion to vote immediately, the consideration of the matter shall be resumed as if no motion therefor had been made.

(b) A motion to reconsider shall be in order on any question the Council has decided, but no question shall be considered more than once. The motion to reconsider shall be in order, however, on the same day as the vote to be reconsidered was taken and in the next regular meeting following. The motion to reconsider shall be moved only by a member who voted with the majority on the vote to be reconsidered. A motion to reconsider a motion to amend shall not be in order if the main question has been voted upon. If the Council has adopted the question of reconsideration, however, motions to amend shall be in order.

A vote to postpone indefinitely shall not be reconsidered. It shall not be in order to take from the table a motion to reconsider, nor shall the vote whereby any motion to reconsider was laid on the table be reconsidered.

(c) A Motion to clear the floor may be made by the chair at any time the chair believes that procedural matters have become sufficiently confused. If the motion to clear the floor is adopted, it shall clear the floor completely of all procedural motions and have the same effect as if all such matters have been withdrawn. The motion shall not be subject to debate nor, if adopted, subject to a motion to reconsider.

(d) A motion to temporarily suspend the rules may be made at any time. By majority vote the board may temporarily suspend the rules to facilitate the accomplishment of any legal objective of the Council in a legal manner.

(e) Any member of the Council may appeal from any decision of the chair. On all appeals the question shall be, "Shall the decision of the chair stand as the judgment of the Council?" Appeals shall be debatable except when the Council is under operation of the order to vote immediately or the decision appealed from relates to the priority of business. Any such appeal may be laid on the table, but it shall not carry with it the matter before the Council at the time such appeal is taken.

(f) Any member of the Council may call for a division of any pending question. The question shall be divided if it contains propositions so distinct that, once removed, a substantive proposition shall remain.

## Section 9.0 AMENDMENTS TO RULES AND REGULATIONS

9.1 These rules may be amended at any regular meeting by the majority vote of the Council members present, when placed on the agenda in accordance with these rules.

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# INDEX


| A | PAGE* |
|---|---|
| Accosting | |
| Disorderly conduct | 9016-2 [60] |
| Amendments of Code | |
| Publication and distribution | 1001-7 [3] |
| Style | 1001-6 [2] |
| Animals | |
| Birds protected | 9002-3 [56] |
| Cruelty to | 9002-1 [56] |
| Dogs | |
| Annoyance to neighbors | 9006-2 [57] |
| Confine female in heat | 9006-2 [57] |
| Confinement at night | 9006-2 [57] |
| Impounding | 9006-3 [58] |
| Notice to owner | 9006-7 [58] |
| Release | 9006-6 [58] |
| Unclaimed disposition | 9006-8 [59] |
| Presumption of ownership | 9006-1 [57] |
| Rabies | |
| Exposure to | 9006-5 [58] |
| Inoculation | 9006-2 [57] |
| Prevention | 9006-4 [58] |
| Vicious, confinement | 9006-2 [57] |
| Poisoning | 9002-2 [56] |
| Assault and Battery | |
| Disorderly conduct | 9016-2(a) [60] |
| Automobiles | |
| See Motor Vehicles | |

B

| | |
|---|---|
| Ballplaying | |
| In streets | 9016-2(s) [61] |
| Begging | |
| Disorderly conduct | 9016-2(g) [60] |


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page.

B


| | Page* |
|---|---|
| Birds | |
| See Animals | |
| Building Regulations | |
| Alternative construction, approval | 8001-2 [44] |
| Archways | 8001-12 [48] |
| Basement as habitable | 8001-36 [52] |
| Bathroom, requirements | 8001-32,35 [52] |
| Building Inspector | |
| Enforcement of Code | 8001-41 [54] |
| Inspection and approval | 8001-43 [54] |
| Notice to inspect | 8001-42 [54] |
| Chimneys | 8001-15 [49] |
| Application NBFU Code | 8001-17 [49] |
| Construction require. | 8001-16 [49] |
| Concrete | 8001-5 [45] |
| Design standard | 8001-5(b) [45] |
| Dwellings, rooms required | 8001-32 [52] |
| Electrical wiring | 8001-21 [50] |
| Fee, building permit | 8001-40 [54] |
| Floors, load design | 8001-7 [46] |
| Footings and foundations | 8001-6 [46] |
| Heating equipment | 8001-18 [49] |
| Application of NBFU Code | 8001-20 [50] |
| Inspection | |
| See Building Inspector | |
| Masonry construction | |
| Lintels and arches | 8001-12 [48] |
| Support required | 8001-13,14 [48] |
| Walls exterior | 8001-11 [47] |
| Masonry | |
| Mix for concrete | 8001-5 [45] |
| Mix for mortar | 8001-4 [44] |
| Materials | |
| Alternative, approval | 8001-2 [44] |
| General standards | 8001-3 [44] |
| Mortar | 8001-4 [44] |
| Partitions, interior | 8001-10 [47] |
| Permit | |
| Cancellation | 8001-44 [55] |
| Fee schedule | 8001-40 [54] |
| Plans & specifications | 8001-39 [53] |
| Required | 8001-37 [53] |
| Site Map | 8001-38 [53] |


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page number.

| B | *Page |
|---|---|
| Plans, for building permit | 8001-39 [53] |
| Plumbing | |
| Fixtures required | 8001-27 [51] |
| Sewer connection required | 8001-30 [ ] |
| Standards | 8001-26 [51] |
| Water supply | 8001-28,29 [52] |
| Prefabricated construc. | 8001-2 [44] |
| Roofs | |
| Load designs | 8001-7 [46] |
| Roofing materials | 8001-22 [50] |
| Rooms | |
| Height of | 8001-25,36 [51,52] |
| Size | 8001-33,34 [52] |
| Scope of regulations | 8001-1 [44] |
| Septic Tanks, construction standards | 8001-31 [ ] |
| Set back | 8001-23 [50] |
| Smokepipes | |
| See Chimneys | |
| Violation | |
| Nuisance per se | 8001-45 [55] |
| Permit cancellation | 8001-44 [55] |
| Walls | |
| Exterior | 8001-9,11 [46,47] |
| Interior | |
| see partitions | |
| Water heaters | 8001-19 [50] |
| Wells, construction standards | 8001-29 [52] |
| Wood construction | |
| Exterior walls | 8001-9 [46] |
| Interior partitions | 8001-10 [47] |
| Lumber standards | 8001-9 [46] |
| Workmanship, general standards | 8001-3 [44] |
| Yards | |
| Front | 8001-23 [50] |
| Side | 8001-24 [50] |

| C | |
|---|---|
| Cafeteria | |
| Eating Establishment | 6032-1 [33] |
| Clerk | |
| Purchasing agent | 1124-1 [5] |


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page.

C *Page

Code
- Amendment procedure 1001-6 [2]
- Copy available to public 1001-1 [1]
- Distribution of 1001-1 [1]
- Effective date 1001-2 [1]
- Headings 1001-9 [3]
- Interpretation, past tense includes future 1001-11 [3]
- Ordinances contained in 1001-3 [1]
- Publication of 1001-1 [1]
- Short title 1001-4 [2]
- Severability 1001-14 [4]
- Violation, penalty 1001-13 [4]

Coffee Shop, eating estab. 6032-1 [33]

Contracts
- See Purchasing

D

Dangerous Structures
- Abatement 9048-3
- Abatement in emergency 9048-4
- Notice and hearing 9048-2
- Prohibited 9048-1

Definitions 1001-5

Deputies
- Title of officer includes 1001-10

Disorderly conduct
- Acts prohibited 9016-2
- Public place defined 9016-1

Disturbing peace
- Disorderly conduct 9016-2(y)

Dogs
- See Animals

Drunkeness
- Disorderly conduct 9016-2(b)


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page.

F

| | *Page |
|---|---|
| Fighting | |
| Disorderly conduct | 9016-2(o) |
| Fire | |
| Buildings | |
| Exits | 9027-7 |
| Waste Accumulation | 9027-6 |
| Chief | |
| Inspection of buildings | 9027-5 |
| Equipment, injuring | 9027-2 |
| Escapes | 9027-7 |
| False Alarm | 9027-1 |
| Hydrants, obstructing | 9027-3 |
| Open fires | 9027-8 |
| Firearms | |
| Discharge of | 9016-2(d) |
| Fire works | |
| Discharge of | 9016-2(e) |
| Fortune telling | |
| Disorderly conduct | 9016-2(j) |
| Frequenting | |
| Disorderly places | 9016-2(u) |

G

| | |
|---|---|
| Gambling | |
| Disorderly conduct | 9016-2(u),(w),(x) |
| Garbage | |
| Depositing in yard | 2026-2 |

H

| | |
|---|---|
| Health Officer | |
| Licenses, certification | 7000-6 |
| Restaurants | |
| Closing | 6032-9 |
| Code Enforcement | 6032-5 |
| Sewage disposal, added requirements | 2026-11 |


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page.

H

*Page

House Trailers
Regulations 5021-1

Housemoving
See Streets

I

Indecent Exposure
Disorderly conduct 9016-2(h),(k)

J

Jostling
Disorderly conduct 9016-2(q)

Junk Yards
Automobiles
License 5032-3
7040-2

M

Motor Vehicles
Junked, Storage 5032-1

N

Notices
By Village 1001-12
Village, interference with 1001-12

Nuisances
Dangerous structures, abatement 9048-3

O

Obscenity
Obscene
Conduct 9016-2(c)
Language 9016-2(i)
Literature 9016-2(l)


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page number.

| | *Page |
|---|---|
| **O** | |
| Offenses | |
| Peanlty | 1001-13 |
| Responsibility for | 1001-8 |
| Officers | |
| Title includes deputy | 1001-10 |
| **P** | |
| Parks | |
| Ball playing | 3012-4 |
| Injury to property | 3012-1 |
| Intoxicants, use of | 3012-2 |
| Rules and regulations | 3012-5 |
| Waste, deposit of | 3012-7 |
| Peddlers | |
| Exempt persons | 7059-5 |
| Finger printing | 7059-2 |
| Fixed stands prohibited | 7059-3 |
| License required | 7059-1 |
| Noise limitations | 7059-4 |
| Penalty | 1001-13 |
| Person, defined | 1001-5 |
| Police | |
| Chief | |
| License certifications | 7000-7 |
| Resisting | 9016-2(aa) |
| President of Village | |
| License suspension by | 7000-10 |
| Privies, prohibited | 2026-3 |
| Prostitution | |
| Disorderly conduct | 9016-2(t),(u),(w) |
| Prowling | |
| Disorderly conduct | 9016-2(cc) |
| Public Place | |
| Defined | 1001-5, 9016-1 |
| Public Property | |
| Malicious destruction | 9016-2(m) |


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page number.

Section. Number between [ ] indicates page number.


| P | *Page |
|---|---|
| Purchasing | |
| Bidders, performance bond | 1124-3 [5] |
| Bids | |
| Competitive | |
| When requied | 1124-3 [5] |
| When unnecessary | 1124-4 [7] |
| Deposit required | 1124-3 [5] |
| Tabulation of | 1124-3 [5] |
| Contracts, professional Services | 1124-4 [7] |
| Joint governmental purchases | 1124-4 [7] |
| Non-competitive products | 1124-4 [7] |
| Notice for bids | 1124-4 [7] |
| Purchase, contracts | |
| Under $1000 | 1124-2 [5] |
| Over $1000 | 1124-3 [5] |
| Purchasing Agent | 1124-1 [5] |
| Sale of Property | 1124-5 [7] |
| Sale of real estate | 1124-6 [7] |
| R | |
| Refuse | |
| Collection | 2001-5 |
| Receptacles | 2001-4 |
| Regulations | 2001-3 |
| Resisting Officer | |
| Disorderly conduct | 9016-2(aa)[62] |
| Restaurants | |
| Defined | 6032-1 [33] |
| Employees | |
| Disease carriers | 6032-10 [38] |
| Infection suspected | 6032-11 [38] |
| Food Inspection | 6032-3 [37] |
| Inspection, periodic | 6032-6 [37] |
| License | |
| Required | 6032-4 [37] |
| Suspension | 6032-9 [37] |
| Sanitation requirements | 6032-2 [34] |
| Violation | |
| Failure to correct | 6032-8 [37] |
| Notice | 6032-7 [37] |


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page.

S *Page


Sales
See Purchasing

Sewage System
Bills, delinquent 2061-1 (a) [17]
Building sewer
Installation 2026-15 [11]
To be separate 2026-13 [10]
Use of old 2026-14 [10]
Connection
Permit 2026-12 [10]
Required 2026-4 [9]
Supervision 2026-16 [11]
Definitions 2026-1 [8]
Deposit of waste in yards 2026-2 [8]
Grease interceptors 2026-18 [12]
Health Officer, additional requirements 2026-11 [10]
Industrial waste, agreements 2026-21 [13]
Injury to facilities 2026-22 [13]
Interceptors, when required 2026-18 [12]
Privies and septic tanks 2026-3 [9]
Prohibited uses 2026-17 [11]
Preliminary treatment 2026-19 [12]
Tests 2026-20 [13]
Rates
Deposit 2061-9 [18]
Fixing 2061-2,3 [17]
Sand Interceptors 2026-18 [12]
Septic tanks 2026-5 [9]
See Building Regulations
Discontinuance of System 2026-9 [10]
Inspection 2026-7 [10]
Maintenance 2026-10 [10]
Permit 2026-6 [9]
Standards 2026-8 [10]
Service to Village 2061-4 [17]
Treatment, preliminary 2026-19 [12]
Water pollution 2026-2 [9]


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page.

S *Page

Septic Tanks
See Sewage System; Building Regulations
Prohibited where sewer available 2026-3 [9]

Sidewalks
Construction
By Village 4024-8 [27]
Notice 1001-12 [4]
Ordering 4024-7 [27]
Permit 4024-2 [26]
Fee 4024-2 [26]
Revocation 4024-5 [26]
Specifications, furnishings 4024-6 [26]
Encroachments, removal 4001-15 [24]
Installations, openings, vaults 4001-8 [22]
Line and grade stakes 4024-3 [26]
Maintenance, duty 4024-9 [27]
Obstructing, crowds 9016-2(r) [61]
Obstructions
Pedestrian passageway 4001-11 [24]
Permits 4001-3,10 [21,23]
Removal 4001-15 [24]
Safeguards 4001-12 [24]
Repair, order to 4024-10 [27]
Sidewalk defined 4024-1 [26]
Snow removal 4024-11 [27]
By Village 4024-12 [28]
Specifications 4024-4 [26]

Soda Fountain
Eating establishment 6032-1 [33]

Soliciting
Immoral act 9016-2(v) [61]

Spitting
On sidwalk or floor 9016-2(dd) [62]

Streets
Ball playing 9016-2(s) [61]
Closing, temporary 4001-16 [24]
Curb cuts 4001-9 [23]
Permits 4001-3,9 [21,23]
Damage to, prohibited 4001-2 [21]


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page.

S

*Page

Encroachments
  Removal 4001-15 [24]
Excavations
  Backfilling 4001-6 [22]
  Emergency 4001-5 [22]
  Permit 4001-3,4 [21,22]
  Safeguards 4001-12 [24]
  Shoring 4001-13 [24]
Fires in, prohibited 9027-8 [64]
Housemoving 4001-14 [24]
Obstructions
  Prohibited 4001-2 [21]
  Removal 4001-15 [24]
Street, defined 4001-1 [21]
Utility pole location 4001-7 [22]

T

Tavern
  Drinking Establishment 6032-1 [33]

Transient Merchants
  Charitable sales exempt 7060-4 [42]
  License required 7060-1 [42]
  Taxes owed Village 7060-3 [42]
  Temporary Business, defined 7060-2 [42]

V

Vagrancy
  Disorderly conduct 9016-2(bb) [62]

Village
  Defined 1001-5 [2]

W

Water
  Bills, delinquent 2061-1(a) (17]
  Charges
    Deposit to secure 2061-9 [18]
    Lien for 2061-6 [18]
  Connection
    Charge 2046-2 [14]
    Defined 2046-1 [14]


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page.

Section. Number between [ ] indicates page.


| W | *Page |
|---|---|
| Fire hydrants | |
| Annual charge | 2061-4 [17] |
| Use | 2046-8 [15] |
| Hydrants, obstructing | 9027-3 [63] |
| Injury to facilities | 2046-11 [15] |
| Lawn sprinkling | 2046-9 [15] |
| "Main", defined | 2046-1 [14] |
| Meters | |
| Access to | 2046-4 [14] |
| Failure | 2046-6 [15] |
| Inaccurate | 2046-7 [15] |
| Injury to | 2046-5 [14] |
| Pollution | 2026-2 [9] |
| Rates | 2061-2,3 [17] |
| Regulations of Dept. | 2046-10 [15] |
| Service installations, testing | 2046-3 [14] |
| Service to Village | 2061-4 [17] |
| Turn-off, to enforce collection | 2061-6 [18] |
| Window Peeping | |
| Disorderly conduct | 9016-2(f) [60] |
| Y | |
| Yards | |
| Private, waste deposits | 2026-2 [9] |


*Number before dash indicates Chapter; after dash indicates Section. Number between [ ] indicates page.

ORDINANCE
CODE #

# VILLAGE ORDINANCE CODE

## 1000 SERIES - ADMINISTRATION

Chapter


1001 Contents, Interpretation and Effect of Village Code
1124 Purchasing, Contracting and Selling Procedure


## 2000 SERIES - UTILITIES AND SERVICES


2026 Sewer Service
2046 Water Service
2061 Water and Sewer Rates


2047 ~~ELECTRIC~~ CROSS CONNECTIONS

## 3000 SERIES - PARKS AND GROUNDS


3012 Park Regulations


## 4000 SERIES - STREETS AND SIDEWALKS


4001 Street Openings and Obstructions
4024 Sidewalks


## 5000 SERIES - ZONING AND PLANNING


5021 House Trailers
5032 Open Storage of Junked Automobiles


## 6000 SERIES - BUSINESSES AND TRADES


7000 Licenses
7059 Peddlers
7060 Transient Merchants


## 8000 SERIES - BUILDING REGULATIONS


8001 Building Code


## 9000 SERIES - POLICE REGULATIONS


9002 Animals
9006 Dogs
9016 Disorderly Conduct
9027 Fire
9048 Dangerous Structures
9101 Traffic
9102 Snowmobiles
9103 SPEED BOATS

# VILLAGE ORDINANCE CODE

(Published by Municipal Codification Service, Inc.
P.O Box 424
Ann Arbor, Michigan)

(The original Village Ordinance Code book is kept in the Village of Elberta office, 108 W. Sheridan, Elberta, Michigan, 49628.)

CERTIFICATION

ELBERTA, MICHIGAN

STATE OF MICHIGAN )
) ss.
COUNTY OF BENZIE )

I, DUDLEY PENFOLD, Clerk of the Village of Elberta, do hereby certify that the within is a true and accurate copy of Ordinance No. 4 passed by the Village Council on the 23rd day of May 1968. KNOWN AS ELBERTA VILLAGE CODE.

IN WITNESS WHEREOF, I have hereunto

set my hand this 23rd day of

May, 1968.

Dudley Penfold
Village Clerk

Certificate of Publication

I, Dudley Penfold, Elberta Village Clerk, hereby certify that the foregoing ordinance was adopted by the Elberta Village Council on May 23, 1968, and that on May 24, 1968, I posted copies thereof in three of the most public places within the Village of Elberta, to-wit:

1. Elberta Village Hall
2. Elberta Post Office
3. Elberta Public Library

Dated: May 24, 1968.

Dudley Penfold

Dudley Penfold, Village Clerk

4. The posting must be done within one week after adoption of the ordinance Code by the Village Council.

5. File the building code pamphlets for future reference.

I am also enclosing a bill for the balance owed for publication of the Code. I am sure that you and the Village officers will find the Code satisfactory in all respects. If you should have any questions or if we can be of any further assistance to you in any way, please do not hesitate to let us know. In the event that additional ordinances are subsequently adopted changing the Village Code or adding to it, we are in a position to print up the necessary changes for you if you desire to have us do so.

MUNICIPAL CODIFICATION SERVICE, INC.

Louis C Andrews Jr

Louis C. Andrews, Jr., President

LCA:cz

# CHAPTER 1001 - CONTENTS, INTERPRETATION AND EFFECT OF VILLAGE CODE

An ordinance to provide for the exercise of certain municipal powers of the Village of Elberta and for the health, safety and welfare of persons and property in the Village, and to provide penalties for the violation of the provisions thereof.

The Village of Elberta ordains:

1. Publication and Distribution of Code. The within Ordinance Code is hereby adopted as an ordinance of the Village of Elberta. Twelve copies of this Code shall be published in loose leaf form and shall be distributed as follows:

| Officer | No. Copies |
|---|---|
| President | 1 |
| Each Trustee | 1 |
| Clerk | 2 |
| Attorney | 1 |
| Marshal (Chief of Police) | 2 |

The Clerk shall keep one of the copies of the Code assigned to him available for public inspection during office hours.

2. Effective Date. This Ordinance Code shall take effect twenty (20) days after its passage.

3. Contents of Code. This Code contains all ordinances of a general and permanent nature of the Village. Excluded from the contents of this Code are special or temporary ordinances such as ordinances granting franchises and special privileges, establishing sewer and other public improvement districts, providing for the construction of particular sewers, streets or sidewalks, or other public works, ordinances authorizing the borrowing of money or the issuance of bonds and ordinances establishing salaries for village officers and employees. Ordinances hereafter adopted which are not of a general or permanent nature shall be numbered consecutively, authenticated, published and recorded in the record of ordinances, but shall not be prepared for insertion in this Code, or be deemed a part hereof. The adoption of this Code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance of the Village in effect on the effective date of this Code. All ordinances of a general and permanent nature in effect on the

effective date of this Code are hereby repealed.

4. Short Title. This ordinance shall be known and cited as the "Elberta Village Code."

5. Definitions. The following words and phrases, when used in this Code and any amendment thereof or addition thereto, shall for the purposes of this Code, have the meanings respectively ascribed to them in this section, except as otherwise specifically provided or where the context clearly indicates a different meaning:

(a) "Village" shall mean the Village of Elberta.

(b) "Person" shall include any individual, co-partnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.

(c) "Public place" shall mean any place to or upon which the public resorts, or travels, whether such place is owned or controlled by the Village or nay agency of the State of Michigan, or is a place to or upon which the public resorts or travels by custom, or by invitation, express or implied.

(d) "Street" or "highway" shall mean the entire width subject to an easement for public right of way, or owned in fee by the Village, County of State, of every way or place, of whatever nature, whenever any part thereof is open to the use of the public travel. "Alley" shall mean any such way or place providing a secondary means of ingress and egress from a property.

(e) "Sidewalk" shall mean that portion of a street between the curb lines or lateral lines and the right of way lines which is intended for the use of pedestrians.

(f) "Charter" shall mean Act 3 of the Public Acts of 1895, State of Michigan, in its application to the Village.

6. Amendment Procedure. This Code shall be amended by ordinance. The title of each amendatory ordinance, adapted to the particular circumstances and purposes of the amendment, shall be substantially as follows:

(a) To amend any section:

AN ORDINANCE TO AMEND SECTION
(OR SECTIONS AND ) OF CHAPTER
OF THE VILLAGE CODE.

(b) To insert a new section or chapter:

AN ORDINANCE TO AMEND THE VILLAGE CODE BY ADDING A NEW SECTION ( NEW SECTIONS OR A NEW CHAPTER, as the case may be) WHICH NEW SECTION (SECTIONS OR CHAPTER) SHALL BE DESIGNATED AS SECTION (SECTIONS AND ) OF CHAPTER (or proper designation if a chapter is added) OF SAID CODE.

(c) To repeal a section or chapter:

AN ORDINANCE TO REPEAL SECTION (SECTIONS AND OR CHAPTER ) CHAPTER , (as the case may be) OF THE VILLAGE CODE.

7. Publication and Distribution of Amendments. Amendments to the Code shall be published as required by section 4, Chapter VI of the Village Charter, and not less than seventeen (17) copies of each amendment shall be published in form suitable for insertion in this Code. The Clerk shall distribute such copies to the officers of the Village having copies of the Code assigned to them. Each officer assigned a copy of the Code shall be responsible for maintaining the same and for the proper insertion of amendatory pages as received. Each copy of said Code shall remain the property of the Village and shall be turned over by each officer having custody thereof upon expiration of this term of office to his successor or to the Village Clerk, in case he shall have no successor.

8. Responsibility. Whenever any act is prohibited by this Code, by an amendment thereof, or by any rule or regulation adopted thereunder, such prohibition shall extend to and include the causing, securing, aiding, or abetting of another person to do said act.

9. Headings. No provision of this Code shall be held invalid by reason of deficiency in any chapter or section heading.

10. Title of Officer to Include Deputy or Subordinate. Whenever, by the provisions of this Code, any officer of the Village is assigned any duty or empowered to perform any act or duty, the title of said officer shall mean and include such officer or his deputy or authorized subordinate.

11. Tense. Except as otherwise specifically provided or indicated by the context, all words used in this Code indicating the present tense shall not be limited to the time of adoption of this Code but shall extend to and include the time of the happening of any act, event, or requirement for which provision is made therein, either as a power, immunity,

Ordinance No. 19

AN ORDINANCE TO AMEND SECTION 13
OF CHAPTER 1001 OF THE VILLAGE CODE.

13. Penalty. Unless a violation of this Code or any ordinance of the Village is specifically designated in the Code or any ordinance as a civil infraction or a misdemeanor, the violation shall be deemed to be a municipal civil infraction. Every person convicted of a misdemeanor violation of any provision of this Code or any ordinance shall be punished by a fine of not more than Five Hundred Dollars ($500.00), plus costs of prosecution, or by imprisonment of not more than ninety-three (93) days or both, unless specific penalties are otherwise provided. The sanction for a violation of which is a municipal civil infraction shall be a civil fine in the amount provided by this Code or any ordinance, plus any costs and other sanctions under applicable laws. Increased civil fines may be imposed for repeat offenses. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any section of this Code or any ordinance of the Village.

Adopted: 5-18-06

Posted: 5-31-06

Sharyn K. Bower, Village Clerk

requirement, or prohibition.

12. Notice. Notice regarding sidewalk construction or repairs, sewer or water connections, dangerous structures, abating nuisances or any other act, the expense of which if performed by the Village may be assessed against the premises under the provisions of this Code, shall, except as otherwise provided by the Village Charter, be served:

(a) By delivering the notice to the owner personally or by leaving the same at his residence, office or place of business with some person of suitable age and discretion, or

(b) By mailing said notice by registered or certified mail to such owner at his last known address, or

(c) If the owner is unknown, by posting said notice in some conspicuous place on the premises for five (5) days.

No person shall interfere with, obstruct, mutilate, conceal, or tear down any official notice or placard posted by any Village office unless permission is given by said officer to remove said notice.

Amended 5-18-04 See Ord #19

13. Penalty. Unless another penalty is expressly provided in this Code for any particular chapter or section, every person convicted by a violation of any provision of this Ordinance Code, shall be punished by a fine of not more than one hundred ($100.00) dollars and costs of prosecution or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any section of this Code whether or not such penalty is re-enacted in the amendatory ordinance.

14. Severability. It is the legislative intent of the Village Council, in adopting this Code, that all provisions and sections of this Code be liberally construed to protect and preserve the peace, health, safety and welfare of the inhabitants of the Village and should any provision or section of this Code be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions or sections, it being the intent that this Ordinance Code shall stand, notwithstanding the invalidity of any provision or section thereof. The provisions of this section shall apply to the amendment of any section or chapter of this Code and to any Chapter added hereto, whether or not the wording of this section is set forth in the amendatory ordinance.

**Ordinance No. 20**

**AN ORDINANCE TO REPEAL SECTION 8 OF THE VILLAGE OF ELBERTA ZONING ORDINANCE AND TO AMEND THE VILLAGE CODE BY ADDING A NEW CHAPTER, WHICH NEW CHAPTER SHALL BE DESIGNATED AS CHAPTER 1002 OF THE VILLAGE CODE.**

## VILLAGE OF ELBERTA

## CHAPTER 1002
## CIVIL INFRACTION ENFORCEMENT ORDINANCE

THE VILLAGE OF ELBERTA ORDAINS:

**1. Short Title.** This Ordinance shall be known and may be cited as the "Village of Elberta Civil Infraction Enforcement Ordinance" of May 18, 2006, and shall be known in short form as the "Civil Infraction Ordinance".

**2. Definitions.** As used in this Ordinance:

A. "Act" means Act No. 236 of the Public Acts of 1961, as amended.

B. "Authorized Village official" means the Village of Elberta Chief of Police, the Village Enforcement Officer, the Frankfort Police Officers or other personnel of the Village of Elberta or City of Frankfort authorized by this ordinance to issue municipal civil infraction citations or municipal civil infraction violation notices.

C. "Bureau" means the Village of Elberta Municipal Ordinances Violations Bureau as established by this Ordinance.

D. "Municipal civil infraction action" means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.

E. "Municipal civil infraction citation" means a written complaint or notice prepared by an authorized Village official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.

F. "Municipal civil infraction violation notice" means a written notice prepared by an authorized Village official, directing a person to appear at the Village of Elberta Municipal Ordinance Violations Bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the Village of Elberta, as authorized under Sections 8369 and 8707(6) of the Act.

**3. Municipal civil infraction action; commencement.** A municipal civil infraction action may be commenced upon the issuance by an authorized Village official of (1) a municipal civil infraction

citation directing the alleged violator to appear in court; or (2) a municipal civil infraction violation notice directing the alleged violator to appear at the Village of Elberta Municipal Ordinance Violations Bureau.

**4. Municipal civil infraction citations; issuance and service.** Municipal civil infraction citations shall be issued and served by authorized Village officials as follows:

A. The time for appearance specified in a citation shall be within a reasonable time after the citation is issued.

B. The place for appearance specified in a citation shall be the Benzie County District Court (hereinafter referred to as "District Court").

C. Each citation shall be numbered consecutively and shall be in a form approved by the state court administrator. The original citation shall be filed with the District Court. Copies of the citation shall be retained by the Village and issued to the alleged violator as provided by Section 8705 of the Act.

D. A citation for municipal civil infraction signed by an authorized Village official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge and belief."

E. An authorized Village official who witnesses a person commit a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and required copies of a citation.

F. An authorized Village official who does not witness a person commit a municipal civil infraction may still issue a citation to a person if based upon his or her investigation, the official has reasonable cause to believe that the person committed the infraction; and either
   (1) the official has consulted with the Village attorney; or
   (2) in the case of a complaint by an alleged witness to the infraction, the prosecuting attorney or Village attorney approves, in writing, the issuance of the citation.

G. Municipal civil infraction citations shall be served by an authorized Village official as follows:

   (1) Except as provided in Section 4(G)(2), an authorized Village official shall personally serve a copy of the citation upon the alleged violator.

(2) If the municipal civil infraction action involves the use or occupancy of land, a building or other structure, a copy of the citation does not need to be personally served upon the alleged violator, but may be served upon an owner or occupant of the land, building or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building or structure at the owner's last known address.

**5. Municipal civil infraction citations; comments.**

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

B. Further, the citation shall inform the alleged violator that he or she may do one of the following:

(1) Admit responsibility for the municipal civil infraction by mail, in person or be representation at or by the time specified for appearance.

(2) Admit responsibility for the municipal civil infraction with explanation by mail by the time specified for appearance or, in person, or by representation.

(3) Deny responsibility for the municipal civil infraction by doing either of the following:

a. Appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the Village.

b. Appearing in court for formal hearing before a judge, with the opportunity of being represented by an attorney.

C. The citation shall also inform the alleged violator of all of the following:

(1) That if the alleged violator desires to admit responsibility with explanation in person or by representation, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for appearance.

(2) That if the alleged violator desires to deny responsibility, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation.

(3) That a hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the Village.

(4) That at an informal hearing the alleged violator must appear in person before a judge or district court magistrate, without the opportunity of being represented by an attorney.

(5) That at a formal hearing, the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney.

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

**6. Municipal ordinance violations bureau.**

A. *Bureau established.* The Village hereby establishes a Municipal Ordinance Violations Bureau ("Bureau") as authorized under Section 8396 of the Act to accept admissions of responsibility for municipal civil infractions in response to municipal civil infraction notices issued and served by authorized Village officials and to collect and retain civil fines and costs as prescribed by the Code or any ordinance.

B. *Location*; supervision; employees; rules and regulations. The Bureau shall be located at the Village of Elberta Offices and shall be under the supervision and control of the Village Clerk. The Village Clerk, subject to the approval of the Village Council, may adopt rules and regulations for the operation of the Bureau and appoint any necessary qualified Village employees to administer the Bureau.

C. *Disposition of violations.* The Bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice (as compared with a citation) has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the Bureau. Nothing in this Chapter shall prevent or restrict the Village from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction violation at the Bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the Bureau shall not

prejudice the person or in any way diminish the person's rights, privileges and protection accorded by law.

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

E. *Municipal civil infraction violation notices.* Municipal civil infraction violation notices shall be issued and served by authorized Village officials under the same circumstances and upon the same persons as provided for citations in Section 4(E), (F), and (G) of this Ordinance. In addition to any other information required by this Ordinance or other ordinance, the notice of violation shall indicate the time by which the alleged violator must appear at the Bureau, the methods by which an appearance may be made, the address and telephone number of the Bureau, the hours during which the Bureau is open, the amount of the fine scheduled for the alleged violation, and the consequence for failure to appear and pay the required fine within the required time.

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

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

**7. Schedule of civil fines established.**

A. A schedule of civil fines payable to the Bureau for admissions of a responsibility by persons served with municipal ordinance violation notices is hereby established. The fines for violations of the Code are as follows:

| Offense | Fine |
|---|---|

| | |
|---|---|
| First Offense: | $50.00 |
| First repeat offense ( a second violation of the same provision within any six (6) month period | $250.00 |
| Second repeat offense (any subsequent violation of the same provision within (6) six months of the first repeat offense | $500.00 |

B. A copy of this schedule, as amended from time to time, shall be posted at the Bureau.

**8. Saving Clause**. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional, invalid, void or unenforceable, for any reason, by a court of competent jurisdiction, the remaining portions of this Ordinance shall remain in full force and effect.

**9. Effective Date**. This Ordinance shall become effective immediately upon publication in a newspaper in general circulation within the Village of Elberta. All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Adopted: 5.18.06

Posted: 5.31.06

Sharyn Bower, Village Clerk

**AN ORDINANCE TO AMEND CHAPTER 1002 THE CIVIL INFRACTION ORDINANCE.**

The Village of Elberta Ordains:

Section 2 Definitions shall be amended as follows:

Part B. Authorized Village official" means the Village Enforcement Officer or other personnel of the Village of Elberta, Benzie County Sheriff's Department, the State Police who are authorized by this ordinance to issue municipal infraction citations or municipal civil infraction violation notices. Animal Control officers are also authorized when enforcing Chapter 9006 - the Dog Ordinance.

Section 7. Schedule of civil fines established.

Part A. First Offence - $100.00

Adopted on April 16, 2009

Posted: 4-19-09

Effective date 5-19-09

Sharyn Bower

Sharyn Bower, Clerk
Village of Elberta

The Village of Elberta ordains:

AN ORDINANCE TO AMEND THE VILLAGE CODE, BY ADDING A NEW SECTION WHICH NEW SECTION SHALL BE DESIGNATED AS SECTION 5040 OF THE CODE.

**Section 5040.**

**1. Established.** A planning commission is hereby established for the Village of Elberta. This planning commission shall be known as the "Village of Elberta Planning Commission."

**2. Members; number; qualifications; appointment; compensation; term; removal; vacancies.**

a. The planning commission shall consist of five members who shall represent, insofar as possible, different professions or occupations. Four (4) of the members shall be appointed by the Village President, and confirmed by a majority vote of the members of the Village Council. The other member, who shall serve ex officio, shall be one (1) member of the Village Council to be selected by it.

b. All members of the planning commission shall serve without compensation, and all four (4) appointed members shall hold no other municipal office, except that one (1) of the appointed members may also be a member of the zoning board of adjustment or appeals.

c. The term of the ex officio member shall correspond to his or her respective official tenure. The term of each appointed member shall be three (3) years, except that one (1) member of the first planning commission to be appointed shall serve for a term of one (1) year and two (2) members for a term of two (2) years. All members shall hold office until their successors are appointed and have qualified.

d. Members, other than the member selected by the Village Council, after a public hearing, may be removed by the Village President for inefficiency, neglect of duty or malfeasance in office. The Village Council may for like cause remove the member selected by it. Vacancies occurring other than through the expiration of term shall be filled for the unexpired term by the Village President in the case of members selected or appointed by him or her, and by the Village Council in the case of the member selected by it.

**3. Chairperson and officers; meetings; rules; records.** The planning commission shall elect a chairperson from amongst the appointed members and may create and fill by election such other offices as it determines necessary. The term of chairperson and any other officers shall be one (1) year, with eligibility for reelection. The planning commission shall hold at least one (1) regular meeting in each month. A majority of the planning commission shall constitute a quorum for the transaction of the ordinary business of the planning commission and all questions which arise at their meetings shall be determined by a majority vote. It shall adopt rules for the transaction of its business and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record.

**4. Powers and duties.**

a. The planning commission may contract with planners, engineers, architects, attorneys and other consultants for such service as it may require. The expenditures of the planning commission shall be within the amounts appropriated for those purposes by the Village Council, which shall provide the funds, equipment, and accommodations necessary for the planning commission work.

b. The planning commission shall have all the powers and duties conferred on a planning commission by Act 285 of the Public Acts of 1931, as amended, all the powers and duties conferred on the village zoning commission by Act 110 of the Public Acts of 2006, as amended, and any other powers

and duties conferred on planning commissions by the other provisions of law. Any and all such powers and duties are hereby conferred and incorporated as if fully set forth herein.

c. Any amendments made to Act 285 of the Public Acts of 1931 and to Act 110 of the Public Acts of 2006, shall hereby be declared to automatically control the powers an duties of the planning commission.

**5. Existing zoning ordinances**. Any existing ordinances shall remain in full force and effect until otherwise amended, altered or repealed by the Village Council, except where such ordinances may be in conflict with Act 110 of the Public Acts of 2006.

**6. Savings clause**. The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section, or provision is declared void or unenforceable, for any reason, by a court of competent jurisdiction, the remaining portions of said Ordinance shall remain in full force.

**7. Effective date**. This Ordinance shall be published and shall take effect fifteen (15) days after adoption by the Council of the Village of Elberta. All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Adopted: 6-21-07

Posted: 6-27-07

Sharyn K. Bower, Village Clerk

AN ORDINANCE TO AMEND SECTION 6 OF CHAPTER 1124 OF THE VILLAGE OF ELBERTA ORDINANCE CODE

THE VILLAGE OF ELBERTA ORDAINS:

Section 6 of Chapter 1124 of the Village of Elberta Ordinance Code shall be amended to provide as follows:

6. Sale of Real Estate. Real estate may be sold when not required for corporate purposes, upon the affirmative vote of two-thirds of the members elect of the Council. Sales of real estate shall be subject to the following:

(a) Sales of real estate to be sold through competitive bids shall be subject to the requirements of section 3 of this Chapter. The notice inviting bids shall contain a brief description of the property in addition to the information section in section 3 (b).

(b) From time to time it is in the best interests of the Village of Elberta to sell certain real property located in the Village of Elberta by private means.

(i) Prior to a private sale, the Village Council must determine that said private sale is in the best interest of the Village of Elberta.

(ii) If there is a private sale, the Village of Elberta shall reserve an easement for purposes of installation, use and maintenance of water, sewer, and power lines.

(iii) Complete documentation of the details of the sale of real property shall be placed on file in the office of the Village Clerk for at least thirty (30) days prior to a meeting of the Village Council to act on the proposed sale. Such documentation shall include a statement detailing the lack of necessity of the real property for public purpose.

(iv) A notice of the proposed sale shall be published in a newspaper circulated in the Village at least ten (10) days prior to a meeting of the Village Council to act upon the proposed sale.

(v) Any private sale of real property shall be done by ordinance.

(c) This Section 6 shall not apply to the sale of a public park, the conditions of which are subject to Michigan statute.

Effective Date. This amendment to the Ordinance shall become effective immediately upon publication in a newspaper in general circulation within the Village of Elberta.

First Reading:

Second Reading:
Effective Date: November 02, 2005

Doug Holmes, President

Sharyn Bower, Village Clerk

Motion by Kirbach supported by Hendershott.

Yeas 6 Nays 0 Absent 1

I, Sharyn K. Bower, Clerk of the Village of Elberta do hereby certify this to be a true and accurate copy of an ordinance duly enacted by the Council of the Village of Elberta on October 20, 2005 at a regular scheduled meeting.

Sharyn K. Bower
Elberta Village Clerk

AMENDMENTS TO PURCHASING , CONTRACTING
AND SELLING AGREEMENT ORDINANCE

**BE IT RESOLVED**, that the Village of Elberta Ordains that: Chapter 1124, Section 2: Purchases or Contracts under $1,000.00 is amended to read as follows: Services and the purchase of supplies, materials or equipment, the cost of which is less than $2,500.00, may be made in the open market but such services and purchases shall, except when the President shall determine that no advantage to the Village would result, be based on two (2) or more bids and shall be awarded to the lowest qualified bidder meeting specifications. The Purchasing Agent may solicit bids verbally or by telephone or may contact prospective bidders by written communication. A record shall be kept of all open market orders and the bids submitted thereon, which records shall be available for public inspection. Any or all bids may be rejected.

And further,

The Village of Elberta Ordains that Chapter 1124, Section 3: Purchases or Contracts over $1,000.00 is amended to read as follows: any expenditure for supplies, materials, equipment, construction project or contract obligating the Village, where the amount of the Village's obligation is in excess of $2,500.00 shall be governed by the provisions of this section.

Motion by Holmes supported by Stefoff.

Yeas 7 Nays 0 Absent 0

I, Sharyn K. Bower, Clerk of the Village of Elberta do hereby certify this to be a true and accurate copy of a resolution passed by the Council of the Village of Elberta on April 15, 1999 at a regular scheduled meeting.

Sharyn K. Bower
Elberta Village Clerk

# CHAPTER 1124 - PURCHASING, CONTRACTING AND SELLING PROCEDURE

1. Purchasing Agent. The Village Clerk shall act as Purchasing Agent of the Village, unless another officer or employee shall be designated to act as Purchasing Agent by the President in writing filed with the Clerk. The Purchasing Agent, with the approval of the President, shall adopt any necessary rules respecting requisitions and purchase orders.

2. Purchases or Contracts under $1000.00. Purchases of supplies, materials or equipment, the cost of which is less than $1000.00, may be made in the open market but such purchases shall, except when the President shall determine that no advantage to the Village would result, be based on at least three (3) competitive bids and shall be awarded to the lowest responsible bidder meeting specifications. The Purchasing Agent may solicit bids verbally or by telephone, or may contact prospective bidders by written communication. A record shall be kept of all open market orders and the bids submitted thereon, which records shall be available for public inspection. Any or all bids may be rejected.

3. Purchases or Contracts over $1000.00. Any expenditure for supplies, materials, equipment, construction project or contract obligating the Village, where the amount of the Village's obligation is in excess of $1000.00 shall be governed by the provisions of this section.

(a) Such expenditure shall be made the subject of a written contract. A purchase order shall be a sufficient written contract only in cases where the expenditure is in the usual and ordinary course of the Village's affairs and in no case shall it be sufficient for the construction of public works or the contracting for supplies or services over any period of time or where the quality of the goods or materials or the scope of the services bargained is not wholly standardized.

(b) Notice inviting sealed bids shall be published in some newspaper of general circulation or posted in three (3) places in the Village, at least five (5) days before the final date for submitting bids thereon. Such notice shall give briefly the specifications of the supplies, materials or equipment or construction project or other matter to be contracted for, and shall state the amount of bond or other security, if any is to be required, to be given with the bid, and the amount of bond or other security to be given with the contract. The

notice shall state the time limit, the place of filing and the time of opening bids and shall also state that the right is reserved to reject any or all bids. Any other conditions of award of the contract shall also be stated in general terms.

(c) The Purchasing Agent shall also solicit bids from a reasonable number of such qualified prospective bidders as are known to him by sending each a copy of the notice requesting bids.

(d) The Council shall prescribe the amount of any security to be deposited with any bid which deposit shall be in the form of cash, certified or cashier's check or bond written by a surety company authorized to do business in the State of Michigan. The amount of such security shall be expressed in terms of percentage of the bid submitted. The Council shall also fix the amount of the performance bond and in the case of construction contracts, the amount of the labor and material bond to be required of the successful bidders.

(e) Bids shall be opened in public at the time and place designated in the notice requesting bids in the presence of the President and either the Clerk or the Treasurer. The bids shall thereupon be carefully examined and tabulated and reported to the Council with the recommendation of the Purchasing Agent at the next Council meeting. After tabulation all bids may be inspected by the competing bidders.

(f) When such bids are submitted to the Council, the contract to be executed shall also be submitted and if the Council shall find any of the bids to be satisfactory, it shall award the contract to the lowest responsible bidder, unless the Council shall determine that the public interest will be better served by accepting a higher bid, and shall authorize execution of the contract upon execution of the contract by the successful bidder and the filing of any bonds which may have been required. Such award may be by resolution or ordinance. The Council shall have the right to reject any or all bids and to waive irregularities in bidding and to accept bids which do not conform in every respect to the bidding requirements.

(g) At the time the contract is executed by him, the contractor shall file a bond executed by a surety company authorized to do business in the State of Michigan, to the Village, conditioned upon the performance of said contract and saving the Village harmless from all losses or damage caused to any person or property by reason of any careless-

ness or negligence by the contractor and from all expense of inspection, engineering and otherwise, caused by the delay in the completion of any improvement and further conditioned to pay all laborers, mechanics, sub-contractors and material men as well as all just debts, dues and demands incurred in the performance of such work.

(h) All bids, deposits of cash or certified or cashier's checks may be retained until the contract is awarded and signed. If any successful bidder fails or refuses to enter into the contract awarded to him within five (5) days after the same has been awarded, or file any bond required within the same time, the deposit accompanying his bid shall be forfeited to the Village, and the Council, may, in its discretion, award the contract to the next low responsible bidder unless the Council shall determine that the public interest will be better served by accepting a higher bid, or said contract may be re-advertised.

4. Exceptions to Competitive Bidding. Subject to prior approval of the Council, competitive bidding shall not be required in the following cases:

(a) Where the product or material contracted for is not competitive in nature, and the Purchasing Agent so certifies to the Council in writing.

(b) In the employment of professional services;

(c) Where the Council shall determine that the public interest will be best served by joint purchase with, or purchase from, another unit of government.

5. Sale of Property. Whenever any personal property belonging to the Village is no longer needed for corporate or public purposes, the same may be offered for sale on approval by the Council. Personal property not exceeding on thousand ($1000.00) dollars in value may be sold for cash by the Purchasing Agent upon approval of the President, after receiving quotations or competitive bids therefor for the best price obtainable. Personal property with a value in excess of one thousand ($1000.00) dollars may be sold after advertising and receiving competitive bids, as provided in section 3 and after approval of the sale has been given by the Council. In the purchase of automotive equipment, bidders may include in their bid, a trade-in allowance for old equipment and such equipment may be disposed of in trade without further bidding requirements.

6. Sale of Real Estate. Real estate may be purchased or sold or leased when not required for corporate purposes, upon the affirmative vote of two-thirds of the members elect

of the Council. Sales of real estate shall be subject to the requirements of section 2 of this Chapter. The notice inviting bids shall contain a brief description of the property in addition to the information specified in section 2 (b).

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Act No. 222
Public Acts of 2001
Approved by the Governor
January 2, 2002
Filed with the Secretary of State
January 2, 2002
EFFECTIVE DATE: January 2, 2002

**STATE OF MICHIGAN**
**91ST LEGISLATURE**
**REGULAR SESSION OF 2001**

**Introduced by Senators Johnson, Hammerstrom, Dunaskiss, Gougeon, Shugars, North and Bullard**

# ENROLLED SENATE BILL No. 109

AN ACT to amend 1964 PA 170, entitled "An act to make uniform the liability of municipal corporations, political subdivisions, and the state, its agencies and departments, officers, employees, and volunteers thereof, and members of certain boards, councils, and task forces when engaged in the exercise or discharge of a governmental function, for injuries to property and persons; to define and limit this liability; to define and limit the liability of the state when engaged in a proprietary function; to authorize the purchase of liability insurance to protect against loss arising out of this liability; to provide for defending certain claims made against public officers and paying damages sought or awarded against them; to provide for the legal defense of public officers and employees; to provide for reimbursement of public officers and employees for certain legal expenses; and to repeal certain acts and parts of acts," (MCL 691.1401 to 691.1415) by adding sections 16, 17, 18, and 19.

*The People of the State of Michigan enact:*

Sec. 16. As used in this section and sections 17 to 19:

(a) "Affected property" means real property affected by a sewage disposal system event.

(b) "Appropriate governmental agency" means a governmental agency that, at the time of a sewage disposal system event, owned or operated, or directly or indirectly discharged into, the portion of the sewage disposal system that allegedly caused damage or physical injury.

(c) "Claimant" means a property owner that believes that a sewage disposal system event caused damage to the owner's property, a physically injured individual who believes that a sewage disposal system event caused the physical injury, or a person making a claim on behalf of a property owner or physically injured individual. Claimant includes a person that is subrogated to a claim of a property owner or physically injured individual described in this subdivision.

(d) "Contacting agency" means any of the following within a governmental agency:

(*i*) The clerk of the governmental agency.

(*ii*) If the governmental agency has no clerk, an individual who may lawfully be served with civil process directed against the governmental agency.

(*iii*) Any other individual, agency, authority, department, district, or office authorized by the governmental agency to receive notice under section 19, including, but not limited to, an agency, authority, department, district, or office

responsible for the operation of the sewage disposal system, such as a sewer department, water department, or department of public works.

(e) "Defect" means a construction, design, maintenance, operation, or repair defect.

(f) "Noneconomic damages" includes, but is not limited to, pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, and other nonpecuniary damages.

(g) "Person" means an individual, partnership, association, corporation, other legal entity, or a political subdivision.

(h) "Serious impairment of body function" means that term as defined in section 3135 of the insurance code of 1956, 1956 PA 218, MCL 500.3135.

(i) "Service lead" means an instrumentality that connects an affected property, including a structure, fixture, or improvement on the property, to the sewage disposal system and that is neither owned nor maintained by a governmental agency.

(j) "Sewage disposal system" means all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes, and includes a storm water drain system under the jurisdiction and control of a governmental agency.

(k) "Sewage disposal system event" or "event" means the overflow or backup of a sewage disposal system onto real property. An overflow or backup is not a sewage disposal system event if any of the following was a substantial proximate cause of the overflow or backup:

(*i*) An obstruction in a service lead that was not caused by a governmental agency.

(*ii*) A connection to the sewage disposal system on the affected property, including, but not limited to, a sump system, building drain, surface drain, gutter, or downspout.

(*iii*) An act of war, whether the war is declared or undeclared, or an act of terrorism.

(*l*) "Substantial proximate cause" means a proximate cause that was 50% or more of the cause of the event and the property damage or physical injury.

Sec. 17. (1) To afford property owners, individuals, and governmental agencies greater efficiency, certainty, and consistency in the provision of relief for damages or physical injuries caused by a sewage disposal system event, a claimant and a governmental agency subject to a claim shall comply with this section and the procedures in sections 18 and 19.

(2) A governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a sewage disposal system event and the governmental agency is an appropriate governmental agency. Sections 16 to 19 abrogate common law exceptions, if any, to immunity for the overflow or backup of a sewage disposal system and provide the sole remedy for obtaining any form of relief for damages or physical injuries caused by a sewage disposal system event regardless of the legal theory.

(3) If a claimant, including a claimant seeking noneconomic damages, believes that an event caused property damage or physical injury, the claimant may seek compensation for the property damage or physical injury from a governmental agency if the claimant shows that all of the following existed at the time of the event:

(a) The governmental agency was an appropriate governmental agency.

(b) The sewage disposal system had a defect.

(c) The governmental agency knew, or in the exercise of reasonable diligence should have known, about the defect.

(d) The governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect.

(e) The defect was a substantial proximate cause of the event and the property damage or physical injury.

(4) In addition to the requirements of subsection (3), to obtain compensation for property damage or physical injury from a governmental agency, a claimant must show both of the following:

(a) If any of the damaged property is personal property, reasonable proof of ownership and the value of the damaged personal property. Reasonable proof may include testimony or records documenting the ownership, purchase price, or value of the property, or photographic or similar evidence showing the value of the property.

(b) The claimant complied with section 19.

Sec. 18. (1) Except as provided in subsection (2), economic damages are the only compensation for a claim under section 17. Except as provided in subsection (2), a court shall not award and a governmental agency shall not pay noneconomic damages as compensation for an event.

(2) A governmental agency remains subject to tort liability for noneconomic damages caused by an event only if the claimant or the individual on whose behalf the claimant is making the claim has suffered death, serious impairment of body function, or permanent serious disfigurement.

(3) In an action for noneconomic damages under section 17, the issues of whether a claimant or the individual on whose behalf the claimant is making the claim has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(a) There is no factual dispute concerning the nature and extent of the claimant's or the individual's injuries.

(b) There is a factual dispute concerning the nature and extent of the claimant's or the individual's injuries, but the dispute is not material to determining whether the claimant or the individual has suffered a serious impairment of body function or permanent serious disfigurement.

(4) Unless this act provides otherwise, a party to a civil action brought under section 17 has all applicable common law and statutory defenses ordinarily available in civil actions, and is entitled to all rights and procedures available under the Michigan court rules.

Sec. 19. (1) Except as provided in subsections (3) and (7), a claimant is not entitled to compensation under section 17 unless the claimant notifies the governmental agency of a claim of damage or physical injury, in writing, within 45 days after the date the damage or physical injury was discovered, or in the exercise of reasonable diligence should have been discovered. The written notice under this subsection shall contain the content required by subsection (2)(c) and shall be sent to the individual within the governmental agency designated in subsection (2)(b). To facilitate compliance with this section, a governmental agency owning or operating a sewage disposal system shall make available public information about the provision of notice under this section.

(2) If a person who owns or occupies affected property notifies a contacting agency orally or in writing of an event before providing a notice of a claim that complies with subsection (1), the contacting agency shall provide the person with all of the following information in writing:

(a) A sufficiently detailed explanation of the notice requirements of subsection (1) to allow a claimant to comply with the requirements.

(b) The name and address of the individual within the governmental agency to whom a claimant must send written notice under subsection (1).

(c) The required content of the written notice under subsection (1), which is limited to the claimant's name, address, and telephone number, the address of the affected property, the date of discovery of any property damages or physical injuries, and a brief description of the claim.

(3) A claimant's failure to comply with the notice requirements of subsection (1) does not bar the claimant from bringing a civil action under section 17 against a governmental agency notified under subsection (2) if the claimant can show both of the following:

(a) The claimant notified the contacting agency under subsection (2) during the period for giving notice under subsection (1).

(b) The claimant's failure to comply with the notice requirements of subsection (1) resulted from the contacting agency's failure to comply with subsection (2).

(4) If a governmental agency that is notified of a claim under subsection (1) believes that a different or additional governmental agency may be responsible for the claimed property damages or physical injuries, the governmental agency shall notify the contacting agency of each additional or different governmental agency of that fact, in writing, within 15 business days after the date the governmental agency receives the claimant's notice under subsection (1). This subsection is intended to allow a different or additional governmental agency to inspect a claimant's property or investigate a claimant's physical injury before litigation. Failure by a governmental agency to provide notice under this subsection to a different or additional governmental agency does not bar a civil action by the governmental agency against the different or additional governmental agency.

(5) If a governmental agency receives a notice from a claimant or a different or additional governmental agency that complies with this section, the governmental agency receiving notice may inspect the damaged property or investigate the physical injury. A claimant or the owner or occupant of affected property shall not unreasonably refuse to allow a governmental agency subject to a claim to inspect damaged property or investigate a physical injury. This subsection does not prohibit a governmental agency from subsequently inspecting damaged property or investigating a physical injury during a civil action brought under section 17.

(6) If a governmental agency notified of a claim under subsection (1) and a claimant do not reach an agreement on the amount of compensation for the property damage or physical injury within 45 days after the receipt of notice under this section, the claimant may institute a civil action. A civil action shall not be commenced under section 17 until after that 45 days.

(7) This section does not apply to claims for noneconomic damages made under section 17.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Larry E Randall

Clerk of the House of Representatives.

Approved _____

_____

Governor.

# CHAPTER 2026

## SEWER SERVICE

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE VILLAGE OF ELBERTA AS FOLLOWS:

2026.0 Chapter 2026 of the Village Ordinance Code is hereby amended by deleting all of the provisions thereunder and in their place the following sections are adopted. All resolutions, rules and procedures shall continue until changed by resolution of the Village Council.

2026.1 DEFINITIONS

Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation of this Chapter:

"Shall" is mandatory.
"May" is permissive.

A. Building Drain. Shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.

B. B.O.D. (Denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C, expressed in parts per million by weight.

C. Building Sewer. Shall mean the extension from the building drain to the property line where it connects with the riser.

D. Combined Sewer. Shall mean a sewer receiving both surface runoff and sewage.

E. Establishment. An establishment is defined as follows:

1. Each separate residential unit is a separate establishment, regardless of whether it is in a connected structure, such as a duplex, flat or apartment.

2. Each lot in a mobile home park, where permanent trailers are stationed, is an establishment. Transient lots are not separate establishments for the purpose of this Ordinance.

3. A group of cabins, rooming houses, hotel or motel rooms operated as a transient facility is a single establishment and shall be charged a commercial rate. Should the use of a single cabin or group of cabins change to permanent residential, then each such residence will become a separate establishment to be charged as a residential unit.

   A combination of transient cabins and a residence which is used by the manager or owner constitutes two establishments.

   For the purposes of this Ordinance, any unit rented on a daily or weekly basis is a "transient facility".

4. Each individual business, institution, or industrial entity is a separate establishment, even though it might be housed along with one or more other businesses, institution or industrial, in a single structure with a common landlord.

5. Combinations of any of the above are each a separate establishment.

F. Industrial Wastes. Shall mean the liquid wastes from industrial processes as distinct from sanitary sewage.

G. pH. Shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

H. Premises. Shall mean each lot or parcel of land in the Village of Elberta.

I. Public Sewer. Shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

J. Sanitary Sewer. Shall mean a sewer which carries sewage and to which storm, surface, and ground waters are not admitted.

K. Sewage. Shall mean a combination of the water-carried wastes from premises or establishments.

L. Sewer. Shall mean a pipe or conduit for carrying sewage.

M. Storm Sewer or Storm Drain. Shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes.

N. Superintendent. Shall mean the Superintendent of the Department of Public Works of the Village or his authorized deputy, agent or representative.

2026.2 WASTE DEPOSITS

No person shall place or deposit in an unsanitary manner upon public or private property within the Village, any human or animal excrement, garbage, or other objectionable waste. No person shall discharge to any natural outlet within the Village, any unsanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Chapter.

2026.3 PRIVIES AND SEPTIC TANKS

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage in the Village of Elberta.

2026.4 PUBLIC SEWER CONNECTION REQUIRED

The owner of each structure used or available for use for household, commercial, industrial, or other purposes, situated within the Village and abutting on any street, alley or right-of-way in which there is located a public sewer, is hereby required at their expense to install suitable toilet and sink facilities therein, and to connect such facilities directly with the proper public sewer, before any use or occupancy; provided that said public sewer is within two hundred (200) feet of the boundary line of the premises or parcel upon which the structure is located.

2026.5 PRIVATE SEWER SYSTEMS

Where a public sanitary or combined sewer is not available under the provisions of Section 2026.4, the building sewer shall be

connected to a private sewage disposal system complying with the provisions of this Chapter and the applicable statutes and codes of the State of Michigan.

2026.6 PERMIT AND FEE

Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the Village which the applicant shall supplement by any plans, specifications and other information as is deemed necessary by the Superintendent. A permit and inspection fee established by Council resolution shall be paid at the time the application is filed.

2026.7 INSPECTION

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. A final inspection by the Superintendent shall be made before the system is enclosed or covered.

2026.8 STANDARDS

The type, capacities, location and layout of a private sewage disposal system shall comply with all requirements of the Department of Public Health of the State of Michigan, and shall be constructed and connected in accordance with the plumbing regulations of the Village, the County and the State of Michigan. No septic tank or cesspool shall be permitted to discharge to any public sewer or natural outlet.

2026.9 DISCONTINUANCE OF SYSTEM

At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Section 2026.4, a direct connection shall be made to the public sewer in compliance with this Chapter, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned, filled with suitable material, or removed as requested by the State of Michigan.

2026.10 MAINTENANCE OF SYSTEM

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times at no expense to the Village.

2026.11 ADDITIONAL REQUIREMENTS

Nothing herein contained shall be construed to interfere with any additional requirements that may be imposed by the Health Department of the County of Benzie, or otherwise limit their powers.

2026.12 SEWER CONNECTIONS

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any building sewer, private sewer or public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee as established by resolution of the Village Council for a building sewer permit shall be paid at the time the application is filed.

2026.13 SEPARATE BUILDING SEWERS

A separate and independent building sewer shall be provided for every building constructed after the effective date of this ordinance, when a sewage disposal system is required for a building, as set forth in this ordinance or other regulations, ordinance and statutes prescribed by the County of Benzie, the State of Michigan and/or the United States Government.

2026.14 OLD BUILDING SEWERS

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this Chapter.

2026.15 INSTALLATION OF BUILDING SEWER

All building sewer construction and the installation of pipes, fittings and appurtenances shall be done in accordance with building regulations and such supplementary rules and regulations as the Village Council, the State of Michigan or the U.S. Government may prescribe. A backwater valve shall be installed by the property owner where any plumbing fixtures may be subject to backflow from the public sewer.

2026.16 SUPERVISION OF CONNECTION

The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection

VILLAGE OF ELBERTA

CHAPTER 2026
SEWER SERVICE

CHAPTER 2061
RATES FOR WATER, SEWER AND GARBAGE SERVICE

I, hereby certify the the foregoing is a true and complete copy of an Ordinance adopted by the Council of the Village of Elberta at a regular meeting held on April 18, 1991, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act 276, Public Acts of Michigan, 1976, and that the minutes of said meeting and copy of the ordinance is available for inspection at the Village office as required by said Act and Section 4, Chapter VI of the Village of Elberta Charter.

I further certify that said Ordinance has been recorded in the Ordinance Book of the Village of Elberta and such recording has been authenticated by the signatures of the President and Clerk.

Effective date of this ordinance shall be the 18th day of April, 1991.

Barbara Harju, Clerk
Village of Elberta

Carl Noffsinger, Village President

Barbara Harju
Village Clerk

# AMENDMENTS TO SEWER ORDINANCE

BE IT RESOLVED, that the Village of Elberta Ordains that: Chapter 2026: Sewer Service, Section 13: Separate Building Sewers is amended to read as follows:

A separate and independent building sewer shall be provided for every building constructed after the effective cate of this ordinance, when a sewage disposal system is required for a building, as set forth in this ordinance or other regulations, ordinance and statutes prescribed by the County of Benzie, the State of Michigan and/or the United States Government.

and further,

The Village of Elberta Ordains that: Chapter 2061, Rates For Water, Sewage and Garbage Service; Section 2(M) Sewer Ready to Serve Fee: is amended to read as follows:

That fee charged to each building located on all premises which have a building sewer constructed after the building has once been connected to a riser or public sewer.

These Ordinance Amendments were adopted at a Regular Meeting of the Elberta Village Council on the 19th day of August 1993 and shall take efect on September 1, 1993.

I, Barbara Harju, Clerk of the Village of Elberta do certify these to be true and accurate copies of ordinance amendments adopted on the 19th day of August, 1993 at a regular meeting of the Elberta Village Council.

Barbara Harju

Barbara Harju, Clerk

# CHAPTER 2026

## SEWER SERVICE

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE VILLAGE OF ELBERTA AS FOLLOWS:

2026.0 Chapter 2026 of the Village Ordinance Code is hereby amended by deleting all of the provisions thereunder and in their place the following sections are adopted. All resolutions, rules and procedures shall continue until changed by resolution of the Village Council.

2026.1 DEFINITIONS

Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation of this Chapter:

"Shall" is mandatory.
"May" is permissive.

A. Building Drain. Shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.

B. B.O.D. (Denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C, expressed in parts per million by weight.

C. Building Sewer. Shall mean the extension from the building drain to the property line where it connects with the riser.

D. Combined Sewer. Shall mean a sewer receiving both surface runoff and sewage.

E. Establishment. An establishment is defined as follows:



1991 Amendment

1. Each separate residential unit is a separate establishment, regardless of whether it is in a connected structure, such as a duplex, flat or apartment.

2. Each lot in a mobile home park, where permanent trailers are stationed, is an establishment. Transient lots are not separate establishments for the purpose of this Ordinance.

3. A group of cabins, rooming houses, hotel or motel rooms operated as a transient facility is a single establishment and shall be charged a commercial rate. Should the use of a single cabin or group of cabins change to permanent residential, then each such residence will become a separate establishment to be charged as a residential unit.

   A combination of transient cabins and a residence which is used by the manager or owner constitutes two establishments.

   For the purposes of this Ordinance, any unit rented on a daily or weekly basis is a "transient facility".

4. Each individual business, institution, or industrial entity is a separate establishment, even though it might be housed along with one or more other businesses, institution or industrial, in a single structure with a common landlord.

5. Combinations of any of the above are each a separate establishment.

F. Industrial Wastes. Shall mean the liquid wastes from industrial processes as distinct from sanitary sewage.

G. pH. Shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

H. Premises. Shall mean each lot or parcel of land in the Village of Elberta.

I. Public Sewer. Shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

J. Sanitary Sewer. Shall mean a sewer which carries sewage and to which storm, surface, and ground waters are not admitted.

K. Sewage. Shall mean a combination of the water-carried wastes from premises or establishments.

L. Sewer. Shall mean a pipe or conduit for carrying sewage.

M. Storm Sewer or Storm Drain. Shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes.

N. Superintendent. Shall mean the Superintendent of the Department of Public Works of the Village or his authorized deputy, agent or representative.

2026.2 WASTE DEPOSITS

No person shall place or deposit in an unsanitary manner upon public or private property within the Village, any human or animal excrement, garbage, or other objectionable waste. No person shall discharge to any natural outlet within the Village, any unsanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Chapter.

2026.3 PRIVIES AND SEPTIC TANKS

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage in the Village of Elberta.

2026.4 PUBLIC SEWER CONNECTION REQUIRED

The owner of each structure used or available for use for household, commercial, industrial, or other purposes, situated within the Village and abutting on any street, alley or right-of-way in which there is located a public sewer, is hereby required at their expense to install suitable toilet and sink facilities therein, and to connect such facilities directly with the proper public sewer, before any use or occupancy; provided that said public sewer is within two hundred (200) feet of the boundary line of the premises or parcel upon which the structure is located.

2026.5 PRIVATE SEWER SYSTEMS

Where a public sanitary or combined sewer is not available under the provisions of Section 2026.4, the building sewer shall be

connected to a private sewage disposal system complying with the provisions of this Chapter and the applicable statutes and codes of the State of Michigan.

2026.6 PERMIT AND FEE

Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the Village which the applicant shall supplement by any plans, specifications and other information as is deemed necessary by the Superintendent. A permit and inspection fee established by Council resolution shall be paid at the time the application is filed.

2026.7 INSPECTION

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. A final inspection by the Superintendent shall be made before the system is enclosed or covered.

2026.8 STANDARDS

The type, capacities, location and layout of a private sewage disposal system shall comply with all requirements of the Department of Public Health of the State of Michigan, and shall be constructed and connected in accordance with the plumbing regulations of the Village, the County and the State of Michigan. No septic tank or cesspool shall be permitted to discharge to any public sewer or natural outlet.

2026.9 DISCONTINUANCE OF SYSTEM

At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in Section 2026.4, a direct connection shall be made to the public sewer in compliance with this Chapter, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned, filled with suitable material, or removed as requested by the State of Michigan.

2026.10 MAINTENANCE OF SYSTEM

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times at no expense to the Village.

2026.11 ADDITIONAL REQUIREMENTS

Nothing herein contained shall be construed to interfere with any additional requirements that may be imposed by the Health Department of the County of Benzie, or otherwise limit their powers.

2026.12 SEWER CONNECTIONS

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any building sewer, private sewer or public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee as established by resolution of the Village Council for a building sewer permit shall be paid at the time the application is filed.

2026.13 SEPARATE BUILDING SEWERS

A separate and independent building sewer shall be provided for every building constructed after the effective date of this ordinance, when a sewage disposal system is required for a building, as set forth in this ordinance or other regulations, ordinance and statutes prescribed by the County of Benzie, the State of Michigan and/or the United States Government.

2026.14 OLD BUILDING SEWERS

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this Chapter.

2026.15 INSTALLATION OF BUILDING SEWER

All building sewer construction and the installation of pipes, fittings and appurtenances shall be done in accordance with building regulations and such supplementary rules and regulations as the Village Council, the State of Michigan or the U.S. Government may prescribe. A backwater valve shall be installed by the property owner where any plumbing fixtures may be subject to backflow from the public sewer.

2026.16 SUPERVISION OF CONNECTION

The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection

and connection to the public sewer. The connection shall be made by the Department of Public Works or under its immediate supervision.

## 2026.17 DEVELOPMENTS

If any person proposes to develop property within the boundaries of the Village and to dedicate portions of the property for street or utility rights-of-way, the Village may require that sewer mains be installed within the rights-of-way at the developer's expense. These mains shall be constructed according to plans and specifications approved by the Village and the Michigan Department of Health and shall meet the specifications for public sewer mains. No sewage shall be admitted into the mains and they shall not be connected to the Village system until the Village has approved the installation. The provisions of this chapter shall also apply to any installation of sewer mains outside the boundaries of the Village, when the owner wishes to connect such mains to the Village system. Nothing in this Section shall be construed as giving owners of property located outside the boundaries of the Village the right to connect sewer mains or building sewers to the Village system.

## 2026.18 USE OF THE PUBLIC SEWER

A. No person shall discharge or cause to be discharged any storm water, surface water, ground water, water from footing drains, or roof water into any sanitary sewer or sewer connection except as provided in this ordinance. Any premises connected to a storm sewer shall comply with County, State and Federal requirements.

B. Downspouts and roof leaders shall be disconnected from sanitary sewers within one (1) year of the effective date of this ordinance.

## 2026.19 PROHIBITED USES

Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

A. Any liquid or vapor having a temperature higher than $150^{O}F$.

B. Any water or waste which may contain more than fifty (50) parts per million, by weight, of fat, oil, or grease.

C. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.

D. Any garbage that has not been properly shredded to a size smaller than ½ inch and in excessive quantities that would interfere with the treatment plant.

E. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, or any other solid or fiscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works.

F. Any waters or wastes having a pH lower than 5.5 or higher than 9.5, or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

G. Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitutes a hazard to humans or animals, or creates any hazard in the receiving waters of the sewage treatment plant.

H. Any waters or wastes containing more than 300 mg/l of B.O.D., 300 mg/l of suspended solids, or 450 mg/l of Chemical Oxygen Demand.

I. Any industrial waste that may cause a deviation from the National Polution Discharge Elimination System, established by Federal Act 92-500, as amended.

J. Any noxious or malodorous gas or substance capable of creating a public nuisance.

K. Any waste having an average daily flow greater than two percent (2%) of the average daily flow of the Village.

2026.20 INTERCEPTORS

Grease, oil and sand interceptors and manholes shall be provided by the owner when, in the opinion of the Superintendent, they are necessary for the observation, sampling, measurement and proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent, State of Michigan or U.S. Government, and shall be located as to be readily and easily accessible for cleaning and inspection.

2026.21 PRELIMINARY TREATMENT FACILITIES

The admission into the public sewers of any waters or wastes having:

A. Five (5) day B.O.D. greater than 300 parts per million by weight; or

B. Containing more than 350 parts per million by weight of suspended solids, or

C. Containing any quantity of substances having the characteristics described in Section 2026.19, or

D. Having an average daily flow greater than two percent (2%) of the average daily sewage flow of the Village,

shall be subject to the review and approval of the Superintendent. Where necessary in the opinion of the Superintendent, the owner shall provide, at his expense, such preliminary treatment as may be necessary to:

A. Reduce the B.O.D. to 300 parts per million and the suspended solids to 300 parts per million by weight, or

B. Reduce objectionable characteristics or constituents to within the maximum limits provided for in Section 2026.19, or

C. Control the quantities and rates of discharge of such waters or wastes.

Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Superintendent and of the Department of Health of the State of Michigan, and no construction of such facilities shall be commenced until said approvals are obtained in writing.

2026.22 MEASUREMENTS AND TESTS

All measurements, tests, and analysis of the characteristics of waters and wastes to which references are made shall be determined in accordance with Standard Methods for Examination of Water and Wastewater and Guidelines Establishing Test Procedures for the Analysis of Pollutants Federal Regulation 40 CFR 136, published in the Federal Register on October 16, 1973, and as amended, and shall be determined at the control manhole provided for in this Chapter, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the

nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

2026.23 AGREEMENTS

Nothing herein contained shall be construed as preventing any special agreement or arrangement between the Village and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Village for treatment, subject to payment therefor by the industrial concern.

2026.24 ENVIRONMENTAL PROBLEMS; ADDITIONAL INFORMATION

The Village may require each person who applies for or receives sewer service, or through the nature of the enterprise creates a potential environmental problem to take any or all of the following steps:

A. File a written statement setting forth the nature of the enterprise, the source and amount of water used, the amount of water to be discharged, with its present or expected bacterial, physical, chemical, radioactive, or other pertinent characteristics of the wastes.

B. Provide a plan map of the building, works, or complex, with each outfall to the surface waters, sanitary sewer, storm sewer, natural watercourse, or ground waters noted, described and the waste stream identified.

C. Sample, test, and file reports with the Village and the appropriate State agencies on appropriate characteristics of wastes on a schedule, at locations, and according to methods approved by the Village.

D. Place waste treatment facilities, process facilities, waste streams or other potential waste problems under the specific supervision and control of persons who have been certified by an appropriate State agency as properly qualified to supervise such facilities.

E. Provide a report on raw materials, intermediate materials, final products, and waste by-products entering the process or support systems, as those factors may affect waste control.

F. Maintain records and file reports on the final disposal of specific liquid, solid, sludges, oils, radioactive materials, solvents, or other wastes.

G. Give written notice to the Village at least thirty (30) days before any industrial process is to be altered to include a process waste.

2026.25 PROTECTION FROM DAMAGE, PENALTIES, COST AND EXPENSES

No unauthorized person shall maliciously, wilfully nor negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the municipal sewage works, building sewer or meters therefore. Any person or entity violating any provisions of this Chapter 2026 shall be guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding $500.00 or by imprisonment in the County Jail for not more than ninety (90) days, or by both such fine and imprisonment, plus court costs. Each day in which a violation shall continue shall be deemed a separate offense.

Any person or entity violating any of the provisions of this ordinance shall also become liable to the Village for any expenses, loss or damages occasioned by reason of such violation.

2026.26 POWER AND AUTHORITY OF INSPECTORS

Duly authorized employees or representatives of the Village shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling, and testing to enforce compliance with the provisions of this ordinance.

2026.27 SEVERABILITY

The provisions of this ordinance are severable. If any section, paragraph, clause, or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance.

2026.28 REPEALER

All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this ordinance are, to the extent of such conflict, hereby repealed.

2026.29 EFFECTIVE DATE

This ordinance shall take effect on 4-18-91.

VILLAGE OF ELBERTA

CHAPTER 2026
SEWER SERVICE

CHAPTER 2061
RATES FOR WATER, SEWER AND GARBAGE SERVICE

I, hereby certify the the foregoing is a true and complete copy of an Ordinance adopted by the Council of the Village of Elberta at a regular meeting held on April 18, 1991, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act 276, Public Acts of Michigan, 1976, and that the minutes of said meeting and copy of the ordinance is available for inspection at the Village office as required by said Act and Section 4, Chapter VI of the Village of Elberta Charter.

I further certify that said Ordinance has been recorded in the Ordinance Book of the Village of Elberta and such recording has been authenticated by the signatures of the President and Clerk.

Effective date of this ordinance shall be the 18th day of April, 1991.

Barbara Harju, Clerk
Village of Elberta

Carl Noffsinger, Village President

Barbara Harju
Village Clerk

#2 - WATER

of the Council. Sales of real estate shall be subject to the requirements of section 2 of this Chapter. The notice inviting bids shall contain a brief description of the property in addition to the information specified in section 2 (b).

## CHAPTER 2026 - SEWER SERVICE

1. Definitions. Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation of this Chapter:

(a) "Superintendent: shall mean the Superintendent of Public Works of the Village or his authorized deputy, agent or representative.

(b) "Sewage" shall mean a combination of the water carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface, and storm waters as may be present.

(c) "Sewer" shall mean a pipe or conduit for carrying sewage.

(d) "Public sewer" shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

(e) "Combined sewer: shall mean a sewer receiving both surface runoff and sewage.

(f) "Sanitary sewer" shall mean a sewer which carries sewage and to which storm, surface, and ground waters are not intentionally admitted.

(g) "Storm Sewer" or "storm drain" shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes.

(h) "Industrial wastes" shall mean the liquid wastes from industrial processes as distinct from sanitary sewage.

(i) "Building drain" shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.

(j) "Building sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.

(k) "B.O.D." (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemcial oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees C., expressed in parts per million by weight.

(l) "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

2. Waste Deposits. No person shall place or deposit in an unsanitary manner upon public or private property within the Village, any human or animal excrement, garbage, or other objectionable waste. No person shall discharge to any natural outlet within the Village, any unsanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Chapter.

3. Privies and Septic Tanks. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

4. Sewer Connection Required. The owner of each house, building and property used for human occupancy, employment, recreation, or other purpose, situated within the Village and abutting on any street, alley or right-of-way in which there is located a public sanitary or combined sewer, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in supplementary hereto, within ninety (90) days after date of official notice to do so, provided that said public sewer is within on hundred fifty (150) feet of the toilet facilities to be served by said public sewer.

5. Private Sewer Systems. Where a public sanitary or combined sewer is not available under the provisions of section 4, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Chapter.

6. Permit and Fee. Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the Village which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the Superintendent. A permit and inspection fee

of five ($5.00) dollars shall be paid at the time the application is filed.

7. Inspection. A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent.

8. Standards. The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the Department of Public Health of the State of Michigan, and shall be constructed and connected in accordance with the plumbing regulations of the Village. No septic tank or cesspool shall be permitted to discharge to any public sewer or natural outlet.

9. Discontinuance of System. At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in section 4, a direct connection shall be made to the public sewer in compliance with this Chapter, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned and filled with suitable material.

10. Maintenance of System. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times at no expense to the Village.

11. Additional Requirements. Nothing herein contained shall be construed to interfere with any additional requirements that may be imposed by the Health Officer, or otherwise limit his powers.

12. Sewer Connections. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent. A permit and inspection fee of five ($5.00) dollars for a building sewer permit shall be paid at the time the application is filed.

13. Separate Building Sewers. A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

14. Old Building Sewers. Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet

all requirements of this Chapter.

15. Installation of Building Sewer. All building sewer construction and the installation of pipes, fittings and appurtenances shall be done in accordance with Village building regulations and such supplementary rules and regulations as the Superintendent may prescribe, which shall be effective upon approval by the Council.

16. Supervision of Connection. The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made by the Department of Public Works or under its immediate supervision.

17. Prohibited Uses. Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

(a) Any liquid or vapor having a temperature higher than (150 degrees F.).

(b) Any water or waste which may contain more than (100) parts per million, by weight, of fat, oil, or grease.

(c) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.

(d) Any garbage that has not been properly shredded.

(e) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works.

(f) Any waters or wastes having a pH lower than (5.5) or higher than (10.5), or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works.

(g) Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitutes a hazard to humans or animals, or create any hazard in the receiving waters of the sewage treatment plant.

(h) Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at

# CHAPTER 2046 - WATER SERVICE

1. Definitions. The following definitions shall apply in the interpretation of this Chapter.

(a) The term "water main" shall mean that part of the water distribution system located within easement lines or streets designed to supply more than one water connection.

(b) The term "water connection" shall mean that part of the water distribution system connecting the water main with the premises served.

(c) The term "Department" shall mean the Department of Public Works of the Village.

2. Service Connections. Service connections shall be installed by the Department upon payment of the required connection fee and meter installation fee. All meters and water connections shall be the property of the Village. Connection fees and meter installation charges shall not be less than the cost of materials, installation and overhead attributable to such installations and a schedule thereof shall be prescribed by Council resolution.

3. Turning on Water Service. No person, other than an authorized employee of the Village, shall turn on or off any water service, except that a licensed plumber may turn on water service for testing his work (when it must be immediately turned off) or upon receiving a written order from the Department. Provided, that upon written permit from the Department, water may be turned on for construction purposes only, prior to the granting of a certificate of occupancy for the premises, and upon payment of the charges applicable thereto.

4. Access to Meters. The Department shall have the right to shut off the supply of water to any premises where the Department is not able to obtain access to the water meter. Any qualified employee of the Department shall at all reasonable hours, have the right to enter the premises where such meters are installed for the purpose of reading, testing, removing, or inspecting same and no person shall hinder, obstruct, or interfere with such employee in the lawful discharge of his duties in relation to the care and maintenance of such water meter.

5. Reimbursement for Damage. Any damage which a meter may sustain resulting from carelessness of the owner, agent, or tenant or from neglect of either of them to properly

secure and protect the meter as well as any damage which may be wrought by frost, hot water, or steam backing from a boiler, shall be paid by the owner of the property to the Village on presentation of a bill therefor: and in cases where the bill is not paid, the water shall be shut off and shall not be turned on until all charges have been paid to the Village.

6. Meter Failure. If any meter shall fail to register properly, the Department shall estimate the consumption on the basis of former consumption and bill accordingly.

7. Inaccurate Meters. A consumer may require that the meter be tested. If the meter is found accurate, a charge of one ($1.00) dollar will be made. If the meter is found defective, a new meter will be installed and no charge will be made.

8. Hydrant Use. No person, except a fireman or authorized employee of the Village in the performance of his duties, shall open or use any fire hydrant, except in case of emergence, without first securing a written permit from the Department. Permits for a period not in excess of fifteen (15) days may be granted by the Department, upon written application in such form as it shall prescribe and upon payment of the required fees. Permits may be granted only on such terms and fess as the Council, by resolution, shall prescribe. In no case shall any hydrant be opened or closed except with a hydrant wrench provided by the Village.

9. Lawn Sprinkling. The Superintendent of the Department, subject to approval by the President, may regulate, limit or prohibit the use of water for any purpose. Such regulations shall restrict less essential water uses to the extent deemed necessary to assure an adequate supply for essential domestic and commercial needs and for fire fighting. No such regulation, limitation or prohibition shall be effective until twenty-four (24) hours after publication of such regulation, limitation or prohibition, either in a newspaper of general circulation in the Village or posting in three (3) places within the Village. Any person violating any such rule or regulation shall, upon conviction thereof, be punished as prescribed in section 13 of Chapter 1001 of this Code.

10. Additional Regulations. The Superintendent of the Department may make and issue additional rules and regulations concerning the water distribution system, connections thereto, meter installations and maintenance, hydrants and water mains and the appurtenances thereto, not inconsistent herewith. Such rules and regulations shall be effective upon approval by the Council.

11. Injury to Facilities. No person, except an employee of the Village in the performance of his duties, shall

wilfully or carelessly damage, destroy, deface or tamper with any structure, appurtenance or equipment which is a part of the Village water distribution system.

12. Fluoride. Notwithstanding any provision of any general or special law or any Charter provision to the contrary, the addition of fluoride to the water distribution system of the Village of Elberta be and the same is hereby prohibited.

PROPOSED LANGUAGE FOR AMENDMENT TO THE ELBERTA VILLAGE CODE

BY ADDING A NEW SECTION 12 OF CHAPTER 1046 OF THE CODE

AN ORDINANCE TO AMEND THE ELBERTA VILLAGE CODE BY ADDING A NEW SECTION, WHICH NEW SECTION SHALL BE DESIGNATED AS SECTION 12 OF CHAPTER 1046 OF SAID CODE.

THE VILLAGE OF ELBERTA ORDAINS:

1. The Elberta Village Code be and is hereby amended by adding a new section ~~which~~ new section shall be designated as Section 12 of Chapter 1046 of said Code and shall read in its entirety as follows:

"Notwithstanding any provision of any general or special law or any charter provision to the contrary, the addition of fluoride to the water distribution system of the Village of Elberta be and the same is hereby prohibited."

2. The foregoing Amendment to the Elberta Village Code shall be published as required by Section 4, Chapter IV of the Elberta Village Charter and as required by law.

3. This Ordinance shall take immediate effect.

WE, THE UNDERSIGNED, President and Clerk of the Village of Elberta, County of Benzie and State of Michigan, do hereby certify that the above and foregoing Ordinance No. 6 was duly passed by the Village Council of said Village at a regular meeting thereof held on the 19th day of July, 1973.

Theodore McClellan, Sr.
President

Dudley Penfold
Clerk

I, Dudley Penfold, duly elected and qualified Clerk of the said Village of Elberta, do hereby certify that the above recorded Ordinance No. 5, which was duly passed by the Village Council of said Village on the 19th day of July, 1973, was published in the Benzie County Patriot, a newspaper published and circulated within said Village of Elberta, on Thursday, the 30th day of August, 1973.

Dudley Penfold,
Clerk

Prepared by John B. Daugherty, Esq.
Attorney for the Village of Elberta
Business address:
263 S. Benzie Blvd.
Beulah, Michigan 49617

AN ORDINANCE TO AMEND THE ELBERTA VILLAGE CODE BY ADDING A NEW SECTION, WHICH NEW SECTION SHALL BE DESIGNATED AS SECTION THIRTEEN OF CHAPTER 2046 OF SAID CODE.

THE VILLAGE OF ELBERTA ORDAINS:

The Elberta Village Code be and is hereby amended by adding a new section, which section shall be designated as section 13 of chapter 2046, and shall read as follows:

An ordinance to state that from hereon a meter shall be attached to each line entering a building in the Village of Elberta,

And furthur, that this ordinance shall be effective immediately.

I, Barbara Harju, Clerk of the Village of Elberta, do hereby certify the above was duly passed by the Village of Elberta Council at a regular meeting held on the 22nd day of June, 1989.

Barbara Harju
Village Clerk

# ELBERTA VILLAGE ORDINANCE

An ordinance to amend the Village Code by adding a new chapter 2047 consisting of sections 1 through 7 inclusive and regulating cross connections with the public water supply system, i.e., a connection or arrangement of piping or appurtenances through which water of questionable quality, wastes or other contaminants can enter the public water supply system.

Be it ordained by the council of the Village of Elberta, State of Michigan:

Section 1. That the Village of Elberta adopts by reference the Water Supply Cross Connection Rules of the Michigan Department of Public Health being R 325.431 to R 325.440 of the Michigan Administrative Code

Section 2. That it shall be the duty of the Village Water Department to cause inspections to be made of all properties served by the public water supply where cross connections with the public water supply is deemed possible. The frequency of inspections and reinspections based on potential health hazards involved shall be as established by the Village Water Department and as approved by the Michigan Department of Public Health.

Section 3. That the representative of the Village Water Department shall have the right to enter at any reasonable time any property served by a connection to the public water supply system of the Village of Elberta for the purpose of inspecting the piping system or systems thereof for cross connections. On request the owner, lessees or occupants of any property so served shall furnish to the inspection agency any pertinent information regarding the piping system or systems on such property. The refusal of such information or refusal to access, when requested, shall be deemed evidence of the presence of cross connections.

Section 4. That the Village Water Department is hereby authorized and directed to discontinue water service after reasonable notice to any property wherein any connection in violation of this ordinance exists, and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the public water supply system. Water service to such property shall not be restored until the cross connection(s) has been eliminated in compliance with the provisions of this ordinance.

Section 5. That the potable water supply made available on the properties served by the public water supply shall be protected from possible contamination as specified by this ordinance and by the State and Village of Elberta plumbing code. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicious manner as:

| WATER UNSAFE<br>FOR DRINKING |
|---|

Section 6. That this ordinance does not supercede the state plumbing code but is supplementary to it.

Section 7. That any person or customer found guilty of violating any of the provisions of this ordinance, or any written order of the Village Water Dept. in pursuance thereof, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25.00 nor more than $100.00 for each violation. Each day upon which a violation of the provisions of this act shall occur shall be deemed a separate and additional violation for the purpose of this ordinance.

January 18, 1978, date of approval by Village Council.

J. H. Penfold.

J. H. Penfold,
Village Clerk.

(j) "Building sewer" shall mean the extension from the building drain to the public sewer or other place of disposal.

(k) "B.O.D." (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemcial oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees C., expressed in parts per million by weight.

(l) "pH" shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

2. Waste Deposits. No person shall place or deposit in an unsanitary manner upon public or private property within the Village, any human or animal excrement, garbage, or other objectionable waste. No person shall discharge to any natural outlet within the Village, any unsanitary sewage, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Chapter.

3. Privies and Septic Tanks. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

4. Sewer Connection Required. The owner of each house, building and property used for human occupancy, employment, recreation, or other purpose, situated within the Village and abutting on any street, alley or right-of-way in which there is located a public sanitary or combined sewer, is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in supplementary hereto, within ninety (90) days after date of official notice to do so, provided that said public sewer is within on hundred fifty (150) feet of the toilet facilities to be served by said public sewer.

5. Private Sewer Systems. Where a public sanitary or combined sewer is not available under the provisions of section 4, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Chapter.

6. Permit and Fee. Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the Village which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the Superintendent. A permit and inspection fee

# CHAPTER 2061

## RATES FOR WATER, SEWAGE AND GARBAGE SERVICE

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE VILLAGE OF ELBERTA AS FOLLOWS:

2061.0 Chapter 2061 is hereby amended by deleting the provisions thereunder and in their place the following sections are adopted. All resolutions regarding rates shall remain in effect, except as otherwise established by the following provisions, and shall continue until changed by resolution of the Village Council.

2061.1 INTENT TO OPERATE WATER DISTRIBUTION, SEWAGE DISPOSAL AND GARBAGE COLLECTION ON RATE BASIS

It is hereby determined to be desireable and necessary for the public health, safety and welfare of the Village of Elberta that the operation of water distribution, sewage disposal and garbage collection for all premises and establishments in the Village of Elberta shall be charged the rates and charges, when applicable, as established in this Chapter 2061.

2061.2 DEFINITIONS

Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation of this Chapter:

"Shall" is mandatory.
"May" is permissive.

A. Benefit Charge. A charge assessed against all new construction or connections of a building sewer to a riser, public sewer, or connection leading thereto.

B. Building Sewer. Shall mean the extension from the building drain to the owner's property line at the riser.

C. Department. Shall mean the Village Department of Public Works.



1991 Amendment

D. Establishment. An establishment is defined as follows:

1. Each separate residential unit is a separate establishment, regardless of whether it is in a connected structure, such as a duplex, flat or apartment.

2. Each lot in a mobile home park, where permanent trailers are stationed, is an establishment. Transient lots are not separate establishments for the purpose of this Ordinance.

3. A group of cabins, rooming houses, hotel or motel rooms operated as a transient facility is a single establishment and shall be charged a commercial rate. Should the use of a single cabin or group of cabins change to permanent residential, then each such residence will become a separate establishment to be charged as a residential unit.

   A combination of transient cabins and a residence which is used by the manager or owner constitutes two establishments.

   For the purposes of this Ordinance, any unit rented on a daily or weekly basis is a "transient facility".

4. Each individual business, institution, or industrial entity is a separate establishment, even though it might be housed along with one or more other businesses, institution or industrial, in a single structure with a common landlord.

5. Combinations of any of the above are each a separate establishment.

E. Laboratory Determination. Shall mean the measurements, tests, and analyses of the characteristics of waters and wastes in accordance with the methods contained in the latest edition at the time of any such measurement, test, or analysis, of "Standard Methods for Examination of Water and Wastewater", a joint publication of the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation or in accordance with any other method prescribed by applicable State or Federal regulations.

F. pH. Shall mean the reciprocal of the logarithm of the hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams per liter of solution; neutral water, for

example, has a pH value of seven and hydrogen ion concentration of 10,000,000.

G. Premises. Shall mean a lot or parcel of land in the Village of Elberta.

H. Person. Shall mean any individual, firm, association, partnership, public or private corporation.

I. Public Sewer. Shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

J. Riser. The connection from the public sewer to the building sewer at the property line of the premises.

K. Riser Fee. The cost for constructing the riser from the public sewer, fronting the premises, to the property line, and inspecting the connection between said riser and the building sewer.

L. Sewage. As defined in Chapter 2026 of the Village Ordinance Code.

M. Sewer Ready to Serve Fee. That fee charged to each building located on all premises which have a building sewer constructed, after the building has once been connected to a riser or public sewer.

N. Sewer Permit. Shall mean when any person desires to make any connection with or opening into, use, alter, or distrub any building sewer, riser or public sewer or appurtenances thereof.

O. Sewage Works. Means all facilities for collecting, pumping, treating and disposing of sewage.

P. Sewer User Fee. Means that fee charged to establishments which are being supplied water by the Village or have a sewage flow.

Q. Surcharge. The additional charge which the Village may require any user discharging water or waste with any of the characteristics described in 2026.17 of the Village Ordinance Code.

R. Utility Bill. Shall mean a combined bill to include a base charge for water, sewer ready to serve charge, sewer user fee, and garbage pickup to a premises. This bill shall be

considered one bill and shall not be broken down separately for partial payment.

2061.3 SUPERVISION AND CONTROL OF SYSTEM

The operation, maintenance, alteration, repair and management of the water distribution, sewage disposal and garbage collection service shall be under the supervision and control of the Village of Elberta. Said Village may employ or contract with such person or persons in such capacity or capacities as it deems advisable to carry on the efficient management and operation of the water distribution, sewage disposal and garbage collection services, and may make such resolutions, rules, orders and regulations as it deems advisable and necessary to assure the efficient management and operation of the services.

The proceeds of such charges are to be used for the benefit and maintenance of the sanitary sewage collection system and treatment plant, for the retirement of bond indebtedness incurred therefore, for operation and maintenance, and for construction of replacement sewage works facilities. The rates hereby fixed are estimated to be sufficient to provide for the payment of the system's expenses and shall be revised from time to time as may be necessary to produce sufficient amounts.

2061.4 WATER METER

A water meter shall be required on all new construction, and on all non-residential premises and establishments, including those residential establishments that qualify for the commercial rate.

2061.5 METHODS OF DETERMINING SEWAGE USER FLOW

To determine the sewage flow from any establishment, the Superintendent may use one of the following methods:

A. The amount of water supplied to the establishment by the Village, or a private water supply as shown upon the water meter if the premises are metered, or

B. Flat rate for establishments with no water meter.

C. If the premises are supplied with river water or water from private wells, the amount of water supplied from such sources as estimated by the Superintendent from the water, gas or electrical supply, or

D. If such premises are used for an industrial or commercial purpose of such nature that the water supplied to the premises cannot be entirely discharged into the sewer system, the estimate of the amount of sewage discharged into the system made by the Superintendent from the water, gas or electric supply, or

E. An estimate of infiltration and inflow from a premise, based on weir readings or television inspection of the sewer tap.

F. A figure determined by the Superintendent by any combination of the foregoing or by any other equitable method chosen by the Village.

2061.6 RATES

The rates in effect upon the adoption of this chapter and ordinance for water distribution, sewer disposal and garbage collection service shall continue in effect until changed or established by resolution of the Village Council. Rates may be established or changed by two-thirds vote of the Village Council. Rates may be reviewed and may be revised from time to time, unless otherwise provided by prior agreement or contract. A benefit charge is also established as set forth in 2061.7 of this Chapter.

The Village Council shall set rates and changes for the following water, sewage and garbage services provided to each establishment:

A. Water connection and meter installation fees for primary water services.

B. Water connection fees for meter on sewer intake water service or outside discharge of water not connected to building sewer.

C. Metered water fees; residential, commercial and industrial.

D. Unmetered water fees; residential, commercial and industrial.

E. Ready to Serve Sewer Fee; residential, commercial and industrial.

F. Sewer User Fee; residential, commercial and industrial. A customer may, at their costs, and as permitted by the Village, install a second water meter on an outside water discharge and thereafter receive a sewer user fee which deducts the water which flows through the second meter.

G. Riser Fee. The Riser Fee will be due and payable when the application for the building sewer permit is submitted.

The work shall be performed by Village personnel or contracted agents of the Village after it has been determined that the building sewer meets the code specifications.

H. Surcharge for commercial and industrial with high strength waste.

I. Sewer Permit and inspection fee.

J. Testing water meters.

K. Water turn-on charge.

L. Water turn-off charge.

M. Initial service charge for late payment.

N. Additional service charge for each month in addition to above Paragraph M.

O. Utility deposits.

P. Non-sufficient funds or account closed check charge.

Q. Garbage Services for specific materials.

R. Special Rates. Special rates for miscellaneous or special services for which a rate has not been established, shall be determined by the Village Council. No free service shall be furnihsed by the Village to any person, firm or corporation, public or private, to any public agency or instrumentality.

2061.7 BENEFIT CHARGE

A benefit charge will be assessed against all new construction or establishments and reconnections upon application for connection to the riser, public sewer, or connection leading thereto.

A. The benefit charge will provide for recovery of the principal and interest charges and maintenance expended to date by the present users of the sewage works, for that portion of the sewage works required by the new user.

B. The benefit charge will commence on 3-1-91. All premises or establishment connections after that date will be subject to the benefit charge.

Reg Meet 11-16-95



review for the site plan and the granting of a special use.

Motion by Gatrell supported by Acre to hold a special meeting to review the Stenberg request. Yea - 6.

Mr. Berlin asked if it would be fair to set the special meeting now, so that all those present would have notice. Mr. Stenberg stated he would like to point out that the notice that was published stated a meeting would follow for the review. Mr. Berlin stated the public hearing has been held but if the time could be set now that would give Mr. Stenberg and the public notice to attend and there will be an eighteen hour notice for the special meeting.

Motion by Acre supported by Gatrell to set a ZBA meeting on the Stenberg request for a dimensional variance, a site plan review and review of the special use on November 30, 1995 at 7:00 p.m. Yeas - 6.

Mr. Berlin stated this was done because of ten other items on the agenda. Mr. Stenberg thanked the Council for their consideration.

2. D/A AARR PROPERTY.

Mr. Gilbert stated there were some letters in their packets. No action taken.

3. D/A FEES FOR WATER/SEWER HOOK-UP APPLICATIONS.

Mr. Gilbert asked the Clerk what the difficulties were on this. The Clerk stated that according to the ordinance there fees that can be charged and no fees were ever established and so two forms were drafted for review; one for separate fees for materials, equipment, labor and the benefit fee or one combined fee of $500.00 for time, equipment, and materials or whichever is larger plus the benefit fee.

Motion by Acre supported by Gatrell to approve the combined fee of $500.00 for time, equipment and labor or whichever is larger plus the benefit fee. Yeas - 6.

4. D/A PREPAY BILLS FOR DECEMBER.

The Clerk stated that because of the way the holidays are falling this year the office will be closed the day after the regular meeting in December and the Treasurer would like to prepare all the bills for the computor and print them to be sent in the mail after the holidays and if there are any the council does not approve, those checks would be voided. Motion by Kirbach supported by Gatrell to permit the Treasurer to prepay all the bills for December. Yeas - 6.

18. SCOUT BUILDING.

Parsons asked Charles Thompson if they had finished work on the scout building because it doesn't look any better. Thompson replied "no". Parsons stated she did not understand why they did not scrape and painted over peeling wood. The area is a park and yet there are cars parked every night and loud music. Thompson stated that because it's a park, apparently they aren't wanted there. If that is the case, after putting in 100 hours of work, and the building is taken away from them, he is done. They are still a long way from being finished. Thompson stated he could put an end to the music...that is no problem and apologized if she was disrupted. Gilbert stated it is an old building and can't be changed overnight.

19. WATER/SEWER HOOK UP FEES.

Motion by Kidder supported by McClellan to establish a charge for all property owners requesting upgrading of water and or sewer system to be set at the costs of time, equipment and materials effective 08/20/92. Yeas - 6. Nays - 0.

McClellan asked Gilbert if Narrow St. sidewalk would be finished as the motion was to do all of Narrow St. He replied it would be completed this year; that something will be done each year on the north end of the village since it has been neglected for years.

Motion for adjournment by Parsons and Kidder accepted at 10:20 p.m.

Barbara Harju
Village Clerk

Reg. Meet 8-20-92

C. There shall be paid on behalf of each single family residence, or equivalent unit as established in Table 1, in cash at the time of application for the building sewer permit or permit to reconnect the following charges:

Residential or Equivalent Unit
Benefit Charge

| | | | |
|---|---|---|---|
| March 1, 1991 to March 1, 1992 | $500.00 | after March 1, 1999 | $1800.00 |
| after March 1, 1992 | 900.00 | after March 1, 2000 | 1900.00 |
| after March 1, 1993 | 1200.00 | after March 1, 2001 | 2000.00 |
| after March 1, 1994 | 1300.00 | after March 1, 2002 | 2100.00 |
| after March 1, 1995 | 1400.00 | after March 1, 2003 | 2200.00 |
| after March 1, 1996 | 1500.00 | after March 1, 2004 | 2300.00 |
| after March 1, 1997 | 1600.00 | after March 1, 2005 | 2400.00 |
| after March 1, 1998 | 1700.00 | after March 1, 2006 | 2500.00 |

Subsequent changes in the character of the use or type of occupancy of any premises may place said premises in a higher ratio-factor category. The Village Council may, in its discretion, increase the number of units assigned to said premises. Thereupon any additional charges occasioned by such increase shall be payable, in cash, at the time a construction permit or other permit issued by the Village for such changes, or at the time such changes occur if no permit is issued or required.

2061.8 TERMINATION OR DECERTIFICATION OF ESTABLISHMENT.

Owners of premises, who have permanently terminated the ability to use a structure on their premises or an establishment thereon, or who have permanently merged, for a minimum of twelve months, into another establishment as to become one establishment or structure which does not require a connection to a public sewer, in compliance with Chapters 2026, 2046 and 2061, as amended, may apply to the Village Council to have their riser disconnected or the establishment decertified as an establishment, if there is another establishment which will continue to use the riser.

All such termination applications shall be made on forms provided by the Village, signed, in the presence of two witnesses and a notary public, by all the owners of the premises where the affected establishments are located, and showing the identity of the draftsperson of the application so that such application and any subsequent approval may be recorded in compliance with the recordation statutes for the Register of Deeds for the County of Benzie. The application shall include therewith the fee as established by Chapter 2061.6(S), as amended. The application shall be complete and shall set forth all facts in support thereof.

The applicants shall further acknowledge that in the event the establishment's riser is disconnected or the establishment is decertified, that any future use of the establishment as set forth in Chapters 2026, 2046 and 2061 of the Village Ordinance, as amended, shall first require the payment of the full benefit charge for each new establishment as though such establishment were a new construction on vacant land, as set forth in this Chapter 2061, as amended.

All such applications, disconnections, terminations or decertifications shall give the Village the full right of inspection, from time to time, of the premises or establishments affected.

All disconnections, terminations or decertifications, as set forth herein, shall require the affirmative vote of two-thirds of the Council.

All disconnections shall be completed by the Department, or under their supervision, with all cost, as set by Village Council resolution, being paid by the applicant owners, when the application is presented.

## 2061.9 BILLING, COLLECTION, ACTIONS, LATE PAYMENTS, DISCONNECTIONS

Charges for all utility bills shall be billed and collected monthly without penalty on or before the twenty-first day of the month. Payments received thereafter will bear a service charge as authorized by 2061.6(M) herein, and an additional amount as authorized by 2061.6(N) herein, shall be added to such bill on the first day of each additional month that the utility bill remains unpaid, to cover the administrative costs to maintain late accounts.

If the utility bill, service charge, and other rates due and owing shall not be paid when due, the amount, plus any damages and cost, may be recovered by the minicipality in an action at

law or the above amounts of the utility bill, service charges and other amounts due and owing may be certified to the tax assessor and assessed against the lot or parcel of land upon which is situated the premises served, and collected or returned in the same manner as municipal taxes against real estate are certified, assessed, collected and returned, and shall be a lien upon such lot or parcel of land coordinate with the lien of such municipal taxes from the time of certification to the tax assessor.

In addition to the foregoing, the Department shall have the right to shut off water service to any premises for which charges for the utility bill are delinquent, and such service shall not be re-established until all delinquent charges, service charges, the turn-off charge, the turn-on charge, and a deposit have been paid in full.

2061.10 NOTICE OF DISCONNECTION

When a person obligated to pay the utility bill becomes delinquent, they shall be sent a notice by regular mail, to the address where the utility bill is sent, that they will have seven (7) days to pay their utility bill and service fees, or their water service, sewer service and/or garbage service will be disconnected or discontinued.

Any case of hardship resulting from a disconnection may be submitted in writing to the Village President for approval, with notice to the Clerk and Treasurer. The person may appear at the next Council meeting, when the Council shall either affirm, revise, or reverse the holding of the President.

2061.11 DEPOSITS

In addition to the above, water and sewer service shall not be rendered and garbage service may not be rendered to delinquent premises, as stated hereinabove, until a cash deposit, in an amount set pursuant to 2016.6(O), shall have been paid as security for payment of future charges and services. The deposit shall not bear interest. All deposits may be applied against any delinquent utility bill, and the application thereof shall not affect the Department's duty to disconnect services for future unpaid utility bills. Deposits, or any remaining balance thereof, shall be returned to the person in whose name the premises or establishment is listed, when the non-rental premises is transferred or sold; except, tenant deposits shall, upon the completion of delinquency, be returned to them upon their request if all amounts owing are fully paid, or upon eighteen (18) months of timely payments, after all amounts owing are fully paid, whichever occurs first.

2061.12 RENTERS

In the case of renters, the property owner will be responsible for the payment of all utility bills to the Village.

2061.13 LIENS

The charges for utility bills and service charges made a lien on all premises served thereby, are hereby recognized to constitute such lien and whenever any such charge against any piece of property shall be delinquent for two (2) months, the Village official or officials in charge of the collection thereof shall certify annually on May 1st of each year, to the tax assessing officer of the Village, the fact of such delinquency, whereupon such charge shall be by him/her entered upon the next tax roll as a charge aginst such premises and shall be collected and the lien thereof enforced in the same manner as general Village taxes against such premises are collected and the lien thereof enforced. However, the use of this lien provision shall not prevent other collection procedures or the requirement of a deposit.

2061.14 ANNUAL REVIEW; ADJUSTMENTS IN RATES AND CHARGES

An annual review will be performed on a fiscal year basis to determine the actual cost of water, sewer and garbage services, including bond retirement, maintenance of an operational and maintenance fund, and a replacement fund. A review of this material by the Superintendent of the Department, Village Treasurer and the Village Clerk will establish whether revenue receipts are sufficient to cover costs and funds, and also whether the distribution of charges is equitable.

If adjustments are necessary in the charges or distribution, as outlined in Chapters 2026, 2046 and this Chapter, rates will be established, amended or enacted to provide sufficient revenue for the new fiscal year budget.

2061.15 SEVERABILITY

The provisions of this Ordinance are severable. If any section, paragraph, clause, or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

2061.16 REPEALER

All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

2061.17 EFFECTIVE DATE

This Ordinance shall take effect on 4-18-1991.

TABLE 1

SCHEDULE OF RESIDENTIAL EQUIVALENTS
FOR BENEFIT CHARGE

| Use | Single Family Residential Equivalent |
|---|---|
| Apartments | 1.0 per unit |
| Auto Dealers | .30 per srevice stall |
| Banks | .50 per 1000 sq. ft. |
| Barber Shops | 1.0 per shop plus .10 per chair |
| Bar | .166 per seat |
| Beauty Shops | 1.0 per shop plus .10 per chair |
| Car Wash | Attendant-operated 12.0 per lane<br>Coin-operated 1.0 per stall |
| Churches | 1.0 plus .10 per 1000 sq. ft. |
| Cleaners | 1.5 per 1000 sq. ft. plus 2.0 per pres |
| Clothing or Shoe Stores, Men's or Women's | .50 per 1000 sq. ft. |
| Clinics, Medical or Dental | 1.0 per doctor |
| Convalescent or Nursing Homes | .22 per bed |
| Drapery or Fabric Retail Store | .50 per 1000 sq. ft. |
| Drug Store | .75 per 1000 sq. ft. |
| Factories (exclusive of industrial waste) | .50 per 1000 sq. ft. plus industrial process waste |
| Fraternal Organizations | 1.0 per 1000 sq. ft. |
| Furniture Store | .25 per 1000 sq. ft. |
| Gift Shop | .75 per 1000 sq. ft. |
| Grocery Store | 1.0 per 1000 sq. ft. |

(continued on following page)



1991 Amendment

| Use | Single Family Residential Equivalent |
|---|---|
| Meat Markets or Produce Markets | 2.5 per 1000 sq. ft. |
| Hotels or Motels | .25 per unit plus restaurant, bar and meeting facilities at respective unit factors |
| Laundry, Self-service | .50 per washer |
| Mobile Home Park | 1.0 per trailer space |
| Office Building | .50 per 1000 sq. ft. |
| Restaurants, Food and Beverage | .125 per seat |
| Restaurants, Food only | .10 per seat |
| Schools | .67 per classroom |
| Service Stations | .40 per pump |
| Snack Bars, Drive-In Restaurants | .10 per seat and/or stall |
| Stores, other than listed | .50 per 1000 sq. ft. |
| Theatres, Drive-In | .008 per car space |
| Warehouse | .10 per residence |
| Single-Family Residence | 1.0 per residence |
| Two-Family Residence | 1.0 per residence |
| Motel Units, with complete kitchen facilities | .50 per unit |

RESOLUTION

SEWER AND WATER LATE FEES

Be it resolved that at a Regular Meeting of the Elberta Village Council held on January 16, 1997 the Council did move to amend the late charges on Sewer and Water Utility Billings from two dollars each month to five dollars each and every month commencing ten days after the due date.

Motion by D.Jenks supported by Poyner to accept the above resolution. Yeas - 7. Motion carried.

Sharyn Bower
Village Clerk

RESOLUTION

DECERTIFICATION FEES

Be it resolved that at a regular meeting of the Elberta Village Council on April 18, 1991 the Council did move to set decertifcation fees at $1,000.00 plus labor and materials for commercial and $400.00 plus labor and materials for residential.

Moved by: Joyce Gatrell  Supported by: Charles Thompson

Yeas - Noffsinger, Gatrell, McClellan, Keillor, Thompson and Kidder. Nay - Gene Lovegrove.

Motion carried.

I, Barbara Harju, Clerk of the Village of Elberta do hereby certify this to be a true and accurate resolution passed at a regular meeting of the Elberta Village Council on April 18, 1991.

Barbara Harju

Barbara Harju, Clerk

RESOLUTION

DECERTIFICATION FEES

Be it resolved that at a regular meeting of the Elberta Village Council on April 18, 1991 the Council did move to set decertifcation fees at $1,000.00 plus labor and materials for commercial and $400.00 plus labor and materials for residential.

Moved by: Joyce Gatrell  Supported by: Charles Thompson

Yeas - Noffsinger, Gatrell, McClellan, Keillor, Thompson and Kidder. Nay - Gene Lovegrove.

Motion carried.

I, Barbara Harju, Clerk of the Village of Elberta do hereby certify this to be a true and accurate resolution passed at a regular meeting of the Elberta Village Council on April 18, 1991.

Barbara Harju

Barbara Harju, Clerk

BE IT RESOLVED that, according to the Elberta Village Water, Sewer and Garbage Rate Ordinance, Chapter 2061, Section 4, an annual charge per fire hydrant shall be prescribed by the Elberta Village Council:

Whereas, the Elberta Village Council does establish that a charge of $840.00 be placed on the rental of fire hydrants; in their entirety, and,

FURTHUR, that $70.00 will be paid to the Water Fund for the rental of hydrants, on a monthly basis.

Resolution offered by: Charles Thompson
Supported by: Joyce Gatrell
Absent: Rommell and Kidder
Yeas - Noffsinger, McClellan, Gatrell, Keillor, Thompson.
Nays - None.

CERTIFICATION

Elberta, Michigan

STATE OF MICHIGAN )
) ss.
COUNTY OF BENZIE )

I, Barbara Harju, Clerk of the Village of Elberta, do hereby certify that the above is a true and accurate copy of a resolution passed by the Village Council, at a special meeting on this 21st day of February, 1990.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of February, 1990.

Barbara Harju

Barbara Harju
Village Clerk

PARKING

# CHAPTER 3012 - PARK REGULATIONS

1. Injury to Park Property. No person shall obstruct any walk or drive in any public park or playground and no person shall injure, mar or damage in any manner, any monument, ornament, fence, bridge, seat, tree, fountain, shrub, flower, playground equipment, fire-places, or other public property within or pertaining to said parks.

2. Intoxicating Liquors. No person shall bring into or drink in any Village park any alcoholic beverage. (SEE #6 - AMENDED)

3. Waste Containers. No person shall place or deposit any garbage, glass, tin cans, paper or miscellaneous waste in any park or playground except in containers provided for that purpose.

4. Ball Games. No person shall engage in baseball, football or softball throwing, or other violent or rough exercises or play in any public park or other public place, except in areas designated therefor by order of the Village Council.

5. Additional Rules. The Village Council may, by resolution, prescribe additional rules and regulations pertaining to the conduct and use of parks and public grounds as it shall deem necessary to administer the same and to protect public property and the safe, health, morals and welfare of the public , and no person shall fail to comply with such rules and regulations.

6. AMENDMENT TO #2. The Elberta Village Council, by a majority vote of the trustees elect, may grant a temporary permit for the sale and use of intoxicating liquors within the limits of public parks and places for up to a period of 3 days, provided, that no permit granted shall take effect until suitable public liability security protecting and absolving the Village of Elberta of all responsibility or liability from any cause shall have been filed and on hand in the office of the Elberta Village Clerk. (Adopted May 19, 1983)

ЭКЗЕМПЛЯР

## CHAPTER 4001 - STREET OPENINGS AND OBSTRUCTIONS

1. Definitions. Unless the context specifically indicates otherwise, the following definitions shall apply in the interpretation of this Chapter:

(a) "Street" shall mean all of the land lying between property lines on either side of all streets, alleys land boulevards in the Village, and includes lawn extensions and sidewalks and the area reserved therefor where the same are not yet constructed.

(b) "Superintendent" shall mean the Superintendent of Public Works of the Village.

2. Damage and Obstruction Prohibited. No person shall make any excavation in, or cause any damage to any street in the Village, except under the conditions and in the manner permitted in this Chapter. No person shall place any article, thing or obstruction in any street, except under the conditions and in the manner permitted in this Chapter, but this provision shall not be deemed to prohibit such temporary obstructions as may be incidental to the expeditious movement of articles and things to and from abutting premises, nor to the lawful parking of vehicles within the part of the street reserved for vehicular traffic.

3. Permits and Bonds. Where permits are authorized in this Chapter, they shall be obtained upon application to the Superintendent, upon such forms as he shall prescribe, and there shall be a charge of one ($1.00) dollar for each such permit. Such permit shall be revocable by the Superintendent for failure to comply with this Chapter, rules and regulations adopted pursuant hereto, and the lawful orders of the Superintendent or his duly authorized representative, and shall be valid only for the period of time endorsed thereon. Application for a permit under the provisions of this Chapter shall be deemed an agreement of the applicant to promptly complete the work permitted, observe all pertinent laws and regulations of the Village in connection therewith, repair all damage done to the street surface and installations on, over or within such street, including trees,and protect and save harmless the Village from all damages or actions at law that may arise or may be brought on account of injury to persons or property resulting from the work done under the permit or in connection therewith. Where liability insurance policies are required to be filed in making application for a permit, they shall be in not less than the following amounts, except as otherwise specified in this Chapter:

(a) On account of injury to, or death of, any person in any one accident----------$10,000.00

(b) On account of any one accident resulting in injury to, or death of, more than one person------$20,000.00

(c) On account of damage to property in any one accident ----------$5,000.00

A duplicate executed copy or photostatic copy of the original of such insurance policy shall be filed with the Village Clerk.

Where cash deposits are required with the application for any permit hereunder, such deposit shall be in the amount of twenty-five ($25.00) dollars, except as otherwise specified in this Chapter, and such deposit shall be sued to defray all expenses to the Village arising out of the granting of the permit and work done under the permit or in connection therewith. Three (3) months after completion of the work done under the permit, any balance of such cash deposit unexpended, shall be refunded. In any case where the deposit does not cover all costs and expenses of the Village, the deficit shall be paid by the applicant.

4. Street Openings. No person shall make any excavation or opening in or under any street without first obtaining a written permit from the Superintendent. No permit shall be granted until the applicant shall post a cash deposit and file a liability insurance policy as required by section 3.

5. Emergency Openings. The Superintendent may, if the public safety requires immediate action, grant permission to make a necessary street opening in an emergency, provided that a permit shall be obtained on the following business day and the provisions of this Chapter shall be complied with.

6. Backfilling. All trenches in a public street or other public place, except by special permission, shall be backfilled with approved granular material to within twelve (12) inches of the surface. On main thoroughfares, this material shall contain one (1) sack of cement per yard of fill. The remaining portion shall be filled with road gravel as specified by the Superintendent.

7. Utility Poles. Utility poles may be placed in such streets as the Superintendent shall prescribe and shall be located thereon in accordance with the directions of the Superintendent. Such poles shall be removed or relocated as the Superintendent shall from time to time direct.

8. Maintenance of Installations in Streets. Every owner of, and every person in control of, any estate hereafter maintaining a sidewalk vault, coal hole, manhole, or any other excavation, or any post, pole, sign, awning, wire, pipe, conduit or other structure in, under, over or upon, any street which is adjacent to or a part of his

estate, shall do so only on condition that such maintenance shall be considered as an agreement on his part with the Village to keep the same and the covers thereof, and any gas and electric boxes and tubes thereon, in good repair and condition at all times during his ownership or control thereof, and to indemnify and save harmless the Village against all damages or actions at law that may arise or be brought by reasons of such excavation or structure being under, over, in or upon the street, or being unfastened, out of repair or defective during such ownership or control.

## CURB CUTS

9. Curb Cuts. No opening in or through any curb of any street shall be made without first obtaining a written permit from the Superintendent. Curb cuts and sidewalk driveway crossings to provide access to private property shall comply with the following:

(a) No single curb cut shall exceed twenty-five (25) feet nor be less than ten (10) feet.

(b) The minimum distance between any curb cut and a public crosswalk shall be five (5) feet.

(c) The minimum distance between curb cuts, except those serving residential property, shall be twenty-five (25) feet.

(d) The maximum number of lineal feet of sidewalk driveway crossings permitted for any lot, parcel of land, business or enterprise, shall be forty-five (45%) per cent of the total abutting street frontage plus twenty (20%) per cent of the lineal feet of street frontage in excess of two hundred (200) feet.

(e) The necessary adjustments to utility poles, light standards, fire hydrants, catch basins, street or railway signs, signals, or other public improvements or installations shall be accomplished without cost to the Village.

(f) All construction shall be in accordance with plans and specifications approved by the Superintendent.

## SIDEWALK OBSTRUCTIONS

10. Sidewalk Obstructions. No person shall occupy any street with any materials or machinery incidental to the construction, demolition or repair of any building adjacent to said street, or for any other purpose, without first obtaining a permit from the Superintendent. No permit shall be granted until the applicant shall post a cash deposit and file a liability insurance policy as required by section 3 of this Chapter.

11. Pedestrian Passage. At least six (6) feet of sidewalk space shall be kept clean and clear for the free passage of pedestrians and if the building operations are such that such free passageway is impracticable, a temporary plank sidewalk with substantial railings or sidewalk shelter shall be provided around such obstruction.

## SAFETY REQUIREMENTS

12. Safeguard. All openings, excavations and obstructions, shall be properly and substantially barricaded and railed off, and at night shall be provided with red warning lights. Warning lights perpendicular to the flow of traffic shall not be more than three (3) feet apart, and parallel to the flow of traffic not over fifteen (15) feet apart.

13. Shoring Excavations. All openings and excavations shall be properly and substantially sheeted and braced as a safeguard to workmen and to prevent cave-ins or wash-outs which would tend to injure the thoroughfare or sub-surface structure of the street.

## HOUSEMOVING

14. Housemoving. No person shall move, transport or convey any building or other similar bulky or heavy object, including machinery, truck and trailer, larger in width than fourteen (14) feet, into, across or along any street, alley or other public place in the Village without first obtaining a permit from the Superintendent. Such permit shall specify the route to be used in such a movement and no person shall engage in such movement along a route other than that specified in the permit. No housemoving permit shall be granted until the applicant shall post a cash deposit in the amount of fifty ($50.00) dollars and file a liability insurance policy as required by section 3 of this Chapter.

15. Removal of Encroachment. Encroachments and obstructions in the street may be removed and excavations refilled and the expense of such removal or refilling charged to the abutting land owner when made or permitted by him or suffered to remain by him, otherwise than in accordance with the terms and conditions of this Chapter. The procedure for collection of such expenses shall be as prescribed in sections 19, 20 and 21 of Chapter VIII of the Charter.

16. Temporary Street Closings. The Superintendent shall have authority to temporarily close any street, or portion thereof, when he shall deem such street to be unsafe or temporarily unsuitable for use for any reason. He shall cause suitable barriers and signs to be erected on said street, indicating that the same is closed to public travel. When any street or portion thereof shall have been closed to

public travel, no person shall drive any vehicle upon or over said street except as the same may be necessary incidentally to any street repair or construction work being done in the area closed to public travel. No person shall move or interfere with any sign or barrier erected pursuant to this section with out authority from the Superintendent.

SIDEWALKS

# CHAPTER 4024 - SIDEWALKS

1. Definitions. The following definitions shall apply in the interpretation of this Chapter.

(a) "Sidewalk" shall mean the portion of the street right-of-way designed for pedestrian travel.

(b) "Superintendent" shall mean the Superintendent of Public Works of the Village.

2. Specifications and Permits. No person shall construct, rebuild or repair any sidewalk except in accordance with the line, grade, slope and specifications established for such sidewalk, nor without first obtaining a written permit from the Superintendent, except that sidewalk repairs of less than fifty (50) square feet of sidewalk may be made without a permit. The fee for such permit shall be one (1) cent per square foot and a minimum of one ($1.00) dollar.

3. Line and Grade Stakes. The Superintendent shall furnish line and grade stakes as may be necessary for proper control of the work, but this shall not relieve the owner of responsibility for making careful and accurate measurements in constructing the work to the lines furnished by the Superintendent. Where it is necessary to replace engineer's stakes disturbed or destroyed without fault on the part of the Village, or its employees, a charge of one ($1.00) dollar per stake shall be paid.

4. Sidewalk Specifications. Sidewalks shall not be less than four (4) inches in thickness and expansion paper shall be placed in the joints. All concrete used in sidewalk construction shall, twenty-eight (28) days after placement, be capable of resisting a pressure of twenty-five hundred (2500) pounds per square inch without failure.

5. Permit Revocation. The Superintendent may issue a stop order to any permittee holding a permit issued under the terms of this Chapter for failure to comply with this Chapter, or the rules, regulations, plans and specifications established for the construction, rebuilding or repair of any sidewalk, and the issuance of such stop order shall be deemed a suspension of such permit. Such stop order shall be effective until the next regular meeting of the Village Council, and if confirmed by the Council, at its next regular meeting, such stop order shall be permanent, and shall constitute a revocation of the permit.

6. Approval of Specifications. The line, grade, slope and width of sidewalks, and specifications as to materials and manner of construction not in conflict with this Chapter, shall be established by the Superintendent, and where, under the following sections of this Chapter, the Council orders

the construction of any sidewalk, then the Council shall also, by resolution, specify the line, grade, slope, width, materials and manner of construction for the sidewalk ordered built.

7. Ordering Construction. The Village Council may, by resolution, require the owners of lots and premises to build sidewalks in the public streets adjacent to and abutting upon such lots and premises. When such resolution shall be adopted, the Superintendent shall give notice thereof, in accordance with section 12 of Chapter 1001 of this Code, to the owner of such lot or premises requiring him to construct or rebuild such sidewalk within twenty (20) days from the date of such notice.

8. Construction by Village. If the owner of any lot or premises shall fail to build any particular sidewalk as described in said notice, and within the time and in the manner required thereby, the Superintendent is hereby authorized and required, immediately after the expiration of the time limited for the construction or rebuilding by the owner, to cause such sidewalk to be constructed and the expense thereof shall be charged to such premises and the owner thereof, and collected as provided in section 10 of Chapter VII of the Charter.

9. Sidewalk Maintenance. No person shall permit any sidewalk within the Village which adjoins property owned by him, to fall into a state of disrepair or to be unsafe.

10. Sidewalk Repair. Whenever the Superintendent shall determine that a sidewalk is unsafe for use, notice may be given to the owner of the lot or premises adjacent to and abutting upon said sidewalk of such determination which notice shall be given in accordance with section 12 of Chapter 1001 of this Code. Thereafter, it shall be the duty of the owner to place said sidewalk in a safe condition. Such notice shall specify a reasonable time, not less than seven (7) days, within which such work shall be commenced, and shall further provide that the work shall be completed with due diligence. If the owner of such lot or premises shall refuse or neglect to repair said sidewalk within the time limited therefor, or in a manner otherwise than in accordance with this Chapter, the Superintendent shall have said sidewalk repaired. The cost of repairs hereunder shall be charged against the premises, and shall be collected as provided in section 10 of Chapter VII of the Charter.

11. Sidewalks to be Cleared. The occupant of every lot or premises adjoining any street, or the owner of such lot or premises, if the same are not occupied, shall clear all ice and snow from sidewalks adjoining such lot or premises within the time herein required. When any snow shall fall or drift upon any sidewalk during the nighttime, such snow shall be

cleared from the sidewalks by 12:00 noon. Snow falling or accumulating during the day shall be cleared from the sidewalks by 12:00 noon of the day following.

12. Failure to Clear. If any occupant or owner shall neglect or fail to clear ice or snow from the sidewalk adjoining his premises within the time limited, or shall otherwise permit ice or snow to accumulate on such sidewalk, he shall be guilty of a violation of this Chapter and in addition, the Superintendent may cause the same to be cleared and the expense of removal shall be collectable as provided in section 10 of Chapter VII of the Charter.

#5 comm.

#5

EXTRACTS FROM THE MINUTES OF THE REGULAR MEETING OF THE COUNCIL OF THE VILLAGE OF ELBERTA, MICHIGAN, HELD IN THE COUNCIL ROOM IN SAID VILLAGE OF ELBERTA ON THE 18th DAY OF MARCH, 1971 AT 7:30 P.M.

On the 18th day of March, 1971, the Council of the Village of Elberta, Michigan, met in the Council Room in said Village in regular session. The meeting was called to order at 7:30 P.M. by the Village President, and on the roll call the following members of the Council were found to be present: Messrs. Berryhill, Wildie, Beugnot, Fitzhugh and Luxford. Absent: Mr. Acre.

The following Ordinance was introduced by Mr. McClellan, read in full and its adoption moved by Mr. Beugnot.

ORDINANCE NO. 5

AN ORDINANCE CREATING A HOUSING COMMISSION FOR THE VILLAGE OF ELBERTA.

WHEREAS, insanitary and unsafe inhabited dwelling accommodations exist in the Village of Elberta, Michigan:

WHEREAS, there is a shortage of safe and sanitary dwelling accommodations in the said Village of Elberta, available to persons who lack the amount of income which is necessary to enable them, without financial assistance, to live in decent, safe and sanitary dwellings without over-crowding: and

WHEREAS, it is for the public interest that a housing commission be created in the said Village of Elberta:

NOW, THEREFORE, THE VILLAGE OF ELBERTA ORDAINS:

Section 1. Pursuant to Public Act No. 18 of the Extra Session of 1933, as amended, a commission is hereby created in and for the Village of Elberta, Michigan, to be known as the "Elberta Area Housing Commission".

Section 2. The Village President of the Village of Elberta is hereby directed to appoint the members of the said Elberta Area Housing Commission as soon as possible after this ordinance shall take effect.

Section 3. The Village Clerk is hereby directed to cause this ordinance to be published as soon as possible in the Benzie County Patriot, published in the City of Frankfort, Michigan, and to be posted in three public places in the Village of Elberta.

The motion to adopt said ordinance was seconded by Mr. Berryhill, and upon roll call the following voted Yea: Messrs. Luxford, Beugnot, Fitzhugh, Berryhill, Wildie. Nay: Messrs. None.

Thereupon the Village President declared said Ordinance duly passed.

The meeting was adjourned at 8 o'clock P.M.

Dudley Penfold
Village Clerk

CLERK'S CERTIFICATE

I, Dudley Penfold, the duly elected, qualified and acting Village Clerk of the Village of Elberta, Michigan,

DO HEREBY CERTIFY:

That the annexed extracts from the minutes of a meeting of the Council of the said Village of Elberta, held on March 18,1971, have been compared by me with the original minutes of said meeting and are a true and correct transcript therefrom and of the whole thereof in so far as the same relate to the matters referred to therein.

IN WITNESS WHEREOF, I have hereunto set my hand and impressed the seal of said Village hereon this 18th day of March, 1971.

Dudley Penfold
Village Clerk

# CHAPTER 5021 - HOUSE TRAILERS

1. House Trailers. For the purpose of this Chapter, the term "house trailer" shall mean any vehicle used or intended for use as a dwelling, regardless of whether such vehicle is self-propelling or is moved by other agencies. The following restrictions shall be applicable to house trailers:

(a) No person shall park overnight or permit the parking overnight of any house trailer upon any public highway, street, alley, park or other public place within the Village.

(b) No person shall park or permit the parking of a house trailer for occupancy on any private property within the Village except in an authorized trailer camp licensed under the provisions of Act 243, Public Acts of 1959, State of Michigan, as amended: Provided, that a permit for the occupancy of a house trailer on a residential lot may be granted by the Village President upon application of the occupant of such house trailer within twenty-four (24) hours after the parking of such house trailer. No such permit shall be granted:

(1) For a period in excess of thirty (30) days, nor oftener than once in six (6) months for for the same lot or parcel of land;

(2) If any charge is to be made directly or indirectly for the parking of such house trailer or the furnishing of any service or facility by the owner or occupant of the premises on which such house trailer is parked.

(c) The term "House trailer" shall not include house trailers or mobile homes with wheels, axles and carriage removed and permanently placed upon an enclosed foundation which complies with the provisions of section 6 of Chapter 8001(Building Code) of this Code.

2. Penalty and Enforcement. In addition to the penalty applicable to a violation of this Code, any person parking, occupying or using any house trailer parked in violation of section 1, shall be guilty of maintaining a nuisance per se and upon application by the Village to any court of competent jurisdiction the maintenance of such nuisance may be restrained.

HB-MEDICINES

# CHAPTER 5032 - OPEN STORAGE

# OF JUNKED AUTOMOBILES

1. Storage of Junked Automobiles. No person shall store, place on or permit to be stored or placed on or allow to remain on any premises within the Village, any dismantled, partially dismantled or inoperable motor vehicle or any parts of any motor vehicle, unless such partially dismantled motor vehicle, inoperable motor vehicle or parts of a motor vehicle shall be kept in a wholly enclosed garage or other wholly enclosed structure. Any bona fide owner, co-owner, tenant or co-tenant of any premises may store, permit to be stored or allow to remain on the premises of which he is the owner, co-owner, tenant or co-tenant, any one such dismantled, partially dismantled or inoperable motor vehicle, for a period of not to exceed forty-eight (48) hours, if such motor vehicle is registered in his, her or its name and provided, that any such owner, co-owner, tenant or co-tenant may, in the vent of hardship, upon payment of the fee hereinafter provided, secure a permit from the Village PResident to extend this period of forty-eight (48) hours for an additional period of not to exceed one (1) week for any one such dismantled, partially dismantled or inoperable motor vehicle, if such motor vehicle is registered in his, her or its name. Nothing contained in this section shall be construed to permit parking or placing of any dismantled or partially dismantled vehicle within any street area within the Village or in any front yard of any premises upon which a dwelling exists and the placement of such vehicles in such places is hereby expressly prohibited.

2. Permits. Upon application duly made by the registered owner of a motor vehicle and upon a showing of undue hardship, the Village President is hereby authorized to issue the permit provided for in Section 1 of this Chapter. A fee of One ($1.00) Dollar for each such permit issued shall be collected and paid into the General Fund.

3. Licensed Junk Yards. Nothing contained in this Chapter shall be applicable to any junk yard licensed under the provisions of this Code.

4. Definitions.

(a) "Motor vehicle" shall have the meaning ascribed to it in Public Act 300 of 1949, State of Michigan, being the Michigan Vehicle Code.

(b) "Inoperable motor vehicle" shall mean a motor vehicle which by reason of dismantling, disrepair or other cause is incapable of being propelled under

its own power.

(c) "Dismantled or partially dismantled motor vehicle" shall mean a motor vehicle from which some part or parts which are ordinarily a component of such motor vehicle has been removed or is missing.

5. Nuisance. The presence of a dismantled, partially dismantled or inoperable motor vehicle or parts of a motor vehicle on any premises in violation of the terms of this Chapter 9048 of this Code and the costs of such abatement shall be collected from the owner of such premises in accordance with said Chapter 9048.

257.29 Maximum axle load. [M.S.A. 9.1829]
Sec. 29. "Maximum axle load" means the gross weight over the axle which includes vehicles and load.

257.30 Metal tire. [M.S.A. 9.1830]
Sec. 30. "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, non-resilient material.

257.31 Motorcycle. [M.S.A. 9.1831]
Sec. 31. "Motorcycle" means every motor vehicle having a saddle or seat for the use of the rider and designed to travel on not more than 3 wheels in contact with the ground but excluding a tractor.

257.32 Motor driven cycle. [M.S.A. 9.1832]
Sec. 32. "Motor driven cycle" means every motorcycle, including every motor scooter, with a motor which produces not to exceed 5 maximum brake horsepower, and every bicycle with motor attached.

257.33 Motor vehicle. [M.S.A. 9.1833]
Sec. 33. "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from over-head trolley wires, but not operated upon rails.

257.34 Nonresident. [M.S.A. 9.1834]
Sec. 34. "Nonresident" means every person who is not a resident of this state

257.35 Nonresident operating privilege. [M.S.A. 9.1835]
Sec. 35. "Nonresident operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle or the use of a motor vehicle owned by him, in this state.

257.36 Operator. [M.S.A. 9.1836]
Sec. 36. "Operator" means every person, other than a chauffeur, who is in actual physical control of a motor vehicle upon a highway.

257.37 Owner. [M.S.A. 9.1837]
Sec. 37. "Owner" means: (a) Any person, firm, association or corporation owning a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period greater than 30 days.

(b) A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner.

257.38 Parking. [M.S.A. 9.1838]
Sec. 38. "Parking" means standing a vehicle, whether occupied or not, upon a highway when not loading or unloading except when making necessary repairs.

257.39 Pedestrian. [M.S.A. 9.1839]
Sec. 39. "Pedestrian" means any person afoot.

257.40 Person. [M.S.A. 9.1840]
Sec. 40. "Person" means every natural person, firm, copartnership, association or corporation and their legal successors.

257.41 Pole-trailer. [M.S.A. 9.1841]
Sec. 41. "Pole-trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole or

#6 ITEM 14

## CHAPTER 6016 - GENERAL HEALTH REGULATIONS

1. Littering. No person shall place, deposit, throw, scatter or leave in any street, alley or public place, or on the private property of another, any refuse, waste, garbage, dead animal, wash water or other noxious or unsightly material.

2. Duties of Health Officer. Subject to the orders of the Board of Health, the Health Officer shall have power and it shall be his duty:

(a) To make, or cause to be made, diligent inquiry in respect to all nuisances, sources of filth and causes of sickness of every description in the Village, which are or may be injurious to the public heath, and to abate the same.

(b) To isolate and quarantine, when in his judgment the public welfare so requires, any person infected with any communicable disease or whom the Health Officer has good reason to believe has been exposed to any such disease. No person shall tear down, remove, mutilate or destroy any quarantine placard or other sign or notice posted by the Health Officer or under his direction, until the Health Officer orders the same removed.

(c) The Health Officer shall be actively in charge of all matters pertaining to the public health of the Village except as may be otherwise provided by statute of the State of Michigan, the Charter or this Code.

3. State Law, Rules, Regulations. The statutes of the State of Michigan, relating to the public health, sanitation and the prevention of disease and the spreading thereof, and the rules and regulations of the Michigan Department of Health, and all amendments and additions thereto, and as hereafter amended or added to, are hereby expressly incorporated into and made a part of this Code. Any person violating any such, law, rule or regulation shall be guilty of a violation of this Code.

4. Communicable Disease Defined. The term "communicable disease" as used in this Chapter shall include the diseases listed as reportable diseases in the regulations for the control of communicable diseases of the Michigan Department of Health, as in effect on the adoption of this Code, and as hereafter amended.

This is an amendment to Section 5 of Ordinance #4 of the

General Health Regulations, Chapter 6016 (adopted May 23, 1968). THE VILLAGE OF ELBERTA ORDAINS: THAT THE FOLLOWING SECTION 5 BE AND IS HEREBY ADDED TO THE GENERAL HEALTH REGULATIONS, CHAPTER 6016, ORDINANCE #4, MAY 23, 1968;

5. The cleaning of fish, animals, birds, or reptiles of any kind, name or nature is hereby prohibited on Lots, 1, 2, 3 & 4, Waterfront lots, Plat of Frankfort City, Village of Elberta commonly known as the Elberta Marina and Dudley Penfold Launching Ramp, and all the acreations and riparian rights between said Lots and the Betsie River until and unless there is a Village approved Fish Cleaning Station(s) in place and in operation, thereafter all fish cleaning may be performed at said station(s) under such regulations and charges as the Village Council shall determine.

I hereby certify that the above amended Section 5 of Ordinance #4 was adopted at a regular meeting of the Elberta Village Council held April 17, 1986 and that proper notice has been posted in the Elberta Post Office, Library and the Village Office.

Theodore A. McClellan, Jr.
President

Dale J. Hunsberger
Clerk

## CHAPTER 6032 - EATING AND DRINKING ESTABLISHMENTS

1. Definitions. The following definitions shall apply in the interpretation of this Chapter:

(a) "Restaurant" shall mean restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, soda fountain, and all other eating or drinking establishments, as well as kitchens or other places in which food or drink is prepared for sale on the premises or elsewhere.

(b) "Employee" shall mean any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed in a room in which food or drink is prepared or served.

(c) "Utensils" shall include any kitchenware, tableware, glassware, cutlery, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.

(d) "Health Officer" shall mean the person designated to

act as Village Health Officer.

(e) "Clerk" shall mean the Village Clerk.

2. Sanitation Requirements for Restaurants. All restaurants shall comply with all of the following items of sanitation:

(a) Floors. The floors of all rooms in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.

(b) Walls and Ceilings. Walls and ceilings of all rooms shall be kept clean and in good repair. All walls and ceilings of rooms in which food or drink is prepared shall be finished in light color. The walls of all rooms in which food or drink is prepared or utensils are washed shall have a smooth, washable surface.

(c) Doors and Windows. When flies are prevalent, all openings into the outer air shall be effectively screened and doors shall be self-closing unless other effective means are provided to prevent the entrance of flies.

(d) Lighting. All rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted.

(e) Ventilation. All rooms in which food or drink is stored or prepared, or served, or in which utensils are washed, shall be well ventilated.

(f) Toilet Facilities.

(1) Every restaurant shall be provided with adequate and conveniently located toilet facilities for its employees, conforming with Chapter 8001 of this Code and the State Plumbing Code. Toilet rooms shall not open directly into any food processing room. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair, and well lighted and ventilated. Hand-washing signs shall be posted in each toilet room used by employees.

(2) All toilet rooms shall be properly vented by exterior windows or mechanical means to the outside air.

(3) All toilet rooms and passageways leading to the same shall be well lighted.

(4) All toilet rooms shall be kept clean. Sanitary toilet paper shall be provided.

(5) Establishments serving alcoholic beverages shall provide proper and adequate toilet facilities for patrons. Separate toilet facilities shall be provided for each sex, and adequate urinals shall be provided in men's toilets.

(g) Lavatory Facilities. Adequate and convenient hand-washing facilities shall be provided, including hot and cold running water, soap and dispenser, and approved sanitary towels. The use of a common towel is prohibited. No employee shall resume work after using the toilet room without first washing his hands.

(h) Water Supply. Running water under pressure shall be easily accessible to all rooms in which food is prepared or utensils are washed, and the water supply shall be from the Village Water System.

(i) Construction of Utensils and Equipment. All multi-use utensils and all show and display cases or windows, counters, shelves, tables, refrigerating equipment, sinks, and other equipment or utensils used in connection with the operation of a restaurant shall be so constructed as to be easily cleaned and shall be kept in good repair. Utensils containing or plated with cadmium or lead shall not be used; provided, that solder containing lead may be used for jointing.

(j) Cleaning and Bactericidal Treatment of Utensils and Equipment. All equipment, including display cases or windows, counters, shelves, tables,refrigerators, stoves, hoods, and sinks, shall be kept clean and free from dust, dirt, insects, and other contaminating material. All cloths used by waiters, chefs and other employees shall be clean. Single-service containers shall be used only once. All multi-service eating and drinking utensils shall be thoroughly cleaned and effectively subjected to an approved bactericidal process immediately following the day's operation. Drying cloths, if used, shall be clean and shall be used for no other purpose. No article, polish, or other substance containing any cyanide preparation or other poisonous material shall be used for the cleansing or polishing of utensils.

(k) Storage and Handling of Utensils and Equipment. After bactericidal treatment utensils shall be stored in a clean, dry place protected from flies, dust, and other contamination, and shall be handled in such a manner as to prevent contamination as far as practicable. Single-service utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a sanitary manner.

(l) Disposal of Wastes. All wastes shall be properly disposed of, and all garbage and trash shall be kept in suitable receptacles, in such manner as not to become a nuisance.

(m) Refrigeration. All readily perishable food and drink shall be kept at or below 50 degrees F. except when being prepared or served. Waste water from refrigeration equipment shall be properly disposed of.

(n) Wholesomeness of Food and Drink. All food and drink shall be clean, wholesome, free from spoilage, and so prepared as to be safe for human consumption. All milk, fluid milk products, ice cream, and other frozen desserts served shall be from approved sources. Milk and fluid milk products shall be served in the individual original containers in which they were received from the distributor or from a bulk container equipped with an approved dispensing device; provided, that this requirement shall not apply to cream, which may be served from the original bottle or from a dispenser approved for such service. All oysters, clams and mussels shall be from approved sources, and if shucked shall be kept until used in the containers in which they were placed at the shucking plant.

(o) Storage, Display and Serving Food. All food and drink shall be stored, displayed and served as to be protected from dust, flies, vermin, depredation and pollution by rodents, unnecessary handling, droplet infection, overhead leakage and other contamination. No animals or fowls shalls be kept or allowed in any room in which food or drink is prepared or stored. All means necessary for the elimination of flies, roaches and rodents shall be used.

(p) Cleanliness of Employees. All employees shall wear clean garments and shall keep their hands clean at all times while engaged in handling food, drink, utensils, or equipment. Employees shall not expectorate or use tobacco in any form in rooms in which food is prepared.

(q) Miscellaneous. The premises of all restaurants shall be kept clean and free of litter or rubbish. None of the operations connected with a restaurant shall be conducted in any room used as living or sleeping quarters. Adequate lockers or dressing rooms shall be provided for employees' clothing and shall be kept clean. Soiled linens, coats and aprons shall be kept in containers provided for this purpose.

3. Examination and Condemnation of Food. Samples of food, drink and other substances may be taken and examined by the Health Officer as often as may be necessary for the detection of unwholesomeness or adulteration. The Health Officer may condemn and forbid the sale of, or cause to be removed or destroyed any food or drink which is unwholesome or adulterated.

4. Licenses. No person shall operate a restaurant in the Village who does not possess an unrevoked license of current issue granted in accordance with Chapter 7000 of this Code. No such license shall be granted except upon certification of the Health Officer. Only persons who comply with the requirements of this Chapter shall be entitled to receive and retain such a license. The fee for such license shall be fifteen ($15.00) dollars per year.

5. Enforcement. The Health Officer shall have the authority and duty to enforce this Chapter.

6. Inspections. At least once every six (6) months, or as often as necessary, the Health Officer shall inspect every restaurant located within the Village. The Health Officer shall have authority to enter any building or part thereof which is used, or which he has reason to believe is used for the storage, preparation, sale, serving or distribution of food or drink for human consumption to inspect the premises, furniture, equipment, dishes or utensils used therein, to determine whether or not the sanitary requirements of this Chapter are complied with.

7. Violations. If, on inspection, the Health Officer finds any violation of the requirements of this Chapter, he shall issue an order to the licensee or person in charge of the restaurant directing the correction of such violation within such reasonable time as he shall deem proper.

8. Failure to Correct Violations. If the Health Officer finds a continuation of the violation upon a second inspection after such reasonable time, he shall suspend the license of the restaurant until such violations have been corrected.

9. Immediate Suspensions. If the Health Officer finds

unsanitary conditions in any restaurant such that it would be immediately dangerous to the health of the general public, he may immediately suspend the license of and close the restaurant until such unsanitary conditions are corrected, following which he shall give a written notice in a reasonable time to the licensee or the responsible representative in charge stating his reasons for closing the restaurant. A continuance to operate after receipt of such written notice shall constitute a violation of this Code.

10. Disease Control. No person who is affected with any disease in a communicable form or is a carrier of such disease shall work in any restaurant, and no restaurant shall employ any such person or any person suspected of being affected with any disease in a communicable form or of being a carrier of such disease. If the restaurant manager suspects that any employee has contracted any disease in a communicable form or has become a carrier of such disease he shall notify the Health Officer immediately.

11. Procedure When Infection Suspected. When suspicion arises as to the possibility of transmission of infection from any restaurant employee the Health Officer is authorized to require any or all of the following measures:

(a) The immediate exclusion of the employee from all restaurants;

(b) The immediate closing of the restaurant concerned until no further danger of disease outbreak exists, in the opinion of the Health Officer;

(c) Adequate medical examinations of the employee and his associates, with such laboratory examinations as may be indicated.

#1- LICENSES

# CHAPTER 7000 - LICENSES

1. License Required. No person shall engage in the operation, conduct or carrying on of any trade, profession, business or privilege for which any license is required by any provision of this Code without first obtaining a license from the Village in the manner provided for in this Chapter. Any person duly licensed on the effective date of this Code shall be deemed licensed hereunder for the balance of the current license year.

2. State Licensed Businesses. The fact that a license or permit has been granted to any person by the State of Michigan to engage in the operation, conduct or carrying on of any trade, profession, business or privilege shall not exempt such person from the necessity of securing a license or permit from the he Village if such license or permit is required by this Code.

3. License Application. Unless otherwise provided in this Code, every person required to obtain a license from the Village to engage in the operation, conduct or carrying on of any trade, profession, business or privilege shall make application for said license to the Village Clerk upon forms provided by the Clerk and shall state under oath or affirmation such facts, as may be required for, or applicable to, the granting of such license.

4. License Year. The license year shall begin January 1st of each year an shall terminate at midnight on December 31st of the year. Original licenses shall be issued for the balance of the license year at the full license fee. License applications for license renewals shall be accepted and licenses issued for a period of fifteen (15) days prior to the annual expiration date. In all cases where the provisions of this Code permit the issuance of license for periods of less than one (1) year, the effective date of such licenses shall commence with the date of issuance thereof.

5. Where Certification Required. No license shall be granted where the certification of any officer of the Village is required prior to the issuance thereof until such certification is made.

6. Health Officer's Certificate. In all cases where the certification of the Health Officer is required prior to the issuance of any license by the Village Clerk, such certification shall be based upon an actual inspection and a finding that the person making application and the premises in which he proposes to conduct or is conducting the trade, profession, business or privilege comply with all the

sanitary requirements of the State of Michigan and of the Village.

7. Chief of Police's Certificate. In all cases where the certification of the Chief of Police is required prior to the issuance of any license by the Village Clerk, such certification shall be based upon a finding that the person making application for such license is of good moral character.

8. Late Renewals. All fees for the renewal of any license which are not paid at the time said fees shall be due, shall be paid as "late fees" with an additional twenty five (25%) per cent of the license fee required for such license for the first fifteen (15) days that such license fee remains unpaid, and thereafter the license fee shall be that required for such license, plus fifty (50%) per cent of such fee.

9. Right to Issuance. If the application for any license is approved by the proper officers of the Village, as provided in this Code, said license shall be granted and shall serve as a receipt for payment of the fee prescribed for such license.

10. Suspension or Revocation. Any license issued by the Village may be suspended by the Village President for cause, and any permit issued by the Village may be suspended or revoked by the issuing authority for cause. The licensee shall have the right to a hearing before the Village Council on any such action of the Village PResident, provided a written request therefor is filed with the Village Clerk within five (5) days after receipt of said notice of such suspension. The Council may confirm such suspension or revoke or reinstate any such license. The action taken by the Council shall be final. Upon suspension or revocation of any license or permit, the fee therefor shall not be refunded.

11. "Cause" Defined. The term "cause", as used in this Chapter, shall include the doing or omitting of any act, or permitting any condition to exist in connection with any trade, profession, business or privilege for which a license or permit is granted under the provisions of this Code, or upon any premises or facilities used in connection therewith, which act, omission or condition is:

(a) Contrary to the health, morals, safety or welfare of the public;

(b) Unlawful, irregular or fraudulent in nature;

(c) Unauthorized or beyond the scope of the license or permit granted; or

(b) Forbidden by the provisions of this Code or any duly

established rule or regulation of the Village applicable to the trade, profession, business or privilege for which the license or permit has been granted.

12. License Renewal. Unless otherwise provided in this Code, an application for renewal of a license shall be considered in the same manner as an original application.

13. Exhibition of License. No licensee shall fail to carry any license issued in accordance with the provisions of this Chapter upon his person at all times when engaged in the operation, conduct or carrying on of any trade, profession, business or privilege for which the license was granted; except that where such trade, profession, business or privilege is operated, conducted or carried on at a fixed place or establishment, said license shall be exhibited at all times in some conspicuous place in such place of business. Every licensee shall produce his license for examination when applying for a renewal thereof or when requested to do so by any Village police officer or by any person representing the issuing authority.

14. Exhibition on Vehicle and Machine. No licensee shall fail to display conspicuously on each vehicle or mechanical device or machine required to licensed by this Code such tags or stickers as are furnished by the Village Clerk.

15. Displaying Invalid License. No person shall display any expired license or any license for which a duplicate has been issued.

16. Transferability; Misuse. No license or permit issued under the provisions of this Code shall be transferable unless specifically authorized by the provisions of this Code. No licensee or permittee shall, unless specifically authorized by the provisions of this Code, transfer or attempt to transfer his license or permit to another nor shall he make any improper use of the same.

17. Misuse - Automatic Revocation. In addition to the general penalty provision for violation thereof, any attempt by a licensee or permittee to transfer his license or permit to another, unless specifically authorized by the provisions of this Code, or to use the same improperly shall be void and result in the automatic revocation of such license or permit.

#1 - PEDDLERS

# CHAPTER 7059 - PEDDLERS

1. License Required. No person shall engage in the business of hawking or peddling, or soliciting orders for, any goods or merchandise without first obtaining a license therefor. No such license shall be granted except upon certification of the Chief of Police. The fee for such license shall be two ($2.00) dollars per day; fifteen ($15.00) dollars per month or fifty ($50.00) dollars per year.

2. Fingerprints. No license to peddle shall be granted to any person unless a complete set of finger prints of such person are on file in the non-criminal identification file of the Police Department.

3. Fixed Stands Prohibited. No licensee shall stop or remain in any one place upon any street, alley or public place, longer than necessary to make a sale to a customer wishing to buy. Any peddler using a vehicle, when stopped, shall place his vehicle parallel to and within twelve (12) inches for the curb and shall depart from such place as soon as he has completed sales with customers actually present.

4. Practices Prohibited. No peddler shall shout or cry out his goods or merchandise, nor blow any horns, ring any bell or use any other similar device to attract the attention of the public.

5. Exempt Persons. This Chapter shall not be applicable to farmers or truck gardeners selling or offering for sale any products grown, raised or produced by them, the sale of which is not otherwise prohibited or regulated; nor to any person under the age of eighteen (18) years, when engaged in peddling or soliciting in the neighborhood of his residence, on foot and under the direct supervision of any school or recognized charitable or religious organization.

#1-MERCHANTS

# CHAPTER 7060 - TRANSIENT MERCHANTS

1. License Required. No person shall engage in a temporary business of selling goods, wares or merchandise at retail within the Village form any lot, premise,building, room or structure, including railroad cars, without first obtaining a license therefor. No such license shall be granted except upon certification of the Chief of Police and Village Treasurer. The fee for such license shall be fifty ($50.00) dollars per year. Persons having regularly established places of business in the Village who are not otherwise subject to this Chapter, shall not become subject thereto because of making incidental sales or deliveries direct from railroad cars.

2. Temporary Business Defined. Every person engaged in the retail sale and delivery of goods, wares or merchandise, shall be deemed to be engaged in carrying on a temporary business unless his goods, wares or merchandise shall have been assessed for taxation in the Village during the current year. (Not in effect 8-28-81)

3. Indebtedness to Village. No license shall be granted to any person owing any personal property taxes or other indebtedness to the Village, or who contemplates using any personal property on which personal property taxes are owing, in the operation of such business, and the Treasurer shall certify to the applicant's qualifications with respect to such indebtedness.

4. Benefit Sales. Any person selling or offering for sale any goods, wares or merchandise on behalf of and solely for the benefit of any recognized public, charitable or religious purpose shall, after meeting all other requirements, be granted a license without payment of the fee required by section 1, hereof.

# CHAPTER 8001 - BUILDING CODE

1. Scope and Purpose. The requirements of this Chapter shall be held to be the minimum requirements in the interest of public health, safety and sanitation for the construction of one and two family dwellings and minor accessory buildings. Construction and equipment which vary from but equal or exceed these requirements will be given due credit and consideration provided they are used appropriately and comply with generally recognized acceptable standards applicable to dwellings.

2. Approval of Alternate Types of Construction and Materials. The Building Inspector may approve the use of types of construction, such as prefabricated houses, or materials that vary from the specific requirements of this Chapter if reports of agencies or laboratories generally accepted as competent by engineering authorities indicate that such alternate materials or construction equal or exceed the applicable requirements of this Chapter.

## QUALITY OF MATERIALS AND WORKMANSHIP

3. General. All building materials and workmanship shall be of good quality conforming to generally accepted standards. Except as may be otherwise provided in this Chapter, the standards of the National Bureau of Standards are hereby declared to be acceptable good practice.

## MASONRY MIXES

4. Mortar.

(a) Proportions. Mortars of the following proportions measured by volume with the sand in a damp loose condition, shall be acceptable for the specific use mentioned in this section:

Type A. On part of portland cement to not more than three (3) parts of sand with an addition of hydrated lime or lime putty of not more than twenty five (25) per cent of the cement.

Type B. One part of portland cement, one part of hydrated lime or lime putty, and not more than six (6) parts of sand. One part of prepared masonry cement conforming to TypeII of Federal Specification SS-C-181e as amended to the date of adoption of this Code. to not more than three (3) parts of sand.

(b) Use. Type A mortar shall be used for all below-

grade masonry construction. Type A or B mortar shall be used for all above-grade construction.

5. Concrete.

(a) Workable concrete. Water used in mixing concrete shall be clean and free from deleterious amounts of acids, alkalies or organic materials. The maximum size of concrete aggregates shall be not larger than one-fifth (1/5) of the narrowest dimension between forms of the member for which the concrete is to be used, nor larger than two and one-half (2 1/2) inches. Workable concrete shall be produced in accordance with the following tables for the particular use specified:

| Type of Concrete and Use | Maximum Gallons of Water per Sack of Cement with Sand of Moisture Content Indicated | | | Maximum Cubic Feet of Total Aggregate* per Sack of Cement |
|---|---|---|---|---|
| | Dry | Average | Wet | |
| Type A - All Concrete exposed to the weather or to water pressure, or reinforced. | 6 | 5 1/4 | 4 3/4 | 6 |
| Type B - All other concrete, except Type C. | 7 | 6 | 5 1/4 | 6 1/2 |
| Type C - Footings | 7 1/2 | 6 1/2 | 5 1/2 | 7 1/2 |

*Proportion of sand (passing 1/4 inch screen) to coarse aggregate (retained on 1/4 inch screen) shall be not less than thirty five (35) per cent nor more than fifty (50) per cent by volume.

(b) Other Requirements. For design principles and practices not specifically mentioned in this section, the standards set forth in the Building Code Requirements for Reinforced Concrete of the American concrete Institute (ACI-318-63), shall

apply.

## FOOTINGS AND FOUNDATIONS

6. General. All footings and piers shall be carried below local frost level, shall bear on undisturbed the superimposed load. Where soil conditions are unstable, the Building Inspector may require additional provisions to insure stability. Drain tile shall be used around basement foundations where conditions require it.

## MINIMUM DESIGN LOADS

7. General. All floors for one and two family dwellings shall be designed for the dead load plus a live load of not less than forty (40) pounds per square foot of floor area. All roofs shall be designed for the dead load plus a live load of not less than thirty (30) pounds per square foot of horizontal projection.

## WOOD CONSTRUCTION

8. General Requirements - Working Stresses and Design. Working stresses and design of wood construction shall comply with the standards set forth in National Design Specification for Stress-Grade Lumber and Its Fastenings, National Forest Products Association.

9. Exterior Walls.

(a) Framing. All external wall covering material shall be moisture-resistant, of sufficient stiffness and properly anchored to remain in place during high winds and be reasonably permanent. All exterior wood or metal stud walls shall provide strength and rigidity equivalent to the following:

Two (2) inch by four (4) inch wood studs spaced not more than sixteen (16) inches on center for walls supporting floor loads.

Two (2) inch by four (4) inch wood studs spaced not more than twenty four (24) inches on center for walls that do not support floor loads.

All studs shall be securely fastened to plates top and bottom, and diagonally braced at outside corners of walls. Walls shall have corner posts either built up or solid of not less than three (3) two (2) by fours (4's). Top plates shall be not less than doubled two (2) by fours (4's) which shall lap at all corners and at all intersecting partitions. All such laps shall be securely spiked. All window and door openings shall have studs doubled on jambs. The inner stud shall be cut to receive the header

over the opening and shall extend in one (1) piece from header to bearing.

Headers over all openings shall be doubled and shall be set on edge. In lieu of headers, trussed construction may be used. Spans for headers shall not exceed the following for the size given:

| | |
|---|---|
| Spans up to 4 feet | two 2 by 4's |
| Spans 4 to 5 1/2 feet | two 2 by 6's |
| Spans 5 1/2 to 7 feet | two 2 by 8's |
| Spans over 7 feet | two 2 by 10's |

(b) Anchorage. The sills of frame walls supported directly on masonry shall be not less than two (2) inches thick and not less in width than that of the width of the studs. Such sills shall be bolted to the masonry at corners and between corners with one-half (1/2) inch bolts not less than seven (7) inches in length and spaced not more than six (6) feet apart.

(c) Sheathing. Sheathing may be of wood, structural insulation board, gypsum board, plywood, or other materials approved by the Building Inspector.

10. Interior Partitions.

(a) Bearing Partitions. Studs of all bearing partitions and studs of all non-bearing partitions exceeding six (6) feet of unsupported length which contain openings shall be made up of two (2) by fours (4's) spaced not more than sixteen (16) inches on center and set the four (4) inch way.

(b) Non-bearing Partitions. Studs of all non-bearing partitions which are devoid of openings may be made up of two (2) by fours (4's) spaced sixteen (16) inches on center and set the two (2) inch way.

(c) Openings. All openings in interior bearing partitions shall have jambs and heads double-framed same as required for exterior openings.

(d) Top Plate. The top plates of all bearing partitions shall be doubled. All partition plates shall lap at all intersecting partition and at outside walls, and shall be securely spiked.

(e) Sole Plate. When partitions frame on top of the joists or subfloor, the studs shall bear on a sole plate at least two (2) inches thick.

## MASONRY CONSTRUCTION

11. Walls.

(a) Solid-Brick Walls. Solid-brick bearing walls shall be not less than eight (8) inches thick. There shall be a header course in all brick walls at least every seventh course on both sides of the wall or there shall be at least one full-length header in every one and one-half (1 1/2) square feet of wall surface.

(b) Hollow Masonry Unit Walls. The minimum thickness of bearing walls of structural clay tile or concrete masonry units shall not be less than eight (8) inches. Hollow masonry units shall have full mortar coverage on vertical and horizontal edges of the face shells. Where two (2) or more hollow units are used to make up the thickness of a wall, the inner and outer course shall be bonded at vertical intervals not exceeding thirty four (34) inches by lapping at least four (4) inches or by lapping with units at least fifty (50) percent greater in width than the units below.

(c) Brick Veneered Walls. Thickness of brick veneer shall be not less than three and three fourths (3 3/4) inches properly anchored with rust-resisting wall ties and with at least one (1) tie in every three (3) square feet. The veneer shall rest on the foundation. Two (2) inch brick veneer may be used for one-story dwellings upon approval by the Building Inspector.

(d) Existing Walls. No existing wall shall be used for renewal or extension of a building or be increased in height without special written permission from the Building Inspector.

12. Lintels and Arches. The masonry above openings shall be supported by arches of masonry or lintels of steel or reinforced concrete, which shall bear on the wall at each end for not less than four (4) inches and shall be supported as required for concentrated loads.

13. On Masonry Construction. All structural members producing concentrated loads shall have bearings at least three (3) inches in length upon solid masonry not less than four (4) inches thick. Metal bearing plates of adequate design and dimensions but not less than one fourth (1/4) inch thick may be used.

14. Support on Wood. No masonry construction shall be supported on wood construction. No timber except nailing blocks not exceeding an ordinary brick in size, shall be built in as a part of masonry walls.

## CHIMNEYS, FLUES AND SMOKE PIPES

15. General. Chimneys shall be constructed in accordance with good practice provided that the specific requirements of this Chapter shall be observed.

16. Construction of Chimneys. Chimneys shall be constructed of brick, stone or of reinforced concrete. When constructed of laid up masonry units, such units shall be not less than three and one half (3 1/2) inches wide laid with full head and bed joints of Type A or Type B mortar (see section 4 of this Chapter). No chimney shall be constructed of hollow masonry units unless such units shall first have been proven to the satisfaction of the Building Inspector to be the equal of or superior to solid masonry units. Masonry walls of buildings may form parts of chimneys when the chimney walls are securely bonded into the walls of the building and when the flue is lined with flue lining the same as an independent chimney.

17. Additional Requirements. Except as otherwise provided by this Chapter, the requirements of the National Building Code (1967 Edition), American Insurance Association, shall apply in the construction and installation of chimneys, flues, vents for gas appliances and smoke pipes.

## HEATING APPLIANCES

18. General. Heating appliances shall be installed in accordance with good practice provided that the specific requirements of this Chapter shall be observed.

(a) Combustion. Adequate facilities shall be provided in all cases for the entrance of air to support combustion in rooms or other spaces enclosing heat producing appliances and the area of such facilities shall not be less than the combined outlet area of the appliances so located.

(b) Clearances for Heating Furnaces. No hot air, hot water, steam heating or other type of furnace described herein shall be located nearer than twenty four (24) inches in any direction to wood-work or other combustible construction, including plaster on a combustible base, unless such furnace shall be enclosed in a jacket providing an air space or which is insulated in an approved manner and the combustible material is protected with three eights (3/8) inch gypsum board under one eight (1/8) inch asbestos board, or with three fourths (3/4) inch portland cement plaster on metal lath, or equivalent protection, in which case this clearance may be reduced to not less than six (6) inches.

(c) Ducts. Warm air ducts, fittings and connections in warm air heating plants shall be made of bright tin

or of galvanized iron or of such other incombustible material as may be approved by the Building Inspector.

19. Water Heaters. Water heaters shall be connected to smoke flues or outlet pipes as hereinbefore provided for gas appliances, provided that such connection may be waived by the Building Inspector if the water heater is of a type which cannot produce an explosive mixture or asphyxiating condition in the room or space where it is located.

20. Additional Requirements. Except as otherwise provided in this Chapter, the National Building Code, 1967 Edition, American Insurance Association, shall apply in the construction and installation of the following:

(a) Mounting and clearances of heating furnaces, boilers and cooking appliances.

(b) Floor furnaces.

(c) Steam and hot water pipes.

(d) Warm air heating and air conditioning systems in dwellings.

## ELECTRICAL WIRING AND OUTLETS

21. Adoption of Electrical Code. Electrical installations and materials shall confirm to the requirements of the National Electrical Code, 1965 Edition as adopted by the National Fire Prevention association, 60 Battery March St., Boston, Massachusetts 02110. (NFPA Pamphlet NO. 70).

## ROOFING

22. General. Readily ignitable and hazardous roofing materials such as light asphalt or tar-impregnated paper and straw thatch, shall not be permitted.

## LIGHT AND VENTILATION

23. Front Yards. Every dwelling hereafter erected shall have a front yard not less than twenty (20) feet in depth. In the case of a dwelling to be erected on a lot or parcel of land where there is an existing building within twenty (20) feet of a side lot line of the property on which the dwelling is to be erected, which building fronts on the same street and which has a front yard less than twenty (20) feet deep, then the minimum allowable depth of the front yard for the dwelling shall be the depth of the front yard of such existing building or ten (10) feet whichever shall be the greater depth.

24. Side Yards.

(a) Every dwelling hereafter erected on any lot or plot with side lines of record, shall be so located that one (1) side yard shall be no less than five (5) feet in width and the other side no less than eight (8) feet in width, provided however, that the wider side yard may be reduced to five (5) feet if a garage is attached to or located along the side of such dwelling.

(b) Every dwelling hereafter erected on a portion of a lot without side lines of record shall be so located that the clear space between it and another structure shall be not less than ten (10) feet.

(c) The width of a side yard of a corner lot abutting on a street or highway shall not be less than the minimum front yard required on an adjoining lot fronting on such side street, but this shall not reduce the suitable width for building purposes of and lot of legal record at the time of the passage of this Code to less than thirty (30) feet measured at the foundation ground level.

25. Ceiling Heights. The minimum ceiling height in any room exclusive of a room used only for storage purposes shall be seven (7) feet, six (6) inches except under sloping roofs where the minimum shall be seven (7) feet, six (6) inches for not less than fifty (50) per cent of the floor area.

## PLUMBING

26. General. In the installation of interior plumbing work, compliance with Articles I to XI of the State Plumbing Code published by the Michigan State Plumbing Board, as effective at the date of adoption of this Code, being the Plumbing Rules and Regulations adopted by the Michigan State Plumbing Board, pursuant to Act 266 of 1929, State of Michigan, as amended, shall be acceptable. Adoption of these rules shall not make the Village subject to Act 266 of 1929, State of Michigan.

27. Plumbing Fixtures.

(a) Within each living unit there shall be provided the following plumbing fixture:

(1) A kitchen sink properly located to facilitate food preparation and dishwashing.

(2) A water closet located either in the bathroom or in a separate toilet compartment.

(3) A bathtub or shower located in a bathroom or other equivalently ventilated space.

(b) Each of the plumbing fixtures shall be permanently installed and connected to the plumbing system.

## WATER SUPPLY

28. Safe Water Supply Required. Every living unit shall have available a supply of safe water obtained from:

(a) A public or municipal water supply if available;

(b) A drilled, driven or dug well.

29. Private Water Supply. When a private water supply is required, the type, location and construction of the well shall be in accordance with "Minimum Requirements for Individual Water Supply and Sewage Disposal Systems" of the FHA Minimum Property Requirements for the State of Michigan, applicable at the date of the adoption of this Chapter.

## SIZE AND NUMBER OF ROOMS

32. Room Requirements. Every dwelling structure shall have not less than two (2) rooms and one (1) bathroom.

33. Sleeping Room. One (1) room shall be designed for sleeping use and shall have a floor area of not less than one hundred and twenty (120) square feet. Where more than one (1) bedroom is provided one (1) bedroom shall have not less than on hundred (100) square feet and all other bedrooms shall have not less than eighty (80) square feet of floor area.

34. Living Room.

(a) One (1) room shall be designed for living use. When it is used only as a living room and space is provided elsewhere for cooking and eating, this room shall have not less than one hundred and fifty (150) square feet of floor area.

(b) Where this room provides the only eating space in the structure it shall be increased by not less than forty (40) square feet of floor area.

35. Bathroom. The bathroom shall be of adequate size and properly planned to accommodate the fixtures as specified under section 27 of this Chapter.

## BASEMENT ROOMS

36. General. In dwellings hereafter erected no habitable room shall be located in a basement, unless such room shall have one-half (1/2) of its height from floor to ceiling above the ground elevation (finished surface) in the

proximity of the windows of the room. All habitable rooms in basements shall have sufficient light and ventilation as required for rooms of similar use above grade and shall be sufficiently well drained to remain dry.

## ADMINISTRATION

37. Building Permits. Before proceeding with the erection, alteration or removal of any residential building, a permit shall first be obtained by the owner or his agent from the Building Inspector. The application shall be made in writing and upon printed forms furnished by the Building Inspector. To determine satisfactory compliance with requirements, the application shall be accompanied by two (2) complete sets of plans and specifications conforming to the requirements of section 39 of this Chapter. When plans and specifications shall be found to conform with the provisions of this Chapter, the Building Inspector shall issue a permit, but when a private water supply orsewage disposal system is necessary no building permit shall be issued until the location of and plans for the water supply and sewage disposal system are approved in writing by the Health Officer. One (1) copy of the plans and specifications shall remain on file with the records of the Building Inspector, the other set to be stamped and kept at the construction site for reference until completion of the building.

## PLANS AND SPECIFICATIONS

38. Site Map. Drawings shall include a site map drawn to scale, adequately dimensioned, clearly showing the exact location of all structures existing or to be constructed. When a private water supply or sewage disposal system is necessary, the site map shall show the location of proposed well, septic tank and disposal field in addition to existing wells, septic tanks, sewer lines, drains, sewage disposal fields, seepage pits, privies and cess-pools within one hundred (100) feet of the dwelling.

39. Building Plans. These drawings shall include:

(1) Floor plans of all habitable floors and the basement or foundation plan and such drawings shall clearly indicate sizes and spacings of all supporting members, sizes of rooms, glass areas, door openings and stair runs;

(2) A sectional drawing which shall clearly indicate sizes of footing, thickness of basement walls and all floor slabs, wall construction, sizes and spacing of framing members, ceiling heights and parapet heights.

40. Fee Schedule. For each building permit issued, the following fees shall be paid to the Building Inspector and no permit shall be valid until the required fee has been paid:

For the first $50.00 of cost or part thereof - $1.00

For $50.00-$500.00 of cost or part thereof - $2.00

For $501.00-$1000.00 of cost or part thereof - $3.00

For each additional $1000.00 of cost or part thereof - $1.00

In the event a building permit is not issued the fee so paid shall be returned to the payor thereof.

## INSPECTION

41. Building Inspector. This Chapter shall be administered by the Building Inspector. In the discretion of the Village Council, the duties of the Building Inspector may be combined with those of any other officer or employee of the Village or an employee of another Municipality may be appointed as Building Inspector.

42. Notification. As work progresses under a building permit the holder thereof shall cause the Building Inspector to be notified at the following stages of construction:

(a) Upon completion of the footings and before erection of the foundation walls.

(b) Upon completion of the rough frame of the structure including the application of roof shingles and side wall sheathing and the installation of rough plumbing and chimneys, and before lath is applied.

(c) Upon total completion of the work authorized by the building permit and before occupancy.

43. Inspection and Approvals.

(a) Each inspection shall be made within two (2) days following receipt of notification. At the first inspection the Building Inspector shall determine to the best of his ability that the building has been located in accordance with the site maps and yard areas will comply with Chapter requirements.

(b) If the construction meets the requirements of this Chapter at the stage of any inspection, the Building Inspector shall issue his written approval thereof and the permit holder shall thereupon be authorized to proceed in accordance with the building permit.

44. Violations and Cancellation of Permit.

(a) Should the Building Inspector determine that the construction is not proceeding according to plan filed or is in violation of any provision of this Chapter or any other applicable Chapter of this Code, regulation or law, he shall so notify the permit holder and further construction shall be stayed until correction has been effected and approved by the Building Inspector upon notice and request for re-inspection duly made.

(b) Should the permit holder fail to comply with the requirements at any stage of construction the Building Inspector is hereby empowered to cancel the building permit issued and shall cause notice of such cancellation to be securely posted upon said construction. Posting of such notice shall be considered sufficient notification to the permit holder of cancellation thereof. No further work shall be undertaken or permitted upon such construction until a valid building permit shall thereafter have been issued.

45. Violation Nuisance Per Se. Any person violating any provision of this Chapter may be punished a specified in section 13 of Chapter 1001 of this Code. Buildings or structures erected, altered, converted or maintained in violation of this Chapter are hereby declared to be nuisances per se. Upon application to any court of competent jurisdiction, the court may order the nuisance abated and/or the violation, or threatened violation, restrained and enjoined.

AN ORDINANCE, regulating the construction of public utility facilities on, along and across the highways, streets, alleys, bridges and other public places in the VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN.

THE VILLAGE OF ELBERTA ORDAINS:

SECTION 1. No public utility shall enter upon any highway, street, alley, bridge or other public place in the Village of Elberta for the purpose of constructing public utility facilities or additions thereto, other than services and replacements, without first notifying the Village Clerk of the Village of Elberta of the proposed construction. Said public utility shall, upon request of the Village, file with the Village Clerk a sufficient plan and specification showing the nature and extent of the proposed construction.

SECTION 2. Anyone violating the provisions of this ordinance shall be subject to a fine of up to $100 for each and every occurrence.

We hereby certify that the foregoing ordinance was duly enacted by the Village Council of the Village of Elberta, Benzie County, Michigan, on the 19th day of November, 1964.

Ernest Van Antwerp
Village President

Attest:

Dudley Penfold
Village Clerk

I hereby certify that the above ordinance was posted at (1) Post Office (2) Council Chamber (3) Corner of Burnace and Crapo and (4) the corner of Digley and Frankfort Ave. being four of the most public places in said Village, on the 25th day of November, 1964.

Dudley Penfold

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## CHAPTER 9002 - ANIMALS

1. Cruelty to Animals. No person shall cruelly treat or abuse any animal or bird.

2. Poisoning Animals. No person shall throw or deposit any poisonous substance on any exposed public or private place where it endangers, or is likely to endanger, any animal or bird.

3. Birds and Birds' Nests. No person, except a police officer acting in his official capacity, shall molest, injure, kill or capture any wild bird, or molest or disturb any wild bird's nest or the contents thereof.

# An Ordinance to Amend Chapter 9006 of the Village of Elberta Ordinance Code

The Village of Elberta Ordains:

That Section 2, Chapter 9006 of the Elberta Village Code (Dogs) is hereby amended to read as the follows:

Section 2. Restrictions No person owning, possessing or having charge of any dog, shall permit such dog:

(a) To be unconfined or not on a leash at any time on any public street or on the trail.

(b.) No Dogs allowed in any Village park or on the Elberta Beach.

That Section 9, Chapter 9006 of the Elberta Village Code (Dogs) is hereby amended to read as the follows:

Section 9. Cleanup. No owner or person having custody of any dog or other animal shall permit the animal to defecate on someone else's property, public or private, or on the trail unless the defecation is removed immediately.

Section 10. Violations; Fines. Violation of this Code after a warning has been given shall be a municipal civil infraction, for which the fine for a first violation shall be $100. Repeat offenses shall be governed by Chapter 1002 of the Village Code.

I hereby certify that the above referenced amendment was adopted by the Elberta Village Council on the 17th day of June, 2010.

Posted 6-23-10

Effective Date July 8, 2010

Sharyn Bower, Clerk
Village of Elberta

# An Ordinance to Amend Chapter 9006 of the Village of Elberta Ordinance Code

The Village of Elberta Ordains:

That Section 2, Chapter 9006 of the Elberta Village Code (Dogs) is hereby amended to read as the follows:

Section 2. Restrictions No person owning, possessing or having charge of any dog, four (4) months of age or over shall permit such dog:

(a) To be unconfined or not on a leash at any time in any public area including the Waterfront Park, the Lake Michigan Beach area and the Trail.

Section 9. Cleanup. 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 10. Violations; Fines. Violation of this Code after a warning has been given shall be a municipal civil infraction, for which the fine for a first violation shall be $100. Repeat offenses shall be governed by Chapter 1002 of the Village Code.

I hereby certify that the above referenced amendment was adopted by the Elberta Village Council on the 16th day of April, 2009.

Posted 4-29-09

Effective Date 5-19-09

Sharyn Bower

Sharyn Bower, Clerk
Village of Elberta

CHAPTER 9006 - DOGS

1. Presumption of Ownership. Any person who shall permit any dog to remain about any premises owned or occupied by him for a period of five 95) days shall be deemed the owner of such dog for the purposes of this Chapter.

2. Restrictions. No person owning, possessing or having charge of any dog, four (4) months of age or over, shall permit such dog:

(a) To be unconfined between sunset and sunrise of the following day unless in the custody of some person;

AN ORDINANCE TO AMEND PART A,
SECTION 2, CHAPTER 9006 OF
THE ELBERTA VILLAGE CODE

BE IT ORDAINED, That Part (a), Section 2, Chapter 9006 of the Elberta Village Code Ordinance No. 4 is hereby amended to read as follows:

(a) To be confined at all times unless in the custody of a reliable person and held on a leash.

Approved and adopted by the Elberta Village Council at a Special Meeting held April 16, 1981.

Allen Blacklock
Village President

Jonathon Penfold
Village Clerk

ATTEST:

I, Jonathon Penfold, Village Clerk, Village of Elberta do hereby certify that the above Ordinance was posted in the three most public places in the Village of Elberta, the United States Post Office, The Elberta Public Library and the office of the Village Clerk.

Signed,

Jonathon Penfold,
Village Clerk

Dated: April 20, 1981

(b) If vicious, to be unconfined at any time unless securely muzzled and led by a leash and any dog shall be deemed vicious which has bitten a person or domestic animal without molestation, or which, by its actions, give indication that it is liable to bite any person or domestic animal.

(c) To be unconfined at any time unless vaccinated

against rabies within the past year and unless such dog shall have a tag on its collar showing such current vaccination; provided, this sub-section shall apply only to dogs six (6) months of age or older;

(d) If a female dog, to be unconfined when said dog is in heat;

(e) To be an annoyance or nuisance in the vicinity where kept because of loud or frequent or habitual barking, yelping or howling, or by reason of damaging or trespassing on the property of others.

3. Seizure and Impounding of Dogs. Any dog found at large in the Village which is doing any of the acts enumerated in, or at large under circumstances prohibited by, section 2, or which is suspected of having rabies or of having bitten any person or animal, may be seized and impounded by the dog warden or any police officer of the Village.

4. Dogs - Rabies Prevention. Any person who shall have in his possession a dog which has contracted rabies or which has been subjected to the same or which is suspected of having rabies or which has bitten any person, shall upon demand of any police officer or the Health Officer, produce and surrender up such dog to be held for observation as hereinafter provided.

5. Exposure to Rabies - Notice. It shall be the duty of any person owning or harboring a dog which has been attacked or bitten by another dog or other animal showing the symptoms of rabies, immediately to notify the Police Department of his possession of such dog.

6. Impounding and Release. Any dog impounded for observation for rabies shall be held until released by the Chief of Police or otherwise disposed of. Any dog impounded for having bitten any person shall be held for not less than five (5) days and in case any complaint shall have been made before any court having jurisdiction of such cases shall be filed, where an order that said dog be killed or confined is sought, then such further time until said case is finally disposed of. All other dogs which may be impounded under the provisions of this Chapter shall be held for not less than five (5) days and shall be released to their respective owners upon payment of such reasonable fee as the Chief of Police may establish, with the approval of the Village Council.

7. Notice to Owner. It shall be the duty of the Police Department to notify the owner of every dog which shall be impounded, if the owner of such dog can be ascertained, as soon as possible after said dog has been impounded.

8. Disposition of Dogs. After a dog has been kept for five (5) full days and has not been redeemed by his owner, any dog may be destroyed in a humane manner if diseased, injured or of little value or any such dog may, in the discretion of the Chief of Police, be sold or given away to any person whom the Chief of Police believes will keep and care for said dog in a proper and humane manner.

CONDUCT

# CHAPTER 9016 - DISORDERLY CONDUCT

1. Definitions. The term "public place" as used in this Chapter shall mean any street, alley, park, public building, any place of business or assembly open to or frequented by the public and any other place which is open to the public view, or to which the public has access.

2. Acts Prohibited. No person within the Village, shall:

(a) Commit an assault, or an assault and battery on any person;

(b) Be drunk in any public place or under the influence of any narcotic drug in any public place;

(c) Engage in any indecent, insulting, immoral, or obscene conduct in any public place;

(d) Discharge any firearm;

(e) Fire, discharge, display, or possess any fireworks except of the type and under the conditions permitted by Chapter 39 of the Penal Code of the State of Michigan, as amended;

(f) Engage in peeping in the windows of any inhabited place;

(g) Beg in any public place;

(h) Swim or bathe in any public place without wearing proper apparel;

(i) Utter vile, profane or obscene language in any public place;

(j) Engage in fortune telling or pretend to tell fortunes for hire, gain, or reward;

(k) Make any immoral exhibition or indecent exposure of his or her person;

(l) Print, engrave, sell, offer for sale, give away, exhibit or publish or have in his possession for any such purpose, any obscene, lewd, lascivious, indecent or immodest book, pamphlet, paper, picture, cast statuary, image or representation or other article of an indecent or immoral nature, or any book, paper, print, circular or writing made up principally of pictures or stories of immodest

deeds, lust, or crime, or exhibit any such article within the view of any passerby;

(m) Wilfully destroy, damage, or in any manner deface any property not his own, or any public school building, or any public building, bridge, fire hydrant, street light, street sign or parking meter, or mark or post handbills on, or in any manner mar the walls of any public building, or destroy, take, or meddle with any property belonging to the Village or remove the same from the building or place where it may be kept, placed, or stored, without proper authority;

(n) Insult, accost, molest, or otherwise annoy, either by word of mouth, sign, or motion, any person in any public place;

(o) Engage in any disturbance, fight, or quarrel in a public place;

(p) Collect or stand in crowds, or arrange, encourage, or abet the collection of persons in crowds for illegal or mischievous purposes in any public place;

(q) Jostle or roughly crowd persons in any street, alley, park, or public building;

(r) Loiter on any street or sidewalk or in any park or public building or conduct himself in any public place so as to obstruct the free and uninterrupted passage of the public;

(s) Play any ball game in any public street or sidewalk or otherwise obstruct traffic on any street or sidewalk by collecting in groups thereon, for any purpose;

(t) Engage in any act of prostitution;

(u) Attend, frequent, operate or be an occupant or inmate of any place where prostitution, gambling, the illegal sale of intoxicating liquor, or any other illegal or immoral business or occupation is permitted or conducted;

(v) Solicit or accost any person for the purpose of inducing the commission of any illegal or immoral act;

(w) Knowingly transport any person to a place where prostitution or gambling is practiced, encouraged, or allowed for the purpose of enabling such person to engage in gambling or in any illegal or immoral act;

(x) Keep or maintain a gaming room, gaming tables, or any policy or pool tickets, used for gaming; or knowingly suffer a gaming room, gaming tables, or any policy or pool tickets to be kept, maintained, played or sold on any premises occupied or controlled by him;

(y) Disturb the public peace and quiet by loud, boisterous, or vulgar conduct;

(z) Permit or suffer any place occupied or controlled by him to be a resort of noisy, boisterous, or disorderly persons;

(aa) Obstruct, resist, hinder, or oppose any member of the police force, or any peace officer in the discharge of his duties as such;

(bb) Wander about the streets, either by day or night, without any lawful means of support or without being able to give a satisfactory account of himself;

(cc) Prowl about any alley or the private premises of any other person in the nighttime, without authority or the permission of the owner of such premises;

(dd) Spit on any sidewalk or on the floor or seat of any public carrier, or on any floor, wall, seat or equipment of any place of public assemblage.

## AMENDMENT TO VILLAGE CODE

AN ORDINANCE TO AMEND THE ELBERTA VILLAGE CODE BY AMENDING SECTIONS 1 and 2 OF CHAPTER 9017 OF SAID CODE AND BY ADDING A NEW SECTION 3 TO SAID CHAPTER.

AN ORDINANCE TO REGULATE THE HOURS THAT CHILDREN UNDER THE AGE OF 18 YEARS MAY BE IN OR ON THE PUBLIC STREETS, HIGHWAYS, ALLEYS AND PARKS OF THE VILLAGE OF ELBERTA; AND TO PRESCRIBE PENALTIES FOR VIOLATIONS OF THE PROVISIONS OF THIS ORDINANCE.

THE PEOPLE OF THE VILLAGE OF ELBERTA ENACT:

SECTION 1. No minor person above the age of 15 years shall loiter, idle or congregate in or on any public street, highway, alley or park within the limits of the Village of Elberta between the hours of 11:00 P.M. and 6:00 A.M., immediately following, on the days of Sunday through Thursday, inclusive, or between the hours of 12:00 Midnight and 8:00 A.M., immediately following, on any Friday or Saturday, except where such person is accompanied by a parent or guardian, or some adult over the age of 18 years delegated by the parent or guardian to accompany such person, or where such person is upon an errand or other legitimate business directed by his or her parent or guardian.

SECTION 2. No minor person of the age of 15 or less shall loiter, idle or congregate in or on any public street, highway, alley or park within the limits of the Village of Elberta between the hours of 10:00 P.M. and 6:00 A.M., immediately following, on any day, except where such person is accompanied by a parent or guardian, or some adult over the age of 18 years delegated by the parent or guardian to accompany such person, or where such person is upon an errand or other legitimate business directed by his or her parent or guardian.

SECTION 3. Any person of the age of 18 years or over assisting, aiding,

abetting, allowing, permitting or encouraging any person under the age of 18 years to violate the provisions of SECTION 1 or SECTION 2 hereof is guilty of a misdemeanor.

Elberta, Michigan

STATE OF MICHIGAN)
)
COUNTY OF BENZIE )

I, JONATHAN PENFOLD, Clerk of the Village of Elberta, do hereby certify that the within is a true and accurate copy of Ordinance Chapter 9017 passed by the Village Council on the 17th day of August, 1978.

IN WITNESS WHEREOF, I have hereunto set my hand and seal as Village Clerk this 18 day of August, 1978.

Village Clerk

#7- FIRE

shall receive such compensation as the Village Council may from time to time prescribe.

AT ANY FIRE, if it shall appear that any member has become incompetent by reason of injury, exhaustion, or state of excitement, or otherwise unfit for duty, also if any person shall become unruly, from any cause or shall interfere, heckle, or criticize, or commit any other act tending to divert the attention of firemen from their duties, they shall be removed from the scene of the fire, and the person in charge at the fire may command the assistance of officers of the law and bystanders, to execute his orders, and shall have the same powers as a village marshall in this respect. The fire chief, or person acting as such, may be removed in a like manner, for any cause, by the Village President, or in the absence of the President, by any two (2) councilmen present.

IT SHALL BE UNLAWFUL for any person to turn in, or to cause to be turned in, a false fire alarm; To seize or board any fire truck or apparatus without authority; Or to drive any vehicle across any fire hose ; To pilfer, damage or interfere with fire department apparatus; Or to crowd into a fire area in such a manner as to interfere with the duties of firemen.

THE CHIEF, or person in charge at any fire, with the concurrence of the President, or any two (2) Trustees of the Village, may cause any building to be pulled down or destroyed, when deemed necessary in order to arrest the progress of the fire. Whenever any building is so pulled down or destroyed, any person having an interest in such

The Fire Chief shall cause to be prepared and forwarded all reports required by Local, State and Federal Government agencies, and shall keep an accurate record thereof.

It shall be unlawful for any person, firm or corporation to commit any act of carelessness or neglect, themselves, their agents, or employees, or to permit the existence of conditions in the construction, equipment, maintenance, or use of property of any kind, name or nature, that would endanger persons or property, their own or otherwise, from fire caused thereby.

It shall be unlawful for any person, firm, or corporation to use or construct buildings, structures, or receptacles, over or under the ground, for the storage or handling of combustible, inflamable, explosive or dangerous substances without first having obtained a written permit from the village council, signed by the village clerk, village president and fire chief, who shall sign such written permit when so ordered by the council.

It shall be unlawful for any person, firm or corporation to build open and/or unprotected fires, such as grass fires, bonfires, rubbish fires, etc. without first having secured the permission of the fire chief or fire warden of the village.

The fire chief shall, on order of the council, conduct an examination of the stoves, furnaces, chimneys, fire places, and all other heating apparatus in all dwellings, buildings and structures within the village, and of all places where combustible or explosive substances are kept, and to cause all such as are unsafe

[illegible] shall take immediate effect.

Any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined not more than one hundred dollars ($100)and the costs of prosecution or not more than ninety days in the Benzie County Jail, or both, in the discretion of the presiding court.

Enacted by the village council of Elberta, Benzie County, Michigan this 24th day of September 1981.Authenicated this 24th day of September, 1981.

Allen Blacklock

Allen Blacklock, President

Jonathon H. Penfold

Jonathon H. Penfold, Clerk

I do hereby certify that the foregoing ordinance was posted in three of the most conspicuous places in the village of Elberta,the Post office, the doorway of the village clerk's office and the Elberta Village Library, where they can be plainly seen, on the 26th day of September 1981.

Jonathon H. Penfold

Jonathon H. Penfold/
Village Clerk

RESOLUTION

RESOLVED:

That in order to guard against the occurrence of fires and to protect the persons and property of the general public against damage and accident therefrom, it is deemed desireable and necessary to establish a volunteer fire department by ordinance.

**********

ORDINANCE NO. 9

TITLE

AN ORDINANCE TO ESTABLISH A VOLUNTEER FIRE DEPARTMENT FOR THE VILLAGE OF ELBERTA, AND TO PROVIDE REGULATIONS FOR THE GOVERNMENT OF SAID VOLUNTEER FIRE DEPARTMENT AND FOR THE CONDUCT OF THE GENERAL PUBLIC.

**********

THE VILLAGE OF ELBERTA ORDAINS,

That a volunteer fire department is hereby established, to consist of a fire chief, an assistant fire chief, not less than twelve (12), nor more than eighteen (18) members residing in close proximity to the fire hall, and so constituted as to assure a sufficient crew to man the apparatus at all times; appointed by the village council, to serve until replaced by the council, or released by the fire chief. The person in charge at any fire may command any person present to aid in the extinguishment thereof, and to assist in the protection of property threat as emergency members of the fire department. All regular and emergency members shall attend such duties and functions as the fire chief may require. They building may present a claim for damages to the Village Council, and it shall be the duty of the council to pay such damages as may be just under all of the circumstances, taking into consideration the fact whether or not such loss would probably have occurred and whether the same was insured or not. Disagreement to be settled in the manner provided by Law in such cases.

The FIRE CHIEF, or person acting as such, shall be subject to the direction of the Village President and the regulations of the Council and, subject to this provision, shall have supervision and direction of the Fire Department and care of the apparatus, keep the same in good working condition and shall report promptly to the President any condition interfering with the proper functioning of same. The Fire Chief shall meet regularly with the village council as they may require.

The Fire Chief shall cause to be kept, in a book provided for that purpose, a complete inventory of all equipment and material belonging to the department and shall record the disposition of worn out or obsolete apparatus and material, and shall keep the council advised as to the condition of the equipment and shall make recommendations as to the improvement of the department.

The Fire Chief shall cause to be kept, in a book provided for that purpose, a complete record of the activities of the department, such as meetings, drills, membership, attendance, false alarms, and an accurate record and description of all fires and the cause thereof.

with respect to fire to be put in a safe condition. All persons are commanded to comply with the orders of the fire chief with respect to these matters. If any person, firm or corporation shall consider the requirements of the fire chief extreme or unreasonable, they may appeal to the village council for relief, however, they must comply with the orders so given until otherwise ordered by the council.

All persons, firms, and corporations shall, upon order of the village president, fire chief, or person acting as such, discontinue the use of water from the village water system during the progress of a fire.

The village council shall be responsible for an adequate water supply for the fire department use and shall make all provisions for a convenient supply. They shall furnish such apparatus for the use of the department as they shall deem necessary and in compliance with the requirements of Local, State and Federal agencies. They shall make provisions for compensation for injury which any officer, member or person in the employment of the department shall suffer to his person or property in consequence of the performance of his duty as a member of the fire department. The village council may revoke any permit issued in relation to this ordinance.

This Ordinance shall supersede and countermand any and all previous Ordinances or parts thereof, inconsistent with its operation and effectiveness.

This ordinance, being of an emergency nature, shall take [illegible]

# CHAPTER 9027 - FIRE

1. False Alarm. No person shall wilfully turn in, sound or cause to communicated to the Village Fire Department, a false alarm of fire.

2. Injury to Fire Equipment. No person shall willfully molest, take for his own private use, or damage in any manner, any fire fighting equipment or apparatus or anything pertaining to the fire fighting system, or drive any vehicle upon or against any hose or equipment of the Fire Department.

3. Obstruction of Fire Hydrants. No person shall place any obtruction whatever, nor shall any person responsible for such obstruction permit it to remain, within fifteen (15) feet of any fire hydrant.

4. Fire Hydrant - Openings. No person, except authorized Village officers and employees shall use any fire hydrant except in case of emergency, without first securing permission from the Department of Public Works for such use, and paying or agreeing to pay for the water to be used. In no case shall any wrench or tool be sued on any fire hydrant other than a regulation Village hydrant wrench.

5. Fire Inspection. The Fire Chief is hereby empowered to enter at any and all reasonable times upon and into any premises, building or structure for the purpose of examining and inspecting the same, to ascertain the conditions thereof with regard to fire hazards and the condition, size, arrangement and efficiency of any and all appliance for fire fighting. If such inspection shall disclose any fire hazard or any deficiency in fire fighting appliances, the Fire Chief shall order the condition remedied. Every order made by the Fire Chief shall be promptly obeyed and complied with.

6. Waste Receptacles and Storage. No person owning or being responsible for any premises shall permit any waste paper, ashes, oil, rags, waste rags, excelsior or any material of a similar nature to accumulate thereon, unless contained in fire proof receptacles.

7. Fire Exits. The following rules relative to passageways, stairs and fire exits shall be applicable to all public buildings, places of assembly, commercial and business buildings, hotels, apartment buildings, lodging houses, tourist homes and all other buildings except private dwellings and except as otherwise expressly limited herein to a particular type of building:

(a) No fire escape, stairway, balcony or ladder on any building shall be obstructed, out repair, or

maintained in a hazardous condition. Doors and windows leading to any fire escape shall open easily from the inside;

(b) No combustible material shall be stored, placed or kept under or upon any passageway, stairs or elevator shaft, nor shall any such material be stored, placed or kept in any other part of any building in such a position as to obstruct or render hazardous egress therefrom;

(c) All doors, hallways and stairways shall be unobstructed at all times;

(d) In all theaters, churches, schools and other places of public assembly, no door, aisle or passageway shall be obstructed with any furniture or article; nor shall any person sit or stand or be permitted to sit or stand in any aisle, or in any exit or passageway; and all exits and the sidewalks leading therefrom shall be unobstructed while such places of public assembly are in use;

(e) No person shall do any act which causes any violation of any of the rules set forth is this section, nor shall any person owning any building or in charge thereof, as agent, employee or otherwise permit any of said rules to be violated.

8. Open Fires. No person shall kindle a fire in or upon any street or alley nor within twenty-five (25) feet of any building, unless such fire be confined in a safe container, and in no case within fifteen (15) feet of any building. Every person who shall kindle any fire shall have some competent person constantly in charge of said fire until it is completely extinguished.

RESOLUTION

ADOPTION OF FIRE ORDINANCE NUMBER 9

BE IT RESOLVED, that at a regular meeting of the Elberta Village Council on Thrusday, December 19, 1991 the Council did move to adopt Ordinance No. 9.

This ordinance shall repeal the Village of Elberta Ordinance No. 9 enacted by the Village Council on September 24, 1981, and shall supercede and countermand any and all previous ordinances or parts thereof inconsistant with its operation and effectiveness.

This ordinance being of an emergent natrue, shall take effect immediately.

Enacted by the Council of the Village of Elberta, County of Benzie, State of Michigan this nineteenth day of December, 1991.

I, Barbara Harju, Clerk for the Village of Elberta do hereby certify that Ordinance No. 9 was duly passed at a regular meeting of the Elberta Village Council on the nineteenth day of December 1991 and published in part in the Benzie County Record Patriot, a newspaper published and circulated within said Village of Elberta on January 1, 1992.

Barbara Harju

Barbara Harju
Village Clerk

ORDINANCE NUMBER 9

VILLAGE OF ELBERTA
IN THE COUNTY OF BENZIE
STATE OF MICHIGAN

AN ORDINANCE TO ENACT FIRE PREVENTION STANDARDS AND TO ESTABLISH STANDARDS OF CONDUCT FOR THE GENERAL PUBLIC.

RESOLVED;

THAT IN ORDER TO GUARD AGAINST THE OCCURANCE OF FIRES AND TO PROTECT THE PERSONS AND PROPERTY OF THE GENERAL PUBLIC AGAINST DAMAGE AND ACCIDENTS THEREFROM, IT IS DEEMED DESIRABLE AND NECESSARY TO ESTABLISH FIRE PREVENTION STANDARDS AND STANDARDS OF CONDUCT FOR THE GENERAL PUBLIC.

THE VILLAGE OF ELBERTA ORDAINS;

1. The Village Council shall be responsible to provide for an adequate water supply and shall make provisions for a convenient water supply for use within the boundaries of the Village of Elberta.

2. All persons, firms and corporations shall, upon order of the Village President, the Fire Chief of the Village of Elberta, or person acting in such capacity, discontinue the use of water from the village water system during the progress of a fire.

3. At any fire, if it shall appear that any person shall become unruly, from any cause or shall interfere heckle or commit any other act tending to divert the attention of firemen from their duties, they shall be removed from the scene of the fire, and the person in charge at the fire may command the assistance of officers of the law to execute his orders, and shall have the same powers as a village marshall in this respect.

4. It shall be unlawful for any person to turn in, or to cause to be turned in, a false fire alarm; to seize or board any fire truck or apparatus of the Elberta Fire Department without authority; to drive any vehicle across any fire hose; to pilfer, damage, or to interfere with the firemen, trucks or apparatus or to crowd into a fire scene area in such a manner as to interfere with the duties of the firemen.

5. It shall be unlawful for any person, firm or corporation to commit any act of carelessness or neglect, or to do so through their agents, or employees, or to permit the existence of conditions in the construction, equipment, maintenance, or use of property of any kind, name or nature, that would endanger persons or property or otherwise, from fire caused thereby.

6. It shall be unlawful for any person, firm or corporation to use or construct buildings, structures, or recepticles, over or under the ground, or underwater for the storage or handling of combustible, inflammable, explosive, or dangerous substances without first having obtained a written permit from the Village Council, signed by the Village Clerk, Village President, and the Fire Chief, who shall write such permit when so ordered by the Village Council.

7. It shall be unlawful for any person, firm or corporation to build open unprotected fires, such as grass fires, bonfires, rubber, etc., without first having secured the permission of the Fire Chief of the Elberta Fire Department.

8. The Village Council may revoke any permit issued in relation to this Ordinance, for acts within the limits of the Village of Elberta.

9. Any person, firm or corporation violating any provisions of this ordinance shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined not more than $500.00, the cost of prosecution, and/or not more than 90 days in jail, or both.

10. This ordinance shall repeal the Village of Elberta Ordinance Number 9 enacted by the Village Council on September 24, 1981, and shall supercede and countermand any and all previous ordinances or parts thereof inconsistent with its operation and effectiveness.

This ordinance being of an emergent nature, shall take effect immediately.

Enacted by the Village Council of the Village of Elberta, County of Benzie, State of Michigan this nineteenth day of December, 1991.

PRESIDENT

_____

CLERK

Barbara Harper

Amended by Resolution at a regular meeting on the twentieth day of May, 1993.

RESOLUTION

AN AMENDMENT TO FIRE ORDINANCE NUMBER 9

BE IT RESOLVED, that at a regular meeting of the Village of Elberta Council on the twentieth day of May, 1993 the Council did move to amend Fire Ordinance No. 9 by deleting all references to a Joint Fire Department known as the Elberta - Crystal Lake Volunteer Fire Department; Crystal Lake and joint fire department; and by deleting all of Section One.

Motion by Kurbach and supported by McClellan.

Yeas - 7 Nays - 0 Absent -

I, Barbara Harju, Clerk of the Village of Elberta do hereby certify this to be a true and accurate copy of a resolution passed by the Elberta Council on May 20, 1993.

Barbara Harju

Barbara Harju, Clerk

#9 - DANGEROUS STRUCTURES

# CHAPTER 9048 - DANGEROUS STRUCTURES

1. Dangerous Structures. No person shall maintain any structure which is unsafe or which is a menace to the health, morals or safety of the public.

2. Dangerous Structures - Notice and Hearing. The Village Council may, after notice to the owner and after holding a public hearing thereon, condemn such structure by giving notice to the owner of the land upon which such structure is located, specifying in what respects said structure is a public nuisance and requiring said owner to alter, repair, tear down or remove the same within such reasonable time, not exceeding sixty (60) days, as may be necessary to do or have done the work required by said notice. Said notice may also provide a reasonable time within which such work shall be commenced.

3. Dangerous Structures - Abatement. If, at the expiration of any time limit in said notice, the owner has not complied with the requirements thereof, the Superintendent of Public Works shall carry out the requirements of said notice. The cost of such abatement shall be charged against the premises and the owner thereof in accordance with the provisions of sections 19, 20 and 21 of Chapter VIII of the Charter.

4. Dangerous Structures - Emergency Abatement. The Superintendent of Public Works, with approval of the Village President may abate any such public nuisance, if the public safety requires immediate action, without preliminary order of the Council. Thereafter the cost of abating such nuisance shall be charged against the premises and the owner thereof in accordance with the provisions of sections 19, 20 and 21 of Chapter VIII of the Charter.

11 7 - 1K/HTTIC

# CHAPTER 9101 - TRAFFIC

1. Code Adopted. The Uniform Traffic Code for Cities, Townships and Villages promulgated by the Commissioner of State Police on February 14, 1958, and published in Supplement No. 18, and on February 14, 1961, published in Supplement No. 25 to the 1954 Michigan Administrative Code in accordance with Public Act 62 of 1956, State of Michigan heretofore adopted by reference by the Village of Elberta, is continued in force as Chapter 9101 of this Code.

2. References in Code. References in the Uniform Traffic Code for Michigan Cities, Townships and Villages to "governmental unit" shall mean the Village of Elberta.

3. Copies to be Available. The Village Clerk having published the ordinance adopting said Uniform Traffic Code in the manner required by law and having published a supplementary notice setting forth the purpose of the said Uniform Traffic Code and of the fact that complete copies of the Code are available at the office of the Clerk for inspection by and distribution to the public at all times, shall maintain copies in accordance with such supplementary notice.

4. Changes in Code. The following sections and sub-sections of the Uniform Traffic Code for Cities, Townships and Villages are hereby amended or deleted as set forth and additional sections and sub-sections are added as indicated. Subsequent section numbers used in this Chapter shall refer to the like numbered sections of the Uniform Traffic Code.

2.59. Section added to read:

2.59. Current Regulations. All intersection stops and yield right of way requirements, regulations on stopping, standing or parking; one-way streets, roadways and alleys; crosswalks; restricted turns; through streets; play streets; angle parking zones; all-night parking restrictions; curb loading zones; public carrier stands; parking meter zones and space; weight restrictions; no passing zones; speed limits and traffic control devices heretofore established and effective on the effective date of this Code, shall be deemed established hereunder and shall remain effective until rescinded or modified as herein provided.

# AMENDMENT TO VILLAGE CODE

AN ORDINANCE TO AMEND THE CODE OF THE VILLAGE OF ELBERTA BY ADDING A NEW SECTION, WHICH NEW SECTION SHALL BE DESIGNATED AS SECTION 2.59 OF ARTICLE 9101 OF SAID CODE.

Section 2.59 : Passing School Bus Stopped to Receive or Discharge Passengers. The driver of a vehicle shall not overtake or meet and pass any school bus which has stopped within the limits of Elberta for the purpose of receiving or discharging passengers. The driver of a vehicle overtaking or meeting and passing a school bus which has stopped for the purpose of receiving or discharging its passengers shall bring such vehicle to a full stop at least 10 feet from the school bus and shall not proceed until the school bus resumes motion or the school bus driver signals to proceed or the visual signals are no longer actuated.

Page 2, Regular Meeting of the Elberta Village Council on October 18, 1979.

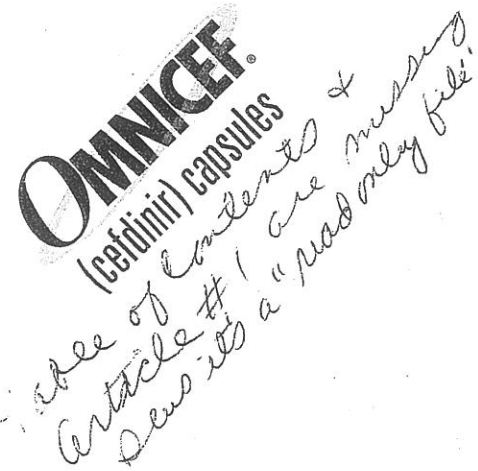
Motion by Bower supported by Soderquist that the following be adopted: Resolved that the Village of Elberta adopt the Michigan Motor Vehicle Code for townships and villages in accordance with Public Act No. 514, House bill 512, and any local ordinance regulating the parking and/or use of a motor vehicle shall be in accordance with the same. 6 ayes. No nays. Motion carried.

(According to Police Chief Walter Peltier, the above is a follow up on a State law already in effect. The above changes most traffic violations from a criminal misdemeanor to a civil infraction, but does not change the fine or point system. The only major change that takes effect is that there is no jury trial available on a civil infraction).

Motion by Soderquist supported by Bower that the meeting be adjourned.

J. H. Penfold

J.H. Penfold, Village Clerk.

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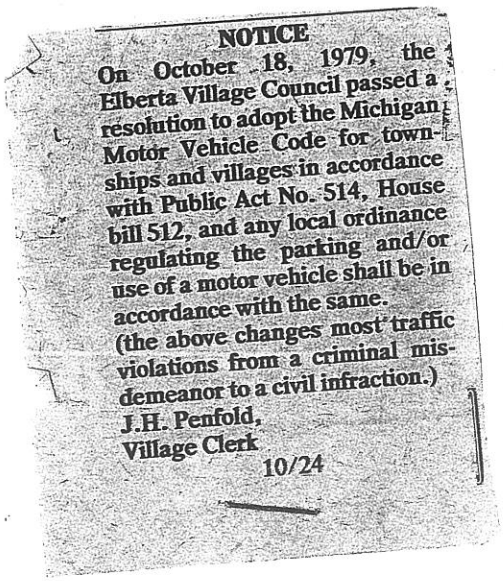


**NOTICE**

On October 18, 1979, the Elberta Village Council passed a resolution to adopt the Michigan Motor Vehicle Code for townships and villages in accordance with Public Act No. 514, House bill 512, and any local ordinance regulating the parking and/or use of a motor vehicle shall be in accordance with the same.
(the above changes most traffic violations from a criminal misdemeanor to a civil infraction.)

J.H. Penfold,
Village Clerk

10/24

**Sharyn Bower**

**From:** "Jill Bennett" <BennettJ14@michigan.gov>
**To:** <bower@villageofelberta.org>
**Sent:** Tuesday, June 15, 2010 3:56 PM
**Subject:** Re: Prohibited Parking

Good afternoon Sharon,

Here is the link to the Michigan Vehicle Code section prohibited parking:

http://www.legislature.mi.gov/(S(0ub0lh3eessjch55hcf34i55))/mileg.aspx?page=getObject&objectName=mcl-257-674

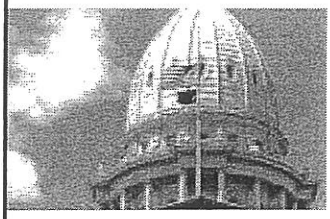
Section (n) covers this issue.

Please make sure the signs are "official" signs as dictated by the Michigan Manual on Uniform Traffic Control Devices.

Please let me know if you need anything else.

Thank you,

Sgt. Jill M. Bennett
Michigan State Police
Traffic Safety Division
Traffic Services Section
333 S. Grand Avenue
Lansing, MI 48933
TX: 517-241-0576
Fax: 517-241-0501
bennettj14@michigan.gov



MICHIGAN LEGISLATURE
95th Legislature Regular Session
Michigan Compiled Laws Complete Through PA 89 of 2010



**Navigation**
- Documents
- MCL Chapter Index
- Chapter 257
- Act 300 of 1949
- 300-1949-VI
- 300-1949-VI-STOPPING-STANDING-AND-PARKING
- Section 257.674

**Legislature**
Bills
Calendars
Committee Bill Records
Committee Meetings
Concurrent Resolutions
Initiatives
Joint Resolutions
Journals
Legislators

# Section 257.674

linkable printable

## MICHIGAN VEHICLE CODE (EXCERPT)
## Act 300 of 1949

**257.674 Prohibited parking; exceptions; bus loading zone; violation as civil infraction.**

Sec. 674.

(1) A vehicle shall not be parked, except if necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic-control device, in any of the following places:

(a) On a sidewalk.

(b) In front of a public or private driveway.

(c) Within an intersection.

(d) Within 15 feet of a fire hydrant.

(e) On a crosswalk.

(f) Within 20 feet of a crosswalk, or if there is

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mcl 257 674

not a crosswalk, then within 15 feet of the intersection of property lines at an intersection of highways.

(g) Within 30 feet of the approach to a flashing beacon, stop sign, or traffic-control signal located at the side of a highway.

(h) Between a safety zone and the adjacent curb or within 30 feet of a point on the curb immediately opposite the end of a safety zone, unless a different length is indicated by an official sign or marking.

(i) Within 50 feet of the nearest rail of a railroad crossing.

(j) Within 20 feet of the driveway entrance to a fire station and on the side of a street opposite the entrance to a fire station within 75 feet of the entrance if properly marked by an official sign.

(k) Alongside or opposite a street excavation or obstruction, if the stopping, standing, or parking would obstruct traffic.

(l) On the roadway side of a vehicle stopped or parked at the edge or curb of a street.

(m) Upon a bridge or other elevated highway structure or within a highway tunnel.

(n) At a place where an official sign prohibits stopping or parking.

(o) Within 500 feet of an accident at which a police officer is in attendance, if the scene of the accident is outside of a city or village.

(p) In front of a theater.

mcl 300 1949 I
mcl Act 300 of 1949
mcl 257 674a
mcl Act 300 of 1949
mcl 257 674
mcl 300 1949 VI
STOPPING STANDING AND PARKING
mcl 300 1949 VI
mcl Act 300 of 1949

(q) In a place or in a manner that blocks immediate egress from an emergency exit conspicuously marked as an emergency exit of a building.

(r) In a place or in a manner that blocks or hampers the immediate use of an immediate egress from a fire escape conspicuously marked as a fire escape providing an emergency means of egress from a building.

(s) In a parking space clearly identified by an official sign as being reserved for use by disabled persons that is on public property or private property available for public use, unless the individual is a disabled person as described in section 19a or unless the individual is parking the vehicle for the benefit of a disabled person. In order for the vehicle to be parked in the parking space the vehicle shall display 1 of the following:

(i) A certificate of identification or windshield placard issued under section 675 to a disabled person.

(ii) A special registration plate issued under section 803d to a disabled person.

(iii) A similar certificate of identification or windshield placard issued by another state to a disabled person.

(iv) A similar special registration plate issued by another state to a disabled person.

(v) A special registration plate to which a tab for persons with disabilities is attached issued under this act.

(t) In a clearly identified access aisle or access

lane immediately adjacent to a space designated for parking by persons with disabilities.

(u) On a street or other area open to the parking of vehicles that results in the vehicle interfering with the use of a curb-cut or ramp by persons with disabilities.

(v) Within 500 feet of a fire at which fire apparatus is in attendance, if the scene of the fire is outside a city or village. However, volunteer fire fighters responding to the fire may park within 500 feet of the fire in a manner not to interfere with fire apparatus at the scene. A vehicle parked legally previous to the fire is exempt from this subdivision.

(w) In violation of an official sign restricting the period of time for or manner of parking.

(x) In a space controlled or regulated by a meter on a public highway or in a publicly owned parking area or structure, if the allowable time for parking indicated on the meter has expired, unless the vehicle properly displays 1 or more of the items listed in section 675(8).

(y) On a street or highway in such a way as to obstruct the delivery of mail to a rural mailbox by a carrier of the United States postal service.

(z) In a place or in a manner that blocks the use of an alley.

(aa) In a place or in a manner that blocks access to a space clearly designated as a fire lane.

(2) A person shall not move a vehicle not owned by the person into a prohibited area or away from a curb a distance that makes the parking unlawful.

(3) A bus, for the purpose of taking on or discharging passengers, may be stopped at a place described in subsection (1)(b), (d), or (f) or on the roadway side of a vehicle illegally parked in a legally designated bus loading zone. A bus, for the purpose of taking on or discharging a passenger, may be stopped at a place described in subsection (1)(n) if the place is posted by an appropriate bus stop sign, except that a bus shall not stop at such a place if the stopping is specifically prohibited by the responsible local authority, the state transportation department, or the director of the department of state police.

(4) A person who violates this section is responsible for a civil infraction.

**History:** 1949, Act 300, Eff. Sept. 23, 1949 ;-- Am. 1977, Act 19, Eff. Oct. 1, 1977 ;-- Am. 1978, Act 510, Eff. Aug. 1, 1979 ;-- Am. 1978, Act 546, Imd. Eff. Dec. 22, 1978 ;-- Am. 1979, Act 66, Eff. Aug. 1, 1979 ;-- Am. 1980, Act 518, Eff. Mar. 31, 1981 ;-- Am. 1985, Act 69, Imd. Eff. July 1, 1985 ;-- Am. 1986, Act 69, Eff. Mar. 31, 1987 ;-- Am. 1986, Act 222, Eff. Oct. 1, 1986 ;-- Am. 1988, Act 150, Eff. Nov. 11, 1988 ;-- Am. 1994, Act 104, Eff. Oct. 1, 1994 ;-- Am. 1998, Act 68, Imd. Eff. May 4, 1998 ;-- Am. 2000, Act 76, Eff. Oct. 1, 2000 ;-- Am. 2000, Act 268, Eff. Oct. 1, 2000

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# ORV Rules Updated

Beginning last Jan. 4, 1990, use of off-road vehicles (ORV) on state-owned lands is restricted to roads and designated and marked trails. ORVs can no longer be used on unmarked, visible trails.

Amendments to the state ORV law last spring include a new operator age restriction (at least 16 years of age), new safety requirements, and a new noise emissions testing procedure. For details, contact **Bob Tyler**, Department of Natural Resources (DNR) Forest Management Division, 517-373-1275.

Effective April 1, 1991, the DNR will license ORVs annually. The Department of State will require titles for all ORVs.

The DNR has designated and marked 1,525 miles of trails and two use areas for ORVs. Of these, 501 miles of trails are in the Upper Peninsula and 1,024 miles are in the northern half of the Lower Peninsula. The use areas are also located in the latter region — at Silver Lake State Park, a 200-acre scramble area managed by DNR Parks Division, and the St. Helen's Motorsport Area, a 1,240-acre cross-country use area just east of St. Helen managed by the Forest Management Division.

# CHAPTER 9102 - SNOWMOBILES

1. Definitions. As used in this Chapter:

(a) "Operator" means any person who operates or is in actual physical control of a snowmobile.

(b) "Operate" means to ride in or on and to control the operation of a snowmobile.

(c) "Person" means an individual, partnership, corporation, the State and any of its agencies or subdivisions, and any body of persons whether incorporated or not.

(d) "Snowmobile: means any motorized vehicle designed for travel primarily on snow or ice and steered by wheels, skis or runners.

(e) "Highway or street" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(f) "Roadway" means that portion of a highway or street improved, designated, or ordinarily used for vehicular travel.

2. Operating Restrictions. No person shall operate a snowmobile in the Village of Elberta:

(a) At a rate of speed greater than is reasonable and proper having due regard for conditions then existing, but in no event at a speed exceeding 15 miles per hour.

(b) Except over a route as generally depicted on the map entitled "Horseback Riding and Snowmobile Trail Through the Village of Elberta" dated January 21, 1971, which shall be on file and available for public inspection if the offices of the Clerk and Superintendent of the Village of Elberta; provided, however, that deviation from such route shall be permitted for travel over the roadways, streets and highways in the Village of Elberta not otherwise on such route, but for the following purposes only:

(1) To reach by the most direct route the usual place of residence or place of ultimate destination of the operator, if such place is located within the Village of Elberta.

(2) To reach by the most direct route the usual place of housing or garaging of the snowmobile if such place is located in the Village of Elberta.

(c) During the hours from 10:00 p.m., to 7:30 a.m., of the following day.

(d) Without displaying a lighted headlight and a lighted tail light.

(e) Except in single file with other snowmobiles.

(f) Except on the extreme right hand side, nearest the edge of the route, roadway, highway or street being travelled.

(g) Except when licensed to operate a motor vehicle under the laws of the State of Michigan or, if not so licensed, except when operating the snowmobile in the company of and under the direct supervision of such a licensed operator, such unlicensed operator to precede the licensed operator at all times.

(h) With sled, toboggan or other object in tow behind the snowmobile, unless such sled, toboggan or other object shall be designed by the manufacturer for towing behind snowmobile and shall be connected to the snowmobile by a two-bar designed by the manufacturer for the purpose.

(i) Unless it is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise.

3. Right-of-way; Intersections. Any person who shall operate a snowmobile in the Village of Elberta:

(a) Shall yield the right-of-way to motor vehicles and pedestrians.

(b) Shall stop at all street and highway intersections, and shall not proceed until safe for the operator, any passenger and the public to do so.

4. Violation, Misdemeanor. Any person who violates the provisions of this ordinance is guilty of a misdemeanor and, in addition to the penalty applicable to a violation of this Code, any person violating the provisions of the ordinance may, in the discretion of the court having jurisdiction, be prohibited from operating a snowmobile within the limits of the Village of Elberta for a period of up to thirty (30) days.

CONFIDENTIAL

EXTRACTS FROM THE MINUTES OF THE REGULAR MEETING OF THE COUNCIL OF THE VILLAGE OF ELBERTA, MICHIGAN, HELD IN THE COUNCIL ROOM IN SAID VILLAGE OF ELBERTA ON THE 18th DAY OF MARCH, 1971 AT 7:30 P.M.

On the 18th day of March, 1971, the Council of the Village of Elberta, Michigan, met in the Council Room in said Village in regular session. The meeting was called to order at 7:30 P.M. by the Village President, and on the roll call the following members of the Council were found to be present: Messrs. Berryhill, Wildie, Beugnot, Fitzhugh and Luxford. Absent: Mr. Acre.

The following Ordinance was introduced by Mr. McClellan, read in full and its adoption moved by Mr. Beugnot.

ORDINANCE NO. 5

AN ORDINANCE CREATING A HOUSING COMMISSION FOR THE VILLAGE OF ELBERTA.

WHEREAS, insanitary and unsafe inhabited dwelling accommodations exist in the Village of Elberta, Michigan:

WHEREAS, there is a shortage of safe and sanitary dwelling accommodations in the said Village of Elberta, available to persons who lack the amount of income which is necessary to enable them, without financial assistance, to live in decent, safe and sanitary dwellings without over-crowding; and

WHEREAS, it is for the public interest that a housing commission be created in the said Village of Elberta:

NOW, THEREFORE, THE VILLAGE OF ELBERTA ORDAINS:

Section 1. Pursuant to Public Act No. 18 of the Extra Session of 1933, as amended, a commission is hereby created in and for the Village of Elberta, Michigan, to be known as the "Elberta Area Housing Commission".

Section 2. The Village President of the Village of Elberta is hereby directed to appoint the members of the said Elberta Area Housing Commission as soon as possible after this ordinance shall take effect.

Section 3. The Village Clerk is hereby directed to cause this ordinance to be published as soon as possible in the Benzie County Patriot, published in the City of Frankfort, Michigan, and to be posted in three public places in the Village of Elberta.

The motion to adopt said ordinance was seconded by Mr. Berryhill, and upon roll call the following voted Yea: Messrs. Luxford, Beugnot, Fitzburh, Berryhill, Wildie. Nay: Messrs. None.

Thereupon the Village President declared said Ordinance duly passed.

The meeting was adjourned at 8 o'clock P.M.

Dudley Penfold
Village Clerk

CLERK'S CERTIFICATE

I, Dudley Penfold, the duly elected, qualified and acting Village Clerk of the Village of Elberta, Michigan,

DO HEREBY CERTIFY:

That the annexed extracts from the minutes of a meeting of the Council of the said Village of Elberta, held on March 18,1971, have been compared by me with the original minutes of said meeting and are a true and correct transcript therefrom and of the whole thereof in so far as the same relate to the matters referred to therein.

IN WITNESS WHEREOF, I have hereunto set my hand and impressed the seal of said Village hereon this 18th day of March, 1971.

Dudley Penfold
Village Clerk

Copy for Village Ordinance Book

## AMENDMENT TO VILLAGE CODE

AN ORDINANCE TO AMEND THE ELBERTA VILLAGE CODE BY AMENDING SECTIONS 1 and 2 OF CHAPTER 9017 OF SAID CODE AND BY ADDING A NEW SECTION 3 TO SAID CHAPTER.

AN ORDINANCE TO REGULATE THE HOURS THAT CHILDREN UNDER THE AGE OF 18 YEARS MAY BE IN OR ON THE PUBLIC STREETS, HIGHWAYS, ALLEYS AND PARKS OF THE VILLAGE OF ELBERTA; AND TO PRESCRIBE PENALTIES FOR VIOLATIONS OF THE PROVISIONS OF THIS ORDINANCE.

THE PEOPLE OF THE VILLAGE OF ELBERTA ENACT:

SECTION 1. No minor person above the age of 15 years shall loiter, idle or congregate in or on any public street, highway, alley or park within the limits of the Village of Elberta between the hours of 11:00 P.M. and 6:00 A.M., immediately following, on the days of Sunday through Thursday, inclusive, or between the hours of 12:00 Midnight and 8:00 A.M., immediately following, on any Friday or Saturday, except where such person is accompanied by a parent or guardian, or some adult over the age of 18 years delegated by the parent or guardian to accompany such person, or where such person is upon an errand or other legitimate business directed by his or her parent or guardian.

SECTION 2. No minor person of the age of 15 or less shall loiter, idle or congregate in or on any public street, highway, alley or park within the limits of the Village of Elberta between the hours of 10:00 P.M. and 6:00 A.M., immediately following, on any day, except where such person is accompanied by a parent or guardian, or some adult over the age of 18 years delegated by the parent or guardian to accompany such person, or where such person is upon an errand or other legitimate business directed by his or her parent or guardian.

SECTION 3. Any person of the age of 18 years or over assisting, aiding,

HB - ZONING

8-95

Add to Book

# Village of Elberta, Michigan

See new Zoning ordinance on shelf. adopted 8.20.09

## Zoning Ordinance - April 1994

TABLE OF CONTENTS


PREAMBLE . . . . . 1

ARTICLE I - TITLE, POLICY AND APPLICATION . . . . . 1
Section 1.0 Title . . . . . 1
Section 1.1 Declaration of Policy . . . . . 1
Section 1.2 Application of this Ordinance . . . . . 1

ARTICLE II - DEFINATIONS . . . . . 2
Section 2.0 Definitions . . . . . 2

ARTICLE III - NONCONFORMING USES AND STRUCTURES . . . . . 7
Section 3.0 Definition and Classification of Nonconforming Uses and Structures . . . . . 7
Section 3.1 Procedure for Obtaining Class A Designation . . . . . 7
Section 3.2 Revocation of Class A Designation . . . . . 7
Section 3.3 Regulation of Class A Nonconforming Uses and Structures . . . . . 7
Section 3.4 Regulation of Class B Nonconforming Uses and Structures . . . . . 8
Section 3.5 Exception to Section 3.4 . . . . . 8

ARTICLE IV - ADMINISTRATION . . . . . 9
Section 4.0 Administration Standards . . . . . 9
Section 4.1 Zoning Administrator . . . . . 9
Section 4.2 Duties and Powers of Zoning Administrator . . . . . 9
Section 4.4 Fee Schedule . . . . . 9
Section 4.5 Occupancy Prior to Completion of Improvements . . . . . 10
Section 4.6 Zoning Board of Appeals . . . . . 10
Section 4.7 Powers . . . . . 10
Section 4.8 Procedures . . . . . 10
Section 4.9 Limitation . . . . . 10
Section 4.10 Resubmission . . . . . 11

ARTICLE V - GENERAL PROVISIONS . . . . . 12
Section 5.1 Annexed Lands . . . . . 12
Section 5.2 Mineral Removal Permit Requirements . . . . . 12
Section 5.3 Height, Density and Placement Regulations . . . . . 13
Section 5.5 General Regulations . . . . . 14

ARTICLE VI - ZONING DISTRICTS AND MAP . . . . . 15
Section 6.0 Establishment of Districts . . . . . 15
Section 6.1 Residential District R-1 . . . . . 15
Section 6.2 Residential District R-2 . . . . . 15
Section 6.3 Commercial District C-1 . . . . . 17
Section 6.4 Waterfront and Lakebluffs Development District DD . . . . . 17
Section 6.5 General Industrial District - "I" . . . . . 20

Section 6.6 Zoning Districts Map . . . . . 21
Section 6.7 District Boundaries . . . . . 22

ARTICLE VII - SPECIAL USES AND SITE PLAN REVIEW . . . . . 23
Section 7.0 Intent . . . . . 23
Section 7.1 Review and Approval . . . . . 23
Section 7.2 Permit Procedures . . . . . 23
Section 7.3 Public Hearing . . . . . 24
Section 7.4 Standards for Decisions . . . . . 24
Section 7.5 Decision of Village Council . . . . . 25
Section 7.6 Permit Expiration . . . . . 25
Section 7.10 Site Plan Review . . . . . 25
Section 7.11 Procedures . . . . . 25
Section 7.12 Application Procedure . . . . . 25
Section 7.13 Action by Village Council . . . . . 27
Section 7.14 Criteria for Review . . . . . 27
Section 7.15 Conformity to Approved Site Plan . . . . . 28
Section 7.16 Term of Approval . . . . . 28

ARTICLE VIII - ENFORCEMENT . . . . . 30
Section 8.1 Violations . . . . . 30
Section 8.2 Penalties . . . . . 30

ARTICLE IX - EFFECTIVE DATE, SEVERABILITY AND CONFLICTING LAWS . . 31
Section 9.1 Effective Date . . . . . 31
Section 9.2 Severability . . . . . 31
Section 9.2 Relationship to Other Laws . . . . . 31

TABULATION OF AMENDMENTS . . . . . 32

## ARTICLE II - DEFINATIONS

**Section 2.0 Definitions:** For the purpose the use of this Ordinance, the following terms are herewith defined.

The term "shall" is always mandatory and not discretionary; the word "may" is permissive.

Any word not interpreted or defined by this Article shall be used with a meaning of standard or common utilization.

**ACCESSORY** means both subordinate and incidental to a principal use or structure.

**BUILDING** means any structure, either temporary or permanent, erected on-site, a mobile home or mobile structure, above or below ground and having a roof or other covering, designed primarily for the shelter, support or enclosure of persons, animals or property of any kind.

**CHURCH** means a building wherein persons regularly assemble for religious worship and used only for that purpose.

**CLUBHOUSE** means offices and meeting rooms for clubs and organizations.

**DUPLEX** means a building containing not more than two (2) separate dwelling units designed for residential use. Also known as a two (2) family dwelling or structure.

**DWELLING, SINGLE FAMILY**, means a building or structure occupied as a home, residence, or sleeping place for one (1) or more persons, either permanently or transiently, and complying with the following standards:

1. It complies in all respects to the Village requirements for floor area, minimum height of rooms and other Building Code requirements.

2. It is firmly attached to a permanent foundation constructed on the site in accordance with the Village Building Code and said foundation is coextensive with the perimeter of the structure.

3. It shall not have exposed wheels, towing mechanism, undercarriage or chassis.

4. The building or structure contains no additions or rooms or other areas which are not constructed with materials and quality of workmanship of similar or better than that of the original structure, including the foundations described in two (2) above and permanent attachment to the principal structure.

5. The building or structure is connected to a public sewer and water supply if available, or to such private facilities as approved by the Health Department.

6. The Dwelling contains a storage capability area in a basement located under the dwelling or in an attic area, in closed areas, or in a separate structure of standard construction similar to or of better quality than the principal dwelling, which storage area shall be equal to ten percent (10%) of the total square footage of the dwelling or 100 square feet, whichever shall be less.

7. The building or structure complies with the Village of Elberta building and fire codes, including, in the case of mobile homes, the standards for mobile home construction as contained in the U.S. Department of Housing and Urban Development (HUD) regulations entitled, "Mobile Home Construction and Safety Standards", being 24 CFR 3280, effective June 15, 1976, and as from time to time amended.

8. The foregoing standards shall not apply to a mobile home located in a mobile home park licensed under Act 243 of 1959 as amended, or a mobile home Plat zoned for such purposes by the Village of Elberta, except to the extent required by state or federal law or otherwise specifically required in the Village of Elberta Zoning Ordinance pertaining to such parks or plats.

**DWELLING, MULTIPLE**, means a structure designed or used for residential occupancy by more than two (2) families, with or without common or separate kitchen or dining facilities, including apartment houses, apartment hotels, rooming houses, boarding houses, fraternities, sororities, dormitories, row houses, condominiums, townhouses and similar housing types.

**DWELLING, TWO FAMILY**, means a structure designed or used for residential occupance by two families, also referred to commonly as a duplex.

**FAMILY** means one or two or more persons occupying a dwelling and living together as a single housekeeping unit.

**FLOOR AREA** means the square feet of floor space within the outside walls of a structure exclusive of porches, garages, basement, cellar or attic area.

**FRONT LOT LINE** means a line dividing a lot from a public roadway.

**GAS STATION** means a lot or parcel on which motor vehicle fuels and lubricants are sold at retail.

**HEIGHT** means the vertical distance from the highest point on a structure, except a chimney, steeple, antenna or other such appurtenance, to the average ground level of the grade where the walls or other structural elements intersect the ground.

**HOME OCCUPATION** means a use of a residential structure that is clearly incidental to its primary use as a residence and which is conducted entirely within the structure by the inhabitants thereof with no nonresident employees engaged and no external evidence of such use or any change in the appearance of the structure or premises from residential.

**HOTEL** means a structure designed, used or offered for residential occupancy for any period less than one month, including tourist homes and motels but not including hospitals or nursing homes, and not including any restaurant or any dining facilities serving persons other than those residing on the premises.

**JUNK YARD** means the use of a lot for the storage or disposition of old and dilapidated automobiles, trucks, tractors and other vehicles and parts thereof, scrap building materials and any other kind of scrap or waste materials.

**KENNEL** means any activity involving the permanent or temporary keeping, housing or treatment of a greater number of animals than permitted in residential districts.

**LAUNDROMAT** means a premises where patrons wash, dry or dryclean clothing and other fabrics in machines operated by the patron.

**LOT OR PREMISES** means the parcel of land occupied or to be occupied by a building or structure and its accessory uses and structures together with such open spaces, minimum area and width as required by this Ordinance and having frontage on a public street or roadway.

**LOT AREA** means the area of land within the boundary of a lot.

**LOT OF RECORD** means a lot which is part of a subdivision or plat, the map of which has been recorded in the office of the Register of Deeds of Benzie County, or a parcel of land described by metes and bounds, the description of which has been recorded in the office of the Register of Deeds of Benzie County.

**LOT LINE** means a line marking the boundary of a lot.

MOBILE HOME means a structure manufactured as a single family dwelling unit and transported to a site as one or more modules, built upon or having a frame or chassis to which wheels may be attached for transport and so constructed to permit permanent occupancy as a home, residence or sleeping place for one or more persons.

**MOBILE HOME PARK** means any lot or premises upon which three (3) or more occupied mobile homes a situated or which is so developed that three (3) or more mobile homes may be situated thereon and complies with the requirements of Act 243 of 1959 as amended, being the Mobile Home Park Act.

**NURSING HOME** means a structure designed or used for residential occupancy and providing limited medical or nursing care on the premises for occupants, but not including hospital or mental health center or a State licensed residential care facility.

**RESTAURANT** means a lot or premises upon which food or beverages are cooked or prepared and offered for sale and where consumption is permitted on the premises whether or not entertainment is offered, and includes establishments commonly known as bars, grilles, cafes, taverns, nightclubs, driveins, and any fast food establishment permitting consumption on the premises.

**SITE PLAN** means documents and drawings specified in the Zoning Ordinance necessary to insure that a proposed land use or activity is in compliance with the Village of Elberta Zoning Ordinance and State and Federal statutes.

**SPECIAL USES** means those uses of land which are not essentially incompatible with the permitted uses in a zoning district, but posses characteristics or locational qualities which require individual review and restriction in order to avoid incompatibility with the character of the surrounding area, public services, facilities, and adjacent land uses.

**STATE LICENSED RESIDENTIAL FACILITY** means a structure constructed for residential purposes that is licensed by the state pursuant to Act 287 of the Public Acts of 1972 as amended

which provides resident service for six (6) or less persons under 24 hour supervision or care for persons in need of that supervision or care.

**STRUCTURE** means any construction, assembly or erection the use of which requires a permanent location on the ground or is attached to something having a permanent location of the ground.

# ARTICLE III - NONCONFORMING USES AND STRUCTURES

**Section 3.0 Definition and Classification of Nonconforming Uses and Structures:** Nonconforming uses and structures are those which do not conform to a provision or requirement of this Ordinance, but were lawfully established prior to the time of its applicability.

Class A nonconforming uses or structures are those which have been so designated by the Village Council, after application by any interested person or the Zoning Administrator, upon findings that the continuance thereof would not be contrary to the public health, safety or welfare, or the spirit of this Ordinance, that the use or structure does not and is not likely to significantly depress the value of nearby properties, that the use or structure was lawful at the time of its inception, and that no useful purpose would be served by the strict application of the provisions or requirements of this Ordinance with which the use or structure does not conform.

All nonconforming uses and structures not designated as Class A are Class B nonconforming uses or structures.

**Section 3.1 Procedure for Obtaining Class A Designation:** A written application shall be filed with the Village Clerk on a form supplied by the Village Council. The Council may require additional information it considers necessary to supplement the application.

The Village Council shall conduct a public hearing as is required for an amendment to the Zoning Ordinance. The decision shall be in writing and shall set forth the findings and reasons on which it is based. Conditions may be attached, including a time limit necessary to assure that the use or structure does not become contrary to the public health, safety or welfare or the spirit and purpose of this Ordinance.

**Section 3.2 Revocation of Class A Designation:** Any Class A designation may be revoked, following the same procedure required for the original designation, upon finding that as a result of any change of conditions or circumstances that the use or structure no longer qualifies for a Class A designation. No vested interest shall arise out of the grating of a Class A designation.

**Section 3.3 Regulation of Class A Nonconforming Uses and Structures:** No Class A nonconforming use shall be resumed if it has been abandoned or discontinued or changed to a conforming use for a period of one (1) year. No Class A structure shall be used, altered or enlarged in violation of any condition imposed in its designation.

**Section 3.4 Regulation of Class B Nonconforming Uses and Structures:** It is purpose of this Ordinance to eliminate Class B nonconforming uses and structures a rapidly as possible under the law with out payment of compensation. No Class B nonconforming use shall be resumed if it has been abandoned or discontinued, or if it has been changed to a conforming use for a period of one (1) year. If it is a nonconforming structure that has been damaged by fire or other casualty to the extent that the cast of reconstruction or repair exceeds 50% of replacement cost of the entire structure, then the structure shall no be repaired or reconstructed.

No Class B nonconforming structure shall be altered, enlarged or changed to a substantially different nonconforming use, nor enlarged so as to make use of more land area than used at the time of becoming nonconforming. No Class B nonconforming use or structure shall continue in existence if it was unlawful at the time of its inception.

**Section 3.5 Exception to Section 3.4:** A building used as a single family dwelling in a district where single family dwellings are a permitted principal use but which is a nonconforming structure because it does not meet all the requirements of this Ordinance but was constructed according to [illegible]ng requirements at the time of its construction, may be altered or enlarged where the al[illegible]n or enlargement itself is conforming and creates no new nonconformance.

# ARTICLE IV - ADMINISTRATION

**Section 4.0 Administration Standards:** Whenever, in the course of administration and enforcement of this Ordinance, it is necessary or desirable to make any administrative decision, then, unless other standards are in this Ordinance provided, the decision shall be made so that the result will not be contrary to the spirit and intent of this Ordinance.

**Section 4.1 Zoning Administrator:** The provision of this Ordinance shall be enforced by the Village Council. The Council shall establish the office of Zoning Administrator. A Zoning Administrator shall be appointed by the Council and shall serve at it s pleasure. The Zoning Administrator shall receive such compensation as the Council may determine.

**Section 4.2 Duties and Powers of Zoning Administrator:**

1. Issue all permits and certificates as required by this Ordinance and keep a record thereof.

2. Make a monthly report to the Village Council of the activities of the office.

3. Conduct an inspection of all buildings and structures and the use of all lands subject to the provisions of this Ordinance to determine compliance.

4. Maintain a correct and permanent record of this Ordinance, including maps, amendments, special use permits, variances and appeals.

5. Maintain a public information office relative to all matters arising out of the administration of this Ordinance.

6. Investigate all applications for variances, special permits, rezoning and other administrative matters and report all findings to the Village Council.

7. Initiate appropriate action to notify the individual and the Village Council of any illegal act or violation of this Ordinance.

**Section 4.4 Fee Schedule:** To assist in defraying the cost of administration of this Ordinance, the Village Council may from time to time adopt and amend by resolution a fee schedule governing the issuance of building and land use permits and other permits and actions taken under the provisions of this Ordinance.

**Section 4.5 Occupancy Prior to Completion of Improvements:** It shall be a violation of this Ordinance to commerce any land use or to occupy any new or enlarged structure until completion of all improvements required by this Ordinance, except where, due to the season of the year, certain required improvements cannot be installed. In such a case, the Zoning Administrator may defer compliance with this provision for not more than six months from the date of initial use or occupance and thereafter such use shall be considered a violation if all required improvements have not been completed.

**Section 4.6 Zoning Board of Appeals:** The Village Council shall serve as a Zoning Board of Appeals. A concurring vote of two third (2/3) of the members shall be required to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the Applicant on any matter upon which the Zoning Board of Appeals is required to pass under this Ordinance, or to effect any variation of this Ordinance.

**Section 4.7 Powers:** The duties and powers of the Zoning Board of Appeals shall include the following:

1. Review - To hear and decide, upon appeal, and determination made by the Zoning Administrator, or other administrative agent acting under the terms of this Ordinance.

2. Interpretation - To hear and decide upon any request for the interpretation of the provisions of this Ordinance in compliance with the intent and purposes set forth herein.

3. Variances - To grant variances on appeal respecting any provisions of this Ordinance if the same causes practical difficulties or undue hardship in conforming to the strict letter of this Ordinance.

**Section 4.8 Procedures:** All requests for variances, appeals and reviews shall be filed in writing with the Village Clerk and accompanied by a fee as established by the Village Council.

**Section 4.9 Limitation:** All appeals shall be made within thirty (30) days from the date of any decision or action constituting the basis for an appeal. The Appeals Board shall return its decision within thirty (30) days after a request or appeal has been heard unless additional time is required and agreed upon by the applicant and the Zoning Board of Appeals.

**Section 4.10 Resubmission:** No application that has been denied by be resubmitted within ninety (90) days from the last date of denial, except on grounds of newly discovered evidence or proof of changed conditions.

## ARTICLE V - GENERAL PROVISIONS

**Section 5.1 Annexed Lands:** Whenever any land is annexed to the Village of Elberta and, at the time of annexation is not subject to any township or county zoning ordinance, such land shall automatically, without council action, be added to the R-1 Residential District.

**Section 5.2 Mineral Removal Permit Requirements:** Except for the removal of sand, gravel, clay and earth in an amount not exceeding 1,000 cubic yards as part of a lawful construction project, mineral removal operations are permitted only after obtaining a Mineral Removal Permit from the Village Council and only in compliance with every condition and regulation as set forth in such permit.

An application for a Mineral Removal Permit shall be on a form as provided by the Village council and shall be completed and returned to the Village Clerk together with a fee as established by the Village Council.

The fee shall be based on an estimate of the cost of the services of independent professional advisors and legal counsel and any other costs involved in connection with the processing of the application. If at any time during the processing of the application it appears that additional expenses on the part of the Council are required in order that Village Officials may properly discharge their obligations to the public, the amount of such expenditures shall be reported to the applicant and paid prior to any action taken on the application by the Village Council.

The Village Council shall conduct a hearing on the application following the same procedure as is required for an amendment to this Ordinance.

The Village Council shall grant the permit only if it finds that the proposed use and operations will not impose undue costs upon the public, that no public or private nuisance is likely to result, that the environmental change which will be caused by the removal operations is fully justified by the benefit to the public of the minerals to be removed, that the operation will be conducted in conformity with Act 347, PA 1972 and will not result in a violation of Act 245, PA 1970, that there is adequate assurance that upon completion of the mineral removal operations the premises will be left in such condition as will protect them from erosion and leave the land in as useful for purposes permitted by this Ordinance as at the time of the grating of this permit.

The Village Council, in the granting of a mineral removal permit, may impose any such restrictions and regulations as the Council deems necessary to protect the public health, safety

and general welfare including the environmental quality of the Village and the surrounding region.

Violation of any restriction or regulation is the same as a violation of this Ordinance. The Council may revoke this permit at any time it appears that operations have been conducted insubstantial violation of any restriction or regulation. The council may also impose additional restrictions if it appears that such are necessary to protect the public health, safety and general welfare, but shall take neither action without first giving the applicant written notice, either by registered mail or delivered in person, at least five (5) days prior to the date of the meeting of the Council at which such action is to be considered. The applicant may appear in person or by council and be heard at this meeting. Revocation of the Mineral Removal Permit does not exempt anyone from punishment for any violation of this Ordinance.

If a hazardous or environmentally dangerous condition is present and the applicant does not correct the situation after due notice and referenced above, then in that event the Village Council, in order to protect the health, safety and general welfare of the inhabitants of the Village and the surrounding region may enter upon the property and correct the hazardous or environmentally dangerous situation and place a lien on the property for the amount needed to correct the hazardous or environmentally dangerous situation.

**Section 5.3 Height, Density and Placement Regulations:** Except as otherwise specifically provided for in this Ordinance, no structure shall be erected or maintained between any lot line and the pertinent setback distance listed below and no structure shall be erected or maintained which exceeds the height limit specified below.

Where a lot fronts on two streets and there is no real lot line, the front yard setback is required for both streets.

SCHEDULE OF HEIGHT, DENSITY AND PLACEMENT REGULATIONS

| District | Max. Height | Setbacks Front | Side | Rear | Lot Area |
|---|---|---|---|---|---|
| R-1 | 30 | 25 | 10 | 20 | 12,000 sq. ft. |
| R-2 | 35 | 25 | 10 | 10 | 6,000 sq. ft. |
| C | 30 | 10 | 10 | 10 | 5,000 sq. ft. |
| D-D | 35 | 25 | 10 | 10 | 43,560 sq. ft. |

**Section 5.5 General Regulations:** Every single family dwelling shall have a floor area of not less than 800 square feet.

No person shall erect, place or move any building or structure having more than one hundred (100) square feet in floor area, nor shall any addition to an existing structure of more than 100 square feet be made or change or established a new use without first obtaining a land use permit. Application for such permit shall be furnished by the Zoning Administrator and shall be returned together with a fee as established by the Village Council.

The Zoning Administrator shall be the power to require proof of the ability to comply with all of the provisions of this Ordinance pertaining to the proposed use, and may also require proof of the ability to meet all public health standards and applicable state, federal, county and village laws, regulations and ordinances.

# ARTICLE VI - ZONING DISTRICTS AND MAP

**Section 6.0 Establishment of Districts:** The Village of Elberta is hereby divided into zoning district as named and described in the following sections.

Residential District R-1
Residential District R-2
Commercial District C
Waterfront and Lakebluffs Development District DD

**Section 6.1 Residential District R-1:**

a) Intent: To establish and preserve quiet single family home neighborhoods free from conflicting uses.

b) Permitted Uses:

Detached Single Family Dwellings
Home Occupations as Defined in Article II
Public Parks and Recreation Areas

c) Permitted Uses When Authorized by Special Use Permit:

Churches
Private Recreation Facilities
Bed and Breakfast Establishments

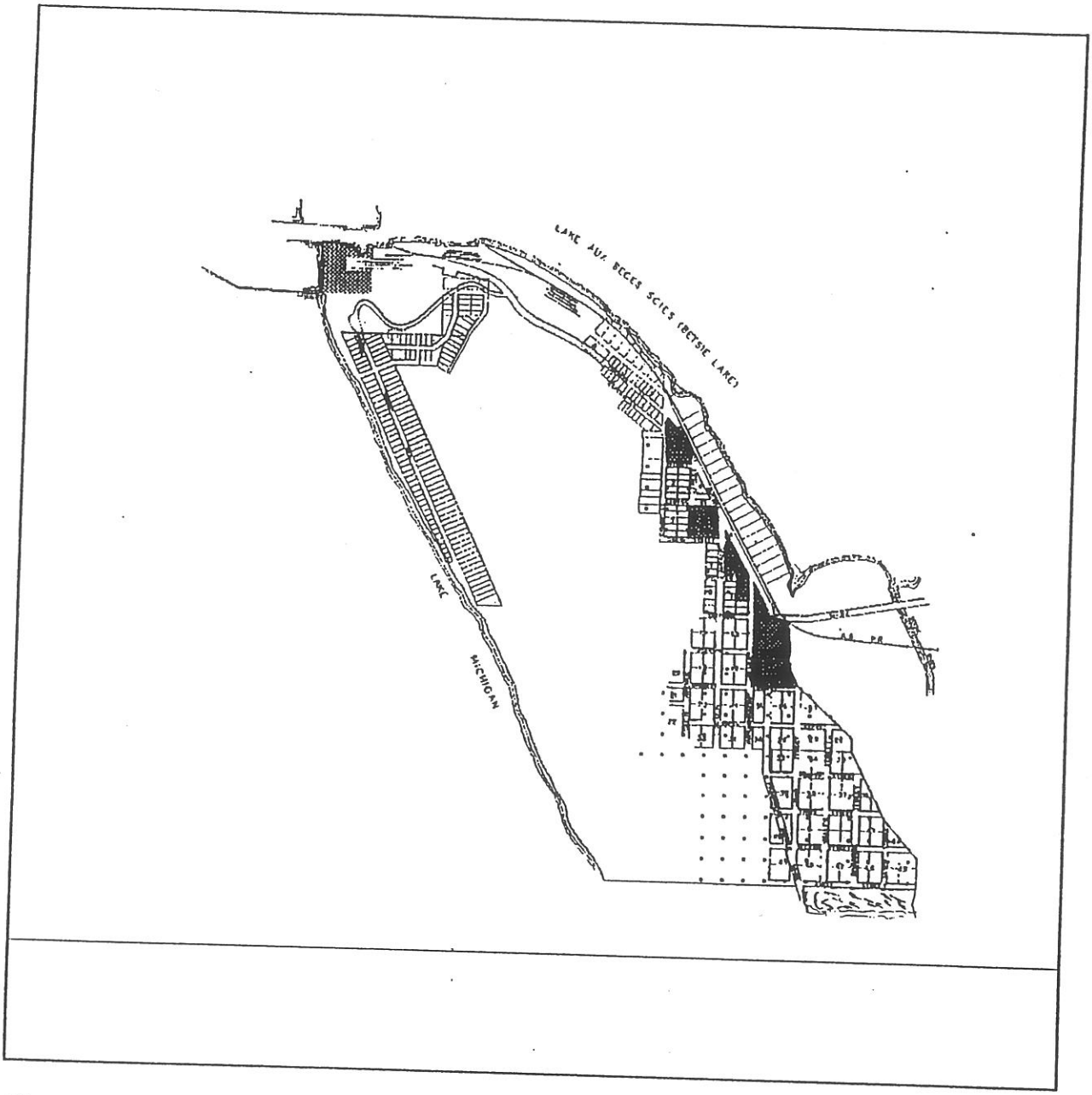
**Section 6.2 Residential District R-2:**

a) Intent: To establish a district for moderate density residential development.

b) Permitted Uses:

Single Family Dwellings
Two-Family Dwellings
Home Occupations as Defined in Section II

c) Permitted Uses When Authorized by Special Use Permit:




**CITY OF ELBERTA ZONING DISTRICTS MAP**

- Residential
- Waterfront Development
- Commerical
- General Industrstrial



James Gilbert
Barbara Karpi

AMENDED 5-5-94

Mobile Home Parks
Churches
Nursing Homes
Bed and Breakfast Establishments

**Section 6.3 Commercial District C-1:**

a) Intent: To establish and preserve a business service district.

b) Permitted Uses:

Personal service establishments such as barber and beauty shops, shoe repair.

Professional offices, banks, doctors, dentists, lawyers, insurance, and similar and allied professions.

Retail stores offering both new and used merchandise.

Duplicating shops with maximum press size of 11" x 17"

c) Permitted Uses When Authorized by Special Use Permit:

Laundromats and dry cleaners
Drive-in facilities for banks
Fast food establishments
Funeral homes, mortuaries and crematoriums
Commercial parking lots, garages and car washes
Veterinary hospitals and kennels
Outdoor sales of garden supplies and plant material
Public assembly buildings
Gasoline stations and auto repair facilities

**Section 6.4 Waterfront and Lakebluffs Development District DD:**

a) Intent: To establish an area for residential and commercial land uses in the Village, that recognizes the unique features of the Elberta Coastal environment, whereby flexibility is granted from the strict application of the zoning district requirements. This will allow the property owner to propose a unified development plan for a single property, or group of properties under a single ownership, which combines commercial and residential uses at densities consistent with

"R-1 and R-2" Zoning Districts, allowing a development plan which maximizes the environmental protection of the coastal environment and provides the substantial opportunity for public access to the waters edge.

It is the intent of the Village of Elberta to require all proposed developments within the "**DD**" Zoning District to conform to site plan review provisions, **Section 7.2** of **Article VII** of this ordinance concerning site plan review.

b) **Permitted Uses:** A single building may be erected, altered or used, and a lot may be occupied or used for any permitted use specified in the "R-1," or "R-2," Residential Zoning Districts or the Commercial Zoning District.

c) **Special Uses:** All special uses specified in the "R-1," "R-2," Residential Zoning District and Commercial Zoning District of this Ordinance. Additional uses which may be authorized by issuance of a Special Use Permit include:

1) Marinas and boat liveries, whether commercial or recreational in nature, and facilities designed to retail maine pleasure craft.

2) Marine vessel storage or repair facilities within completely enclosed buildings.

3) Marine vessel sales outlets.

4) Hotels and Motels

5) Outdoor recreational or public amusement facilities, including tourism facilities, historical displays and other facilities.

e) **Supplemental Regulations for Waterfront and Lakebluffs Uses:** All uses of Waterfront and Lakebluffs zoned properties shall have the burden of demonstrating to the Village Council that provisions will be made to adequately reduce and/or minimize the impact of the proposed development on the costal environment of the Village including, but not limited to, air and water pollution, wetlands, costal sand dunes, and floodplain. Evidence shall be provided in the form of approved permits from all local, state and federal responsible agencies prior to the issuance of land use permits by the Village for buildings and structures for the proposed project.

There shall be no minimum lot size requirements for Waterfront and Lakebluffs uses, however, all buildings and structure proposes for development shall occupy no more than 33% of the total property(ies) included within the site plan subject to the zoning designation. The remaining lot area may be used for parking, access roads, amenities, and landscaping. A substantial portion of water shoreline shall remain available for public access an be shown as part of the landscaping plan. The Village Council shall approve the landscaping plan prior to the issuance of a land use permit for the building and/or structures.

There shall be no specific maximum density for development within the Waterfront and Lakeblufffs "DD" District. Commercial space usage shall be limited to no more than 25% of the total building area within a mixed use building or structure housing both residential and/or over night rental accommodations and allowable uses specified in the Commercial District.

The maximum building height shall be 35 feet. The front yard and side yard set back requirement shall be those of the Residential R-1" District, however, the Village Council may wave the height restriction were a development proposal contains an approved fire suppression system and is constructed with approved fire fighting accessways as determined by the State Fire Marshall in accordance with the Village and State of Michigan Building Construction and Fire Codes. The burden of demonstrating conformance with these provisions shall be born by the applicant for the special use approval.

On site parking spaces shall be provided according to the following schedule. Where an applicant proposes multiple uses within a proposed unified development project, the number of parking spaces required shall be determined by tabulation of all parking required by the number of units and square footage proposed in the development and the following schedule of required parking spaces.

Two parking spaces for each single family detached living unit.

One and one-half parking spaces for each multi-family living unit.

One parking space for each over night rental sleeping accommodation and each worker for hotels and other like accommodations.

One parking space for each 250 square feet of building floor area for all commercial uses. Where commercial uses require off street loading/unloading services, additional parking area shall be provided to accomodiated the services.

## Section 6.5 General Industrial District - "I"

a) **Intent:** To establish a district wherein single or multiple properties, under a single ownership, can provide for the location of businesses and industries where objectional influences including the influence of traffic entering and exiting the property upon the Village Street system can be regulated.

b) **Permitted Uses:** A building or other structure may be erected, altered or used, and a lot may be occupied or used for any of the following uses:

1) Any manufacturing operation provided the operations of the industry are completely enclosed within the building and structure, except for truck docks.

2) Any warehousing operation provided all operations are completely enclosed within the building, except for truck docks.

3) Commercial Port Facilities including, dockage, outdoor/indoor storage, and related activities.

c) **Special Uses:** Upon approval of a Special Use Permit, a building or other structure may be erected, altered or used, and a lot may be occupied or used for any of the following uses:

1) Gasoline stations and other fuel storage facilities.

2) Commercial truck and related transportation terminals.

3) Commercial indoor and outdoor storage facilities.

3) Commercial vehicle and/or equipment repair facilities.

4) Automobile, truck, boat and equipment repair facilities.

5) Outdoor storage of equipment, goods and other materials.

e) **Supplemental Regulations for Industrial Uses:** All uses of industrial property within the Village shall have the burden of demonstrating to the Village Council that provisions will be made to adequately reduce and/or minimize the noxious, offensive, dangerous, or hazardous feature or features thereof, as the case may be. Evidence of compliance with local, state and federal environmental regulations and constraints shall be provided to the Village prior to the issuance of a land use permit for the building and/or structures. Thereafter, all operations shall met the regulations and constraints on a continuing basis.

There shall be no minimum lot size requirements for industrial uses, however, industrial building(s) and related structure shall occupy no more that 25% of the total property(ies) subject to the zoning designation. The remaining lot area may be used for parking, access roads, truck docking, and landscaping.

The maximum building height shall be 35 feet. The front yard set back shall be 40 feet from the right-of-way property line of the adjacent street. The side yard set back shall be 20 feet from the property line of all commercial and industrial zoned properties. The rear yard set back shall be 20 feet.

For uses abutting residential and commercial districts the side yard set back shall be 100 feet of which 60 feet shall be maintained as a green area entirely covered by grass, shrubs, and trees. The number of trees, shrubs and related plantings shall assure a 50 percent visual barrier of the industrial lot when viewed from the abutting residential or commercial zoning district, except for necessary ways of access therethrough. The City Council shall approve the landscaping plan prior to issuance of the land use permit for the building and/or structures.

One, on site, parking space shall be provide for each employee working each shift. Additional parking for visitors, temporary workers (such as sales persons) and the like shall be provide to assure that all parking needs are met on site. The Village Council shall approve the number and location of all parking spaces prior to the issuance of a land use permit for building and structure. In all cases no parking shall be allowed closer than 40 feet from a front yard property line and 40 feet from a side yard lot line which abuts a residential zoning district.

**Section 6.6 Zoning Districts Map:** The location of each zoning district is shown on a map designated as the "Zoning Districts Map of Elberta, Michigan", which information thereon shall be made a part of this Ordinance.

The official zoning map shall be identified by the signature of the President of the Village, attested by the Village Clerk, including the following certification: "This is to certify that this is the official zoning districts map referred to in Article VI, Section 6.5 of the Village of Elberta Zoning Ordinance.

A copy of the Zoning Ordinance and official zoning map shall be maintained and kept up to date for inspection by the public at all times, in the office of the Village Clerk.

When changes are made in the district boundaries or other matters on the official zoning map, such changes shall not be considered final and no permit required by this Ordinance shall be issued until changes have been made on the official zoning map. Each change shall have a reference number on the map referring to the amending action of the Council.

**Section 6.7 District Boundaries:** The following rules shall apply in interpreting zoning district boundaries:

1) Boundaries indicated as approximately following street, alleys or highways shall be interpreted as the center lines of said streets, alleys or highways.

2) Boundaries indicated as approximately following lot lines or boundary lines shall be interpreted as following such lines.

3) Boundaries indicated as approximately parallel to the centerline of streets or highways shall be interpreted as parallel thereto, and at such distance therefrom as indicated on the official zoning map. If no distance is specified, then such distance shall be scaled from the official zoning map.

# ARTICLE VII - SPECIAL USES AND SITE PLAN REVIEW

**Section 7.0 Intent:** It is the intent and purpose of this Ordinance to provide a set of procedures and standards for Ordinance to provide a set of procedure sand standards for special uses of land or structures that will maintain sound provisions for the protection of the health, safety, convenience and general welfare of the inhabitants of the Village of Elberta.

**Section 7.1 Review and Approval:** The special land uses and activities eligible in a respective zoning district in the Village of Elberta may be permitted only after review and approval of the Village Council.

Following approval by the Village Council, such special uses and activities shall also be subject to site plan review and approval by the Council who will then direct the Village Zoning Administrator to issue a Special Land Use Permit.

**Section 7.2 Permit Procedures:** Requests for a special use permit in any district and a land use permit in the Waterfront and Lakebluffs District, shall be made by filling an application with the Village Clerk which shall consist of the following:

a) A survey or tax description map of the property, showing existing features of the property, including contours, building structures, trees over four inches in trunk diameter, streets, utility easements, rights-of-way, current land use and the approximate location of any land area subject to regulation by any local, state of federal law or regulation other than those imposed by the Village.

b) A map showing the property and all abutting properties including name and address of all land owner of abutting property, the current zoning designation of the property and all abutting properties.

c) A list of all local, state and federal regulations which govern the development of the property and a list of all required permits and approvals necessary prior to issuance of the building permit by the County.

d) Site plan showing proposed building locations and land use areas.

e) Traffic circulation, parking areas and pedestrian walks.

f) Landscaping plans, including site grading and landscaping design.

g) Preliminary drawings for buildings to be constructed in the current phase, including floor plans, exterior elevations and sections.

h) Preliminary engineering plans, including street improvements. the drainage system and public utility extensions.

i) Engineering feasibility studies of any anticipated problems which might arise due to the proposed development as require by the Village Council.

j) Name of current property owner and developer, if different than the property owner, address, and phone number of where a representative of the developer can be contacted during normal working hours.

k) Name, address and phone number of all technical advisors providing support services in the preparation of the site plan.

**Section 7.3 Public Hearing:** When the Village Clerk is satisfied that the application is complete, the Clerk shall cause a notice of public hearing to be published at least fifteen (15) days prior to the Council meeting where the hearing will take place.

In addition, the Clerk shall notify the applicant and all property owners within three hundred (300) feet of any boundary of the parcel in question, and post the notice in other suitable locations in the Village indicating the time, place and purpose of the Village Council public hearing.

**Section 7.4 Standards for Decisions:** In evaluating a proposed special use, the Village Council shall consider the following factors upon which to base their decision and/or approval:

1) The similarity and compatibility of the proposed use with permitted uses in the respective zoning districts.

2) Whether or not the proposed use would create a traffic hazard to a greater degree than the permitted uses in that district.

3) Whether or not the proposed use would create obnoxious or harmful noise, dust, fumes or odors.

4) The location of the proposed use in relation to streets, roads and adjacent residential areas.

5) The need for buffering of lights, noise and pedestrian access from adjacent residential areas where appropriate.

6) The preservation of elements of the natural environment such as the Great Lake Shoreline, sand dunes, trees, natural land forms and drainage patterns.

7) Safety factors such as access for fire, emergency service and police.

**Section 7.5 Decision of Village Council:** After adequate review and study of the application and utilization of the above listed standards, the Village Council shall approve or disapprove the application. The Council has the right to require a performance bond to assure the completion of public improvements. Any person who has applied for a special use permit and shall feel aggrieved by the decision of the Village Council may appeal the decision to the Village Board of Zoning Appeals.

**Section 7.6 Permit Expiration:** A special use permit issued pursuant to the requirements and standards of this Ordinance shall be valid for a period of one (1) year form the date of issuance. If construction or use has not commenced and proceeded meaningfully toward completion by the end of this period, then the special use permit shall become null and void.

**Section 7.10 Site Plan Review:** Special land uses and activities eligible in a respective zoning district of the Village of Elberta may be permitted only after a site plan review and approval by the Village Council.

**Section 7.11 Procedures:** each application for a site plan review shall include information requested in Section 7.2 Permit Procedures.

**Section 7.12 Application Procedure:** Request for final site plan review shall be made by filing with the Village Clerk the following:

1) A review fee as determined by resolution of the Village Council, based upon the cost of processing the review and shall be on file with the Village Clerk.

2) Ten (10) copies of the completed application form for site plan review, which shall contain at a minimum the following information:

   a. Name and address of applicant.

b. Legal description of property, property parcel tax number and street address of the subject parcel of land.

c. Area of the subject parcel of land stated in acres, or if less than one acre, in square feet.

d. Present Zoning Classification on parcel.

e. Present and proposed land use.

f. Applicants statement of the expected impact on the community for emergency services, schools, storm water systems, and automobile and trucks circulation patterns and local traffic volumes.

3) Ten (10) copies of the proposed site plan, which shall include at a minimum the following information:

a. A scale drawing of the site and proposed development thereon, including date, name and address of the preparer.

Not applicable b. Topography of the site of at least a two (2) foot contour interval showing it s relationship to adjoining lands.

N/A c. Itemization of existing man-made features.

d. The dimensions of all setbacks.

NO MORE 35' → e. The location, heights and sizes of all structures and other features.

f. Elevation views of a cross section of the parcel showing the relationship of the structures to the existing grades and adjoining properties.

Not presented g. The percentage of land covered by building and parking and that which is reserved for open space.

Not addressed h. The location of public and private rights-of-way and easements adjacent and within the proposed development.

i. Curb-cuts, driving lanes, parking and loading areas.

j. Location and type of drainage, sanitary sewers, storm sewers and other facilities.

k. The location and nature of fencing, landscaping and screening.

l. Signs and on site illumination.

m. Any other additional material or information necessary to consider the impact of the project upon the site and adjacent properties and the general public, as may be requested by the Village Council.

**Section 7.13 Action by Village Council:** Upon receipt of the plans as specified above, the Village Clerk shall set a public hearing date and notify all parties as specified in Section 7.3 of this Ordinance.

The hearing shall be held within forty five (45) days of the receipt of the plans by the Village Clerk.

The applicant shall be notified of the date, time and place of the hearing.

At the conclusion of the hearing, the Village Council shall have the authority to approve, disapprove, alter or modify the proposed plans in accordance with he purpose of this site plan review procedure and the criteria contained herein. Any modifications required by the Village Council shall be stated in writing together with the reasons therefore, and delivered to the applicant.

**Section 7.14 Criteria for Review:** In reviewing the application and site plan and approving, disapproving or modifying the same, the Village Council shall be governed by the following standards:

1) That there is a proper relationship between the existing streets and highways within the vicinity, and proposed deceleration lanes, service drives, entrance and exit driveways and parking areas to assure the safety and convenience of pedestrian and vehicular traffic, and that the proposed circulation plan conforms to any street or circulation plan adopted by the Village Council.

2) That the buildings, structures and entryways thereto proposed to be located upon the premises are so situated and designed as to minimize adverse impacts effects therefrom upon owners and occupants of adjacent properties and the Village in general.

3) That as many natural features of the landscape are retained as possible, particularly, where they furnish a barrier of buffer between the project and adjoining properties used for dissimilar purposes and where they assist in preserving the general appearance of the Village or help control erosion or the discharge of storm waters.

4) That any adverse effects of the proposed development and activities upon adjoining properties and inhabitants is minimized by appropriate screening, fencing or landscaping.

5) That all provisions of this Ordinance are complied worth unless an appropriate variance has been granted by the Village Board of Zoning Appeals.

6) That all buildings and structures are accessible to emergency vehicles.

7) That the plan as approved is consistent with the intent and purpose of zoning to promote public health, safety and general welfare; to encourage the use of lands in accordance with their character and adaptability; to avoid the overcrowding of population; to lessen congestion on the public roads and streets; to reduce hazards to life and property and to provide for the most advantageous use of the land.

8) That a plan for erosion control and storm water discharge has been approved by the appropriate public officials.

**Section 7.15 Conformity to Approved Site Plan:** Property which is the subject of a site plan approval must be developed in strict compliance with that approved plan.

If construction and development does not conform with such approved plan, the approval is hereby revoked and all further construction activities shall immediately cease, other than for the purpose of correcting the violation.

The Village Zoning Administrator shall notify the Council of such violation and the Village Clerk shall mail a notice of revocation of the site plan approval to the developer. The Zoning Administrator shall post the property with the same notice.

However, the Village Council can accept a modification in the Site Plan upon following the same procedure as outlined in Section 7.13 above.

**Section 7.16 Term of Approval:** The approval of a site plan shall be valid for a period of one (1) year after the date of approval. If a building permit has not been obtained and on-site development actually commenced within said time period, the site plan approval shall become

null and void and a new application for site plan approval shall be required and obtained before and construction or earth changes is commenced upon the site.

# ARTICLE VIII - ENFORCEMENT

**Section 8.1 Violations:** Buildings or structures erected, altered, razed or converted, or uses carried on in violation of this Ordinance are declared to be a nuisance. The court shall order the nuisance abated, and the owner or agent in charge of the building or land, or both the owner and the agent, shall be adjudged guilty of maintaining a nuisance.

**Section 8.2 Penalties:** Any person who violates any provision of this Ordinance or any amendment thereto, who fails to perform any act required hereunder or does any prohibited act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars ($100.00) or imprisonment in the County Jail for not more than ninety (90) days, or both, for each offense. Each and everyday on which any violation is committed or permitted to continue shall constitute a sperate offense and shall be punishable as such hereunder.

ORDINANCE NO. _____
AMENDMENT TO VILLAGE OF
ELBERTA ZONING ORDINANCE

THE VILLAGE OF ELBERTA ORDAINS:

Part 1. Section 8 of the Village of Elberta Ordinance shall be amended to provide in its entirety as follows:

MUNICIPAL CIVIL INFRACTIONS

Sec. 8-1. Definitions.

As used in this Chapter:

"Act" means Act No. 236 of the Public Acts of 1961, as amended.

"Authorized Village official" means the Village of Elberta Chief of Police and the Frankfort Police Officers or other personnel of the Village or City of Frankfort authorized by this ordinance to issue municipal civil infraction citations or municipal civil infraction violation notices.

"Bureau" means the Village of Elberta Municipal Ordinances Violations Bureau as established by this Section.

"Municipal civil infraction action" means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.

"Municipal civil infraction citation" means a written complaint or notice prepared by an authorized Village official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.

"Municipal civil infraction violation notice" means a written notice prepared by an authorized Village official, directing a person to appear at the Village of Elberta Municipal Ordinance Violations Bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the Village, as authorized under Sections 8369 and 8707(6) of the Act.

Sec. 8-2. Municipal civil infraction action; commencement.

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

The Village Chief of Police and the Frankfort Police Officers are hereby designated as the authorized Village officials.

Sec.8-3. Municipal civil infraction citations; issuance and service.

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

(a) The time for appearance specified in a citation shall be within a reasonable time after the citation is issued.

(b) The place for appearance specified in a citation shall be the Benzie County District Court (hereinafter referred to as "District Court").

(c) Each citation shall be numbered consecutively and shall be in a form approved by the state court administrator. The original citation shall be filed with the District Court. Copies of the citation shall be retained by the Village and issued to the alleged violator as provided by Section 8705 of the Act.

(d) A citation for municipal civil infraction signed by an authorized Village official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge and belief."

(e) An authorized Village official who witnesses a person commit a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and required copies of a citation.

(f) An authorized Village official may issue a citation to a person if:

(1) Based upon investigation, including consultation with the Village attorneys, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction; or

(2) Based upon the investigation of a complaint by someone who allegedly witnessed the person commit a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for an infraction and if the prosecuting attorney or Village attorney approve in writing the issuance of the citation.

(g) Municipal civil infraction citations shall be served by an authorized Village official as follows:

(1) Except as provided in Section 8-3(g)(2), an authorized Village official shall personally serve a copy of the citation upon the alleged violator.

(2) If the municipal civil infraction action involves the use or occupancy of land, a building or other structure, a copy of the citation does not need to be personally served upon the alleged violator, but may be served upon an owner or occupant of the land, building or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building or structure at the owner's last known address.

Sec. 8-4. Municipal civil infraction citations; comments.

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

(b) Further, the citation shall inform the alleged violator that he or she may do one of the following:

(1) Admit responsibility for the municipal civil infraction by mail, in person or be representation at or by the time specified for appearance.

(2) Admit responsibility for the municipal civil infraction with explanation by mail by the time specified for appearance or, in person, or by representation.

(3) Deny responsibility for the municipal civil infraction by doing either of the following:

(A) Appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the Village.

(B) Appearing in court for formal hearing before a judge, with the opportunity of being represented by an attorney.

(c) The citation shall also inform the alleged violator of all of the following:

(1) That if the alleged violator desires to admit responsibility with explanation in person or by representation, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for appearance.

(2) That if the alleged violator desires to deny responsibility, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation.

(3) That a hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the Village.

(4) That at an informal hearing the alleged violator must appear in person before a judge or district

court magistrate, without the opportunity of being represented by an attorney.

(5) That at a formal hearing, the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney.

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

Sec. 8-5. Municipal ordinance violations bureau.

(a) *Bureau established.* The Village hereby establishes a Municipal Ordinance Violations Bureau ("Bureau") as authorized under Section 8396 of the Act to accept admissions of responsibility for municipal civil infractions in response to municipal civil infraction notices issued and served by authorized Village officials and to collect and retain civil fines and costs as prescribed by the Code or any ordinance.

(b) *Location; supervision; employees; rules and regulations.* The Bureau shall be located at the Village of Elberta Offices and shall be under the supervision and control of the Village Clerk. The Village Clerk, subject to the approval of the Village Council, shall adopt rules and regulations for the operation of the Bureau and appoint any necessary qualified Village employees to administer the Bureau.

(c) *Disposition of violations.* The Bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice (as compared with a citation) has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the Bureau. Nothing in this Chapter shall prevent or restrict the Village from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction violation at the Bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the Bureau

shall not prejudice the person or in any way diminish the person's rights, privileges and protection accorded by law.

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

(e) *Municipal civil infraction violation notices.* Municipal civil infraction violation notices shall be issued and served by authorized Village officials under the same circumstances and upon the same persons as provided for citations in Sections 8-3(f) and (g) of this Chapter. In addition to any other information required by this Code or other ordinance, the notice of violation shall indicate the time by which the alleged violator must appear at the Bureau, the methods by which an appearance may be made, the address and telephone number of the Bureau, the hours during which the Bureau is open, the amount of the fine scheduled for the alleged violation, and the consequence for failure to appear and pay the required fine within the required time.

(f) *Appearance; payment of fines and costs.* An alleged violator receiving a municipal civil infraction violation notice shall appear at the Bureau and pay the specified fine and costs at or by the time specified for appearance in the municipal civil infraction violation notice. An appearance may be made by mail, in person, or by representation.

(g) *Procedure where admission of responsibility not made or fine not paid.* If an authorized Village official issues and serves a municipal ordinance violation notice and if an admission of responsibility is not made and the civil fine and costs, if any, prescribed by the schedule of fines for violation are not paid at the Bureau, a

municipal civil infraction citation may be filed with the District Court and a copy of the citation may be served by first class mail upon the alleged violator and alleged violator's last known address. The citation filed with the court does not need to comply in all particulars with the requirements for citations as provided by Sections 8705 and 8709 of the Act but shall consist of a sworn complaint containing the allegations stated in the municipal ordinance violation notice and shall fairly inform the alleged violator how to respond to the citation.

Sec. 8-6. Schedule of civil fines established.

(a) A schedule of civil fines payable to the Bureau for admissions of a responsibility by persons served with municipal ordinance violation notices is hereby established. The fines for the violations listed below shall be as follows:

| Offense (Violation) | Fine |
|---|---|
| Any land, dwelling, building or structure, including any tent or mobile home, used, erected, altered, raised or converted in violation of this Ordinance or in violation of any regulation, condition, permit or other right granted, adopted or issued pursuant to this Ordinance is hereby declared to be a nuisance *per se*. Any person, partnership, limited liability company, corporation or association who creates or maintains a nuisance *per se* or who violates or fails to comply with any provision of this Ordinance or any permit issued pursuant to this Ordinance shall be responsible for a municipal civil infraction. Every day that any such violation continues shall constitute a separate and distinct offense. Nothing in this Section shall exempt such person from compliance with the provisions of this Ordinance. | $50.00 plus costs |
| First repeat offense. | $250.00 |
| Second (or any subsequent) repeat offense. | $500.00 |

See Attached.

(b) A copy of this schedule, as amended from time to time, shall be posted at the Bureau.

| | |
|---|---|
| Any person, partnership, limited liability company, corporation or association who violates or fails to comply with any provision of the Village of Elberta Rubbish Ordinance shall be responsible for a municipal civil infraction. Any day that any such violation continues shall constitute a separate and distinct offense. Nothing in this Section shall exempt such person from compliance with the provisions of the Ordinance. | $50.00 plus costs |
| Any person, partnership, limited liability company, corporation or association who violates or fails to comply with any provision of the Village of Elberta Mobile Home Ordinance shall be responsible for a municipal civil infraction. Any day that any such violation continues shall constitute a separate and distinct offense. Nothing in this Section shall exempt such person from compliance with the provisions of the Ordinance. | $50.00 plus costs |
| First repeat offense. | $250.00 |
| Second (or any subsequent) repeat offense. | $500.00 |

(b) A copy of this schedule, as amended from time to time, shall be posted at the Bureau.

Part 2. Severability.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Part 3. Effective Date.

This Ordinance shall become effective immediately upon publication in a newspaper in general circulation within the Village of Elberta.

Part 4. Repeal.

Section 8 of the Village of Elberta Zoning Ordinance is repealed. The Civil Infraction of Enforcement Policy Resolution is hereby repealed.

Part 5. Conflict.

If any provision of the Village of Elberta Zoning Ordinance is contrary to this Amendment, then the provisions of this Amendment shall control.

First Reading:

Second Reading:

Effective Date:

Gregory Jenks, President

Sharyn Bower, Village Clerk

**RESOLUTION**
**AMENDMENT TO VILLAGE OF ELBERTA**
**ZONING ORDINANCE**

At a regular conducted meeting of the Elberta Village Council of the Village of Elberta, with a quorum of members being present, the following resolution was adopted:

**BE IT RESOLVED,** the Village of Elberta Ordains that Section 8 of the Zoning Ordinance be amended to provide for Municipal Civil Infractions. The amendment includes: commencement of civil infraction action; Village Officials authorized to enforce civil infraction action; outline of procedure to be followed in enforcing the ordinance; citation wording; the creation of a municipal ordinance violations bureau and the establishment of a schedule of civil fines.

Motion by Voss Supported by Newberschott

Yeas 6 Nays 0

Approved this 18th day of January, 2001.

Sharyn Bower

Sharyn Bower, Village Clerk

# ARTICLE IX - EFFECTIVE DATE, SEVERABILITY AND CONFLICTING LAWS

**Section 9.1 Effective Date:** This Ordinance shall take effect and be in force upon publication as required by law.

**Section 9.2 Severability:** This Ordinance and the various parts, sections, subsections and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, subsection, section or clause is adjudged unconstitutional or invalid as applied to a particular property, building or structures, it is hereby provided that the application of such portion of the ordinance to other property, building or structures shall not be effected thereby. Whenever any condition or limitation is included in any variance, compliance permit, conditional or special use permit or nonconforming permit, it shall be conclusively presumed that the authorizing officer or body considered such condition or limitation necessary to carry out the spirit and purpose of this ordinance or the requirement of some provision thereof, and to protect the public health, safety and welfare, and that the officer or board would not have granted the authorization unless the condition or limitation was lawful.

**Section 9.2 Relationship to Other Laws:** Whenever regulations or restrictions imposed by this Ordinance are wither more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule of regulation, the regulations, rules or restrictions which are more restrictive or which impose higher standards or requirements shall govern. Regardless of any other provision of this Ordinance no land shall be used and no structure erected or maintained in violation of any state or federal pollution control or environmental protection law or regulation.

## TABULATION OF AMENDMENTS

Amendment # 86-1 "Delete all of Section 100 and replace with Article I - Legal Basis, and Article IX - EFFECTIVE DATE, ACTION BY COUNCIL and CONFLICTING LAWS."

Adopted September 15, 1986

Amendment # 86-2 "Delete Section 604 and all of Section 700 and replace with Article II - DEFINITIONS and Article VIII - VIOLATIONS AND PENALTIES."

Adopted October 16, 1986

Amendment # 86-3 "Delete all of Section 300 and Section 400 and replace with Article III NONCONFORMING USES AND STRUCTURES, and Article V - GENERAL PROVISIONS."

Adopted November 20, 1986

Amendment # 86-4 "Delete all of Section 200 500 and 600 and replace with Article IV - ADMINISTRATION, Article VI - ZONING DISTRICTS AND MAP, and Article VII - SPECIAL USES AND SITE PLAN REVIEW."

Adopted December 18, 1986

## CERTIFICATE OF ADOPTION:

I hereby certify that the above referenced amendments were adopted by the Elberta Village Council after proper public notice, public hearing and publication of adoption pursuant to the requirements of Act 207 of the Public Acts of 1921 as amended.

s/Floyd Ikens
Floyd Ikens, President

s/Dale J. Hunsberger
Dale J. Hunsberger, Clerk

*- - - continued - - -*

Amendment # 94-1 "Delete and replace Section 6.4 Waterfront and Lakesbluffs Development District - 'DD' Add new Section 6.5 General Industrial District - 'I', and remove and replace Section 7.2 Permit Procedures."

Adopted *****, 1994

**CERTIFICATE OF ADOPTION:**

I hereby certify that the above referenced amendments were adopted by the Elberta Village Council after proper public notice, public hearing and publication of adoption pursuant to the requirements of Act 207 of the Public Acts of 1921 as amended.

s/James Gilbert
James Gilbert, President

s/Barbara Harju
Barbara Harju, Clerk

AMENDMENT TO
VILLAGE OF ELBERTA ZONING ORDINANCE

VILLAGE OF ELBERTA ordains:

1. Section 8 of The Village of Elberta Ordinance shall be amended to provide in its entirety as follows:

(A) Any land, dwelling, building or structure, including any tent or mobile home, used, erected, altered, raised or converted in violation of this Ordinance or in violation of any regulation, condition, permit or other right granted, adopted or issued pursuant to this Ordinance is hereby declared to be a nuisance *per se*. Any person, partnership, limited liability company, corporation or association who creates or maintains a nuisance *per se* or who violates or fails to comply with any provision of this Ordinance or any permit issued pursuant to this Ordinance shall be responsible for a municipal civil infraction. Every day that any such violation continues shall constitute a separate and distinct offense. Nothing in this Section shall exempt such person from compliance with the provisions of this Ordinance.

(B) The fine for a Municipal Civil Infraction shall be not less than fifty ($50) dollars plus costs for each infraction and two hundred fifty ($250) dollars plus costs for any repeat offense.

(C) The Village Chief of Police and Frankfort Police Officers are hereby designated as the authorized village officials to issue Municipal Civil Infraction citations directing the alleged violators of this Ordinance to appear in court.

(D) In addition to enforcing this Ordinance as a Civil Municipal Infraction, the Village may initiate proceedings in the Circuit Court to abate or eliminate the nuisance *per se* or any other violation of this Ordinance.

2. Section 8 of the Village of Elberta Zoning Ordinance is repealed.

3. Severability. If any section, clause or provision of this Ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance. The Village Council hereby declares that they would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, section subsections, phrases, sentences or clauses be declared invalid.

4. Conflicts. If any provision of the Village of Elberta Zoning Ordinance conflicts with the Zoning Amendment Ordinance, then the provisions of the Zoning Amendment Ordinance shall control.

5. Effective Date. This Ordinance shall become effective thirty (30) days after being published in a newspaper of general circulation within the Village.

Dated as of the 19 day of October 2000.

Sharyn Bower, Village Clerk

## RESOLUTION

## ZONING ORDINANCE AMENDMENT

At a regular conducted meeting of the Elberta Village Council of the Village of Elberta, with a quorum of members being present, the following resolution was adopted:

**BE IT RESOLVED,** the Village of Elberta Ordains that Section 8 of the Zoning Ordinance be amended to provide that violations of the Zoning Ordinance be considered civil infractions with fines.

**BE IT FURTHER RESOLVED,** the Village Chief of Police and Frankfort Police Officers are designated to issue and enforce Municipal Civil Infractions.

Motion by Holmes Supported by D. Jenks

Yeas 7 Nays 0

Approved this 19th day of October, 2000.

Sharyn Bower

Sharyn Bower, Village Clerk

## CIVIL INFRACTION OF ENFORCEMENT POLICY RESOLUTION

RESOLUTION _____

At a regular meeting of the Village Council of the Village of Elberta, called to order by President Greg Jenks on 10-19, 2000 at 7:00 p.m., the following resolution was offered:

Moved by Holmes Supported by D. Jenks

Any person who is authorized to write civil infraction tickets on behalf of the Village of Elberta shall comply with this policy. It is the duty of the ordinance enforcement officer to comply with this policy. This policy is:

1. Whenever possible, the ordinance enforcement officer shall attempt to make personal contact with the person who is in violation of the village ordinance which is being enforced. Personal contact may be by telephone or face-to-face. The purpose of the personal contact is to explain the nature of the violation and to attempt to persuade the person to voluntarily comply with the village ordinance.

2. If the personal contact is unsuccessful or cannot be accomplished, a written warning shall, normally be sent to the person's last known address. The notice shall contain at a minimum the nature of the violation, an explanation of the corrective action to be taken and a deadline for compliance.

3. The verbal and/or written notice may be waived by the ordinance enforcement officer when experience has shown that the person has repeatedly violated a village ordinance in the past or the violation has resulted in a condition which may be a danger to persons or property.

Before issuing a civil infraction ticket, the ordinance enforcement officer shall:

a. Obtain approval from the village attorney. This is to ensure that the village has all the evidence necessary to prevail in court.

b. Notify the President or such other person as shall be designated by the President or Village Council that the ticket will be or has been issued. This is to ensure that the Village Council knows of pending court actions. The Village Council may specify different ways of keeping them informed of the issuance of civil infraction tickets such as by written or personal reports to the Village Council.

Upon a roll call vote, the following voted:

AYE: 7

NAY: ~~0~~

ABSENT: ~~0~~

President Greg Jenks declared Resolution 13 adopted.

I hereby certify that the foregoing is a true and correct copy of a motion made and adopted at a regular meeting of the Village of Elberta Village Council on the 19th day of October 2000.

Sharyn Bower

Sharyn Bower, Village Clerk

Dated: 10-19-00

AMENDMENT TO
VILLAGE OF ELBERTA ZONING ORDINANCE

VILLAGE OF ELBERTA ordains:

1. Section 8 of The Village of Elberta Ordinance shall be amended to provide in its entirety as follows:

(A) Any land, dwelling, building or structure, including any tent or mobile home, used, erected, altered, raised or converted in violation of this Ordinance or in violation of any regulation, condition, permit or other right granted, adopted or issued pursuant to this Ordinance is hereby declared to be a nuisance *per se*. Any person, partnership, limited liability company, corporation or association who creates or maintains a nuisance *per se* or who violates or fails to comply with any provision of this Ordinance or any permit issued pursuant to this Ordinance shall be responsible for a municipal civil infraction. Every day that any such violation continues shall constitute a separate and distinct offense. Nothing in this Section shall exempt such person from compliance with the provisions of this Ordinance.

(B) The fine for a Municipal Civil Infraction shall be not less than fifty ($50) dollars plus costs for each infraction and two hundred fifty ($250) dollars plus costs for any repeat offense.

(C) The Village Chief of Police and Frankfort Police Officers are hereby designated as the authorized village officials to issue Municipal Civil Infraction citations directing the alleged violators of this Ordinance to appear in court.

(D) In addition to enforcing this Ordinance as a Civil Municipal Infraction, the Village may initiate proceedings in the Circuit Court to abate or eliminate the nuisance *per se* or any other violation of this Ordinance.

2. Section 8 of the Village of Elberta Zoning Ordinance is repealed.

3. Severability. If any section, clause or provision of this Ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance. The Village Council hereby declares that they would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, section subsections, phrases, sentences or clauses be declared invalid.

4. Conflicts. If any provision of the Village of Elberta Zoning Ordinance conflicts with the Zoning Amendment Ordinance, then the provisions of the Zoning Amendment Ordinance shall control.

5. Effective Date. This Ordinance shall become effective thirty (30) days after being published in a newspaper of general circulation within the Village.

Dated as of the 19 day of October 2000.

Sharyn Bower

Sharyn Bower, Village Clerk

## RESOLUTION

## ZONING ORDINANCE AMENDMENT

At a regular conducted meeting of the Elberta Village Council of the Village of Elberta, with a quorum of members being present, the following resolution was adopted:

**BE IT RESOLVED,** the Village of Elberta Ordains that Section 8 of the Zoning Ordinance be amended to provide that violations of the Zoning Ordinance be considered civil infractions with fines.

**BE IT FURTHER RESOLVED,** the Village Chief of Police and Frankfort Police Officers are designated to issue and enforce Municipal Civil Infractions.

Motion by Holmes Supported by D. Jenks

Yeas 7 Nays 0

Approved this 19th day of October, 2000.

Sharyn Bowes

Sharyn Bower, Village Clerk

## CIVIL INFRACTION OF ENFORCEMENT POLICY RESOLUTION

RESOLUTION _____

At a regular meeting of the Village Council of the Village of Elberta, called to order by President Greg Jenks on 10-19, 2000 at 7:00 p.m., the following resolution was offered:

Moved by Holmes Supported by D. Jenks

Any person who is authorized to write civil infraction tickets on behalf of the Village of Elberta shall comply with this policy. It is the duty of the ordinance enforcement officer to comply with this policy. This policy is:

1. Whenever possible, the ordinance enforcement officer shall attempt to make personal contact with the person who is in violation of the village ordinance which is being enforced. Personal contact may be by telephone or face-to-face. The purpose of the personal contact is to explain the nature of the violation and to attempt to persuade the person to voluntarily comply with the village ordinance.

2. If the personal contact is unsuccessful or cannot be accomplished, a written warning shall, normally be sent to the person's last known address. The notice shall contain at a minimum the nature of the violation, an explanation of the corrective action to be taken and a deadline for compliance.

3. The verbal and/or written notice may be waived by the ordinance enforcement officer when experience has shown that the person has repeatedly violated a village ordinance in the past or the violation has resulted in a condition which may be a danger to persons or property.

Before issuing a civil infraction ticket, the ordinance enforcement officer shall:

a. Obtain approval from the village attorney. This is to ensure that the village has all the evidence necessary to prevail in court.

b. Notify the President or such other person as shall be designated by the President or Village Council that the ticket will be or has been issued. This is to ensure that the Village Council knows of pending court actions. The Village Council may specify different ways of keeping them informed of the issuance of civil infraction tickets such as by written or personal reports to the Village Council.

Upon a roll call vote, the following voted:

AYE: 7

NAY: ~~0~~

ABSENT: ~~0~~

President Greg Jenks declared Resolution 13 adopted.

I hereby certify that the foregoing is a true and correct copy of a motion made and adopted at a regular meeting of the Village of Elberta Village Council on the 19th day of October 2000.

Sharyn Bower

Sharyn Bower, Village Clerk

Dated: 10-19-00

ORDINANCE NO. 7

VILLAGE OF ELBERTA, MICHIGAN,
BENZIE COUNTY.

An ordinance to regulate the speed of vessels and to provide for the safe use of the waters in Benzie County, enacted under the authority of Act 303, Public Acts of 1967, as amended (M.S.A. 18.1287 (17)), being identical to State Administrative Rules filed in the Office of the Secretary of State.

THE VILLAGE OF ELBERTA ORDAINS:

SECTION I

All words and phrases used in this ordinance shall be construed and have the same meanings as those words and phrases defined in Act 303, P.A. 1967, as amended, M.S.A. 18.1287 (8)

SECTION II

Regulation No. 10, Benzie county.
R281.710.8 Betsie lake; slow--no wake speed.
Rule 8. On the waters of Betsie lake, sections 27 and 28, T25N, R15W, village of Elberta and city of Frankfort, Benzie county, it is unlawful for the operator of a vessel to exceed a slow-- no wake speed.

SECTION III

All other ordinances or parts in conflict herewith are hereby repealed.

SECTION IV

Violations of this ordinance are a misdemeanor and may be punished by a fine not to exceed one hundred dollars ($100) together with costs of prosecution or imprisonment in the county jail or such other place of detention as the court may prescribe, for a period not to exceed ninety (90) days, or said fine, costs of prosecution, and imprisonment, at the discretion of the court.

SECTION V

This ordinance and the various parts, sections, subsections, provisions, sentences and clauses are severable. If any part of this ordinance is found to be unconstitutional or invalid it is declared the remainder of this ordinance shall not be affected hereby.

SECTION VI

This ordinance shall take effect 30 days after its publication in the Benzie County Record-Patriot newspaper.

We, the undersigned Village President and Clerk of the Village of Elberta, Benzie County, do hereby certify that the above ordinance was passed by the Elberta Village Council on December 20, 1979.

Village President

Village Clerk.

# 0-comp.

# AMENDMENT TO ORDINANCE NO. 8

An amendment to Ordinance No. 8 to provide for compensation for the members of the Elberta Village Council as required by Public Act 3 of 1895.

THE VILLAGE OF ELBERTA ORDAINS: that compensation for the Elberta Village Council Trustees, the Clerk and the Treasurer shall be $35.00 and the Village President $100.00 for each regular and special meeting attended; that payment of such meetings shall be paid in two payments; one in December and the other by the last day of the fiscal year or upon request by Council member.

I hereby certify that the above referenced amendment was adopted by the Elberta Village Council on 17 Day of November, 2005 after public notice and publication of adoption pursuant to the requirements of Act 207 of the Public Acts of 1921 as amended.

Sharyn Bower
Elberta Village Clerk

Sharyn Bower

# AMENDMENT TO ORDINANCE NO. 8

An amendment to Ordinance No. 8 to provide for compensation for the members of the Elberta Village Council as required by Public Act 3 of 1895.

THE VILLAGE OF ELBERTA ORDAINS: that compensation for the Elberta Village Council Trustees, the Clerk and the Treasurer shall be $35.00 and the Village President $100.00 for each regular and special meeting attended; that payment of such meetings shall be paid in two payments; one in December and the other by the last day of the fiscal year or upon request by Council member.

I hereby certify that the above referenced amendment was adopted by the Elberta Village Council on 17 Day of November, 2005 after public notice and publication of adoption pursuant to the requirements of Act 207 of the Public Acts of 1921 as amended.

Sharyn Bower
Elberta Village Clerk

Sharyn Bower

# AMENDMENT TO ORDINANCE NO. 8

An amendment to Ordinance No. 8 to provide for compensation for the members of the Elberta Village Council as required by Public Act 3 of 1895.

THE VILLAGE OF ELBERTA ORDAINS: that compensation for the Elberta Village Council Trustees shall be $35.00 and the Village President $100.00 for each regular meeting attended; provided also, that when a regular meeting is recessed, that day shall be counted as an additional regular meeting for compensation purposes; provided also, that payment of such meetings shall be paid in two payments; one in December and the other by the last day of the fiscal year or upon request by Council member.

I hereby certify that the above referenced amendment was adopted by the Elberta Village Council on 16th Day of DECEMBER, 1999 after public notice, advertised public hearing and publication of adoption pursuant to the requirements of Act 207 of the Public Acts of 1921 as amended.

Sharyn Bower
Elberta Village Clerk

Sharyn Bower

I, Barbara Harju, duly elected Clerk of the Village of Elbera, do hereby certify that the amended Ordinance No. 8 which was adopted by the Village Council of said Village on the 18th day of June, 1992, was published in the Benzie County Record Patriot on July 1, 1992 which shall become the effective date of the amended ordinance.

Barbara Harju

Barbara Harju
Village Clerk

PERMITS

Nov, 1980

Notice of application for special land use, (House Bill 4780): This would allow notice of an application for special land use to be published in local papers 45 days before the date the application will be reviewed. Currently, such notice must be given not less than 5 days, nor more than 15 days, before review. Approved by House Towns and Counties Committee.

Compensation for delegates to regional planning commissions, (Senate Bill 295): Under this bill, members of regional planning commissions could be paid a per diem and mileage as is established by the regional commission or the local units which appointed them. Approved by House Towns and Counties Committee.

ORO #9

ORDINANCE NUMBER 9

VILLAGE OF ELBERTA
IN THE COUNTY OF BENZIE
STATE OF MICHIGAN

AN ORDINANCE TO ENACT FIRE PREVENTION STANDARDS AND TO ESTABLISH STANDARDS OF CONDUCT FOR THE GENERAL PUBLIC.

RESOLVED;

THAT IN ORDER TO GUARD AGAINST THE OCCURANCE OF FIRES AND TO PROTECT THE PERSONS AND PROPERTY OF THE GENERAL PUBLIC AGAINST DAMAGE AND ACCIDENTS THEREFROM, IT IS DEEMED DESIRABLE AND NECESSARY TO ESTABLISH FIRE PREVENTION STANDARDS AND STANDARDS OF CONDUCT FOR THE GENERAL PUBLIC.

THE VILLAGE OF ELBERTA ORDAINS;

1. The Village Council shall be responsible to provide for an adequate water supply and shall make provisions for a convenient water supply for use within the boundaries of the Village of Elberta.

2. All persons, firms and corporations shall, upon order of the Village President, the Fire Chief of the Village of Elberta, or person acting in such capacity, discontinue the use of water from the village water system during the progress of a fire.

3. At any fire, if it shall appear that any person shall become unruly, from any cause or shall interfere heckle or commit any other act tending to divert the attention of firemen from their duties, they shall be removed from the scene of the fire, and the person in charge at the fire may command the assistance of officers of the law to execute his orders, and shall have the same powers as a village marshall in this respect.

4. It shall be unlawful for any person to turn in, or to cause to be turned in, a false fire alarm; to seize or board any fire truck or apparatus of the Elberta Fire Department without authority; to drive any vehicle across any fire hose; to pilfer, damage, or to interfere with the firemen, trucks or apparatus or to crowd into a fire scene area in such a manner as to interfere with the duties of the firemen.

5. It shall be unlawful for any person, firm or corporation to commit any act of carelessness or neglect, or to do so through their agents, or employees, or to permit the existence of conditions in the construction, equipment, maintenance, or use of property of any kind, name or nature, that would endanger persons or property or otherwise, from fire caused thereby.

6. It shall be unlawful for any person, firm or corporation to use or construct buildings, structures, or recepticles, over or under the ground, or underwater for the storage or handling of combustible, inflammable, explosive, or dangerous substances without first having obtained a written permit from the Village Council, signed by the Village Clerk, Village President, and the Fire Chief, who shall write such permit when so ordered by the Village Council.

7. It shall be unlawful for any person, firm or corporation to build open unprotected fires, such as grass fires, bonfires, rubber, etc., without first having secured the permission of the Fire Chief of the Elberta Fire Department.

8. The Village Council may revoke any permit issued in relation to this Ordinance, for acts within the limits of the Village of Elberta.

9. Any person, firm or corporation violating any provisions of this ordinance shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined not more than $500.00, the cost of prosecution, and/or not more than 90 days in jail, or both.

10. This ordinance shall repeal the Village of Elberta Ordinance Number 9 enacted by the Village Council on September 24, 1981, and shall supercede and countermand any and all previous ordinances or parts thereof inconsistent with its operation and effectiveness.

This ordinance being of an emergent nature, shall take effect immediately.

Enacted by the Village Council of the Village of Elberta, County of Benzie, State of Michigan this nineteenth day of December, 1991.

PRESIDENT

_____

CLERK

Barbara Hayes

Amended by Resolution at a regular meeting on the twentieth day of May, 1993.

RESOLUTION

AN AMENDMENT TO FIRE ORDINANCE NUMBER 9

BE IT RESOLVED, that at a regular meeting of the Village of Elberta Council on the twentieth day of May, 1993 the Council did move to amend Fire Ordinance No. 9 by deleting all references to a Joint Fire Department known as the Elberta - Crystal Lake Volunteer Fire Department; Crystal Lake and joint fire department; and by deleting all of Section One.

Motion by Kerbach and supported by McClellan.

Yeas - 7 Nays - 0 Absent -

I, Barbara Harju, Clerk of the Village of Elberta do hereby certify this to be a true and accurate copy of a resolution passed by the Elberta Council on May 20, 1993.

Barbara Harju

Barbara Harju, Clerk

PROCEEDINGS OF THE VILLAGE COUNCIL
OF THE
VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN

Minutes of the special meeting of the Village Council of the VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN, held in the Village Council Chambers of said Village, on the 8th day of December, 1994.

Present: President James Gilbert and Village Council members Walt Poynor, Louise Kirbach, Ann McClellan, Jack Acre Dyana Parsons and Joyce Gatrell.

and also the Village Clerk.

Village Council member Jack Acre then introduced the following ordinance:

ОКОЛО

ORDINANCE NO. 10

CONSUMERS POWER COMPANY ELECTRIC FRANCHISE ORDINANCE

AN ORDINANCE, granting to CONSUMERS POWER COMPANY, its successors and assigns, the right, power and authority to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances on, under, along and across the highways, streets, alleys, bridges, waterways, and other public places, and to do a local electric business in the VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN, for a period of thirty years.

THE VILLAGE OF ELBERTA ORDAINS:

SECTION 1. GRANT, TERM. The VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN, hereby grants the right, power and authority to the CONSUMERS POWER COMPANY, a Michigan corporation, its successors and assigns, hereinafter called the "Grantee," to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances, for the purpose of transmitting, transforming and distributing electricity on, under, along and across the highways, streets, alleys, bridges, waterways, and other public places, and to do a local electric business in the VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN, for a period of thirty years.

SECTION 2. CONSIDERATION. In consideration of the rights, power and authority hereby granted, said Grantee shall faithfully perform all things required by the terms hereof.

SECTION 3. CONDITIONS. No highway, street, alley, bridge, waterways, or other public place used by said Grantee shall be obstructed longer than necessary during the work of construction or repair and shall be restored to the same good order and condition as when such work was commenced. All towers, masts, poles and other supports shall be set and all wires shall be suspended or buried in a careful and proper manner so as not to injure persons or property. The Grantee shall have the right to trim trees if necessary in the conducting of such business, subject, however, to the supervision of the highway authorities of the Village.

SECTION 4. HOLD HARMLESS. Said Grantee shall at all times keep and save the Village free and harmless from all loss, costs and expense to which it may be subject by reason of the negligent construction and maintenance of the structures hereby authorized. In case any action is commenced against the Village on account of the permission herein granted, said Grantee shall, upon notice, defend the Village and save it free and harmless from all loss, cost and damage arising out of such negligent construction and maintenance.

SECTION 5. RATES. Said Grantee shall be entitled to charge the inhabitants of said Village for electric energy furnished therein, the rates as approved by the Michigan Public Service Commission, to which Commission or its successors authority and jurisdiction to fix and regulate electric rates and rules regulating such service in said Village, are hereby granted for the term of this franchise. Such rates and rules shall be subject to review and change at any time upon petition therefor being made by either said Village, acting by its Village Council, or by said Grantee.

SECTION 6. FRANCHISE NOT EXCLUSIVE. The rights, power and authority herein granted, are not exclusive.

SECTION 7. REVOCATION. The franchise granted by this ordinance is subject to revocation upon sixty (60) days written notice by the party desiring such revocation.

SECTION 8. MICHIGAN PUBLIC SERVICE COMMISSION, JURISDICTION. Said Grantee shall, as to all other conditions and elements of service not herein fixed, be and remain subject to the reasonable rules and regulations of the Michigan Public Service Commission or its successors, applicable to electric service in said Village.

SECTION 9. EFFECTIVE DATE. This ordinance shall take effect upon the day after the date of publication thereof, provided, it shall cease and be of no effect after thirty days from its adoption unless within said period the Grantee shall accept the same in writing filed with the Village Clerk. Upon acceptance and publication hereof, this ordinance shall constitute a contract between said Village and said Grantee.

We hereby certify that the foregoing ordinance was duly enacted by the Village of the VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN, on the 8th day of December, 1994.

James Gelbart
Village President

Attest:

Barbara Harjes
Village Clerk

Village Council member JACK ACRE moved that the Ordinance as introduced be adopted for a period of thirty (30) years.

Said motion was supported by Village Council member LOUISE KIRBACH.

The following was the vote upon the adoption of such ordinance:

Yes: President JAMES GILBERT and Village Council members ANN MCCLELLAN, DYANA PARSONS, WALT POYNOR, JOYCE GATRELL LOUISE KIRBACH AND JACK ACRE.

No: NONE

The President declared the motion carried.

The President declared the foregoing attached Franchise Ordinance adopted.

CLERK CERTIFICATION

STATE OF MICHIGAN )
: ss.
COUNTY OF BENZIE )

I, BARBARA HARJU, Village Clerk of the VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN, DO HEREBY CERTIFY that the annexed is a true and correct copy of all of the proceedings of the Village Council of said Village, with reference to the granting of a franchise to CONSUMERS POWER COMPANY.

I FURTHER CERTIFY that the within acceptance was filed with me as Village Clerk, on the 8th day of December, 1994; that I have compared the within copies with the original records in my office, and that the same are true and correct transcripts therefrom.

I FURTHER CERTIFY that a copy of the foregoing ordinance was published as appears by proof thereof on file in my office in the Benzie County Record-Patriot, a newspaper circulated in the VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN, on the 14th day of December, 1994; and that all of said proceedings were regular and in accordance with all legal requirements.

Barbara Harju
Village Clerk

Dated: December 15, 1994.

# 0 V O

MICHIGAN CONSOLIDATED GAS COMPANY GAS FRANCHISE ORDINANCE

ORDINANCE NO. 11

AN ORDINANCE, granting to MICHIGAN CONSOLIDATED GAS COMPANY, its successors and assigns, the right, power, and authority to lay, maintain, and operate gas mains, pipes and services on, along, across and under the highways, streets, alleys, bridges and other public rights of way and to do a local gas business in the VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN for a period of thirty years.

THE VILLAGE OF ELBERTA ORDAINS:

Section 1. **Grant of Gas Franchise and Consent to Laying of Pipes, Etc.** Subject to all the terms and conditions mentioned in this ordinance, 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 rights of way in the Village of Elberta, Benzie County, Michigan, and a franchise is hereby granted to the Company, its successors and assigns, to transact local business in said Village of Elberta for the purposes of conveying gas into and through and supplying and selling gas in said Village of Elberta and all other matters incidental thereto.

Section 2. **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

Thereupon there was presented to the Village Council, an Acceptance from CONSUMERS POWER COMPANY for the said Franchise Ordinance.

Village Council member Jack Acre moved that the Acceptance be received and ordered recorded in the minutes of this meeting.

Said motion was supported by Village Council member Louise Kirbach, and was adopted by the following vote:

Yes: President James Gilbert and Village Council members Walt Poynor, Ann McClellan, Dyana Parsons, Joyce Gatrell Louise Kirbach and Jack Acre.

No: None.

The President declared the following attached Acceptance duly received and ordered the said Acceptance filed and recorded.

ACCEPTANCE

The CONSUMERS POWER COMPANY does hereby accept the terms of the ordinance adopted on the 8th day of December, 1994, by the Village Council of the VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN, which said ordinance is entitled as follows:

> AN ORDINANCE, granting to CONSUMERS POWER COMPANY, its successors and assigns, the right, power and authority to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances on, under, along and across the highways, streets, alleys, bridges, waterways, and other public places, and to do a local electric business in the VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN, for a period of thirty years.

IN WITNESS WHEREOF, said CONSUMERS POWER COMPANY has caused this acceptance to be executed by its duly authorized officer this 8th day of December, 1994.

CONSUMERS POWER COMPANY

By _____
Carl L. English, Vice President
Energy Distribution Services

Village Council member WALT POYNOR moved that within fifteen (15) days from the date hereof, the Village Clerk shall cause to be published in the Benzie County Record-Patriot, a newspaper of general circulation in said Village, a copy of said Franchise Ordinance (in full), as part of the proceedings of this meeting; and that also, immediately after such publishing, enter the said ordinance in the Record of Ordinances of said Village, and shall certify thereto under his/her hand, stating the time and place of such publishing.

Said motion was supported by Village Council member DYANA PARSONS, and was adopted by the following vote:

Yes: President JAMES GILBERT and Village Council members LOUISE KIRBACH, ANN MCCLELLAN, WALT POYNOR, JACK ACRE AND JOYCE GATRELL.

M

No: NONE.

The President declared said motion duly carried.

Thereupon the meeting adjourned.

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 3. **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 Village of Elberta 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 Village for all damages and costs which may be recovered against said Village 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 Highway Commissioner or the Village Council, 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 Highway Commissioner or the Village Council, or such other authority as may have jurisdiction, to issue a permit to the Company to do the work proposed.

Section 4. **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 Village of Elberta under the orders, rules, and regulations of the Michigan Public service Commission or other authority having jurisdiction in the premises.

Section 5. **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 6. **Effective Date: Term of Franchise Ordinance; Acceptance by Company.** This ordinance shall take effect the day

following the date of publication thereof, which publication shall be made within fifteen (15) days after the date of its adoption, and shall continue in effect for a period of thirty (30) years thereafter, subject to revocation at the will of the Village of Elberta at any time during said thirty (30) year period; provided, however, that when this ordinance shall become effective the Village 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 receipt of the above documents, file with the Village Clerk its written acceptance of the conditions and provisions hereof.

Section 7. 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.

Ayes: Jenks, D.Jenks, Stefoff, Hendershott, Holmes and Acre.

Nays: 0

Date Passed: June 20, 1996

Attested, by Order of the Village of Elberta

Sharyn Bower, Village Clerk
Village of Elberta

Greory Jenks, Village President

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**ORDINANCE NO. 12**

**VILLAGE OFFICER'S TERM ORDINANCE**

**WHEREAS,** the Village President, Clerk and Treasurer shall hold their respective offices for the term of two (2) years from the second Monday in March of the year when elected and until their successors are elected and qualified as provided in chapter II, section 4, Michigan Compiled Law 62.4 of the General Law Village Charter preceding July 10, 1998.

**WHEREAS,** the term of office for Village Officers may be provided by ordinance as outlined in chapter II, section 4, 62.4 of the Michigan Compiled Law of the July 10, 1998, amended General Law Village Charter.

**THEREFORE BE IT RESOLVED,** the Village of Elberta Ordains that: the Village Treasurer as provided by ordinance shall hold his/her office for the term of four (4) years commencing from the second Monday of March of the year 2000 when elected and until his/her successor is elected and qualified, and

**FURTHER RESOLVED,** the Village of Elberta Ordains that: the Village President and the Village Clerk as provided by ordinance shall hold his/her respective offices for the terms of four (4) years commencing from the second Monday of the year 2002 when elected and until their respective successors are elected and qualified.

This ordinance is adopted on the 16th day of December, 1999, by the Board of Trustees of the Village of Elberta.

Sharyn Bower
Elberta Village Clerk

Sharyn Bower

Ordinance 21 repealed and 13

Village Ordinance No. 13

**VILLAGE OF ELBERTA**
**RUBBISH ORDINANCE**

AN ORDINANCE TO SECURE THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE OF THE RESIDENTS AND PROPERTY OWNERS OF THE VILLAGE OF ELBERTA, BENZIE COUNTY, MICHIGAN, A MUNICIPAL CORPORATION, BY THE REGULATION OF THE OUTDOOR PARKING AND STORAGE OF MOTOR VEHICLES, TRACTOR TRAILERS, HOUSE TRAILERS AND NEW OR USED PARTS OR JUNK THEREFROM AND BY THE REGULATION OF RUBBISH AND DANGEROUS OR HAZARDOUS CONDITIONS ON ANY PREMISES, WITHIN THE VILLAGE OF ELBERTA; TO PROVIDE PENALTIES FOR THE VIOLATION OF THIS ORDINANCE AND TO REPEAL ANY ORDINANCE OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.

THE VILLAGE OF ELBERTA, BENZIE COUNTY, ORDAINS:

SECTION 1. NAME. This Ordinance shall be known and cited as the Village of Elberta Rubbish Ordinance.

SECTION 2. PURPOSE. The purpose of this Ordinance is to limit and restrict the outdoor storage, parking, or accumulation of unused, partially dismantled or non-operating motor vehicles, house trailers, tractor trailers, or used or new parts thereof and regulate rubbish and dangerous or hazardous conditions upon premises primarily used or zoned for any type of residential purposes within Village; to thereby avoid injury and hazards to children and others attracted to such vehicles, trailers or rubbish, the devaluation of property and the psychological ill effect of the presence of such vehicles, trailers or rubbish upon adjoining residents and property owners.

SECTION 3. DEFINITION OF TERM "RUBBISH". Rubbish is defined to include, but not limited to, parts of machinery or motor vehicles, boat hulls, abandoned, discarded or unused objects or equipment such as automobiles, trailers, furniture, stoves, refrigerators, freezers, cans, or containers, or other cast off material of any kind including rubbish, rags, paper, waste, or other similar materials.

SECTION 4. REGULATIONS.

A. With the exception of duly licensed and operable vehicles or trailers with substantially all main components attached, no person, firm, or corporation shall park, store, or place upon any public right-of-way or public property or upon any premises that is primarily used or is zoned for any type of residential purpose within the Village of Elberta, any motor vehicle, house trailer, tractor trailer or new or used parts or junk therefrom, unless the same is contained within a fully enclosed building and does not violate any zoning or building laws of the Village of Elberta,

County of Benzie, or State of Michigan, except for the following:

1. Any commercial vehicles or trailers must have the approval of the Zoning Administrator and/or the Village Council.

2. Vehicles or trailers that are temporarily in operable because of minor mechanical failure but are not, in any manner, dismantled and have substantially all main component parts attached, such may remain on such private property for not to exceed fourteen (14) days

3. In no event shall any vehicle be parked in the front or side yard area of any residential premises, except as needed during the winter months.

B. No repairing, re-designing, modifying, or dismantling work or operations shall be allowed upon any vehicle or trailer or parts therefore upon any public right-of-way or public property and no more than one vehicle on property primarily used or zoned for any type of residential purpose may be repaired, re-designed, modified, or dismantled for a period in excess of 48 hours except such as shall be accomplished with fully enclosed buildings. Any such work within such 48 hour period heretofore allowed shall not, however, consist of any major repair, re-designing, modifying or dismantling work, but only such occasional minorwork as may infrequently be required to maintain a vehicle or trailer or parts thereof in normal operation.

C. The use of dumpsters will be allowed under this Ordinance, only as long as the following requirements are met:

1. That the person wishing to use a dumpster obtain a permit from the Zoning Administrator, which will allow the use of a dumpster for 30 days.

2. That the length of the dumpster not exceed 25 feet.

D. No open storage of rubbish, as defined in Section 3 hereof, shall be permitted on any premises within the Village, except such premises specifically provided for in the Village Zoning Ordinance, and such open storage, piling up, or accumulation of rubbish shall constitute a violation of this Ordinance.

E. In the event the foregoing regulations create any special or peculiar hardship beyond the control of a particular violator thereof because of unforseen circumstances, the Zoning Administrator of the Village is hereby given the authority to grant permission to an applicant to operate contrary to the provisions hereof for a limited period of time not to exceed 14 days provided no adjoining property owner or occupant is unreasonably adversely affected thereby and the spirit and purpose of the Ordinance are still substantially observed.

SECTION 5. NUISANCE. Any violation of the provisions of this Ordinance is hereby declared to be a public nuisance and a nuisance per se which may be enjoined or which may subject the

violator to municipal civil infraction fines and penalties herein provided for.

SECTION 6. CONSTRUCTION. This Ordinance shall not prevent the operation of any licensed junk yard, salvage yard, garage, body or paint shop legally operating within a proper zone as defined in the Village of Elberta Zoning Ordinance and shall be in addition to any other laws or ordinance respecting rubbish, refuse, litter, trash, or junk control and regulations, to the extent not in conflict.

SECTION 7. SAVING CLAUSE. The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of the Ordinance other than said part or portion thereof.

SECTION 8. PENALTY. Any person, firm, or corporation who violates any of the provisions of this Ordinance shall be responsible for a municipal civil infraction. Every day that any such violation continues shall constitute a separate and distinct offense. Nothing in this section shall exempt such person from compliance with the provisions of this ordinance.

The fine for a municipal civil infraction shall not be less than $50.00 plus costs for each infraction and $250.00 plus costs for any repeat offense.

The issuing of a municipal civil infraction pursuant to this Ordinance will be governed by Section 8 of the Village of Elberta Zoning Ordinance, including the civil infraction of enforcement policy resolution passed on 10 - 19 - _____, 2000.

In addition to the imposition of the foregoing fines and penalties, the Village Zoning Administrator may cause any vehicle, trailer or part thereof which violates the provisions of this Ordinance to be removed from the premises, impounded and destroyed or sold for junk, in the discretion of the officer, and the cost thereof assessed against the owner of such vehicle, trailer or parts thereof, or of the premises on which the same are located. Any sums realized on the sale of same may be retained by the Village to reimburse it for the costs incurred in such removal and sale, to the extent of such costs. Any balance of such sums remaining after such reimbursement shall be returned to the owner of such vehicle, trailer or parts thereof.

SECTION 9. EFFECTIVE DATE. This Ordinance shall take effect twenty days after adoption. All ordinances or parts of ordinances in conflict with any provisions of this Ordinance are hereby repealed.

Adopted: September 21, 2000

Sharyn K. Bower, Village Clerk

Posted: October 4, 2000

**RESOLUTION**

**RUBBISH ORDINANCE**

At a regular conducted meeting of the Elberta Village Council of the Village of Elberta, with a quorum of members being present, the following resolution was adopted:

**BE IT RESOLVED,** the Village of Elberta Ordains that Ordinance Number 13 be added to the Village Ordinance Book. Ordinance Number 13 is a Rubbish Ordinance.

Motion by HENDERSHOTT Supported by D. JENKS

Yeas 6 Nays ~~0~~

Approved this 21st day of September, 2000.

Sharyn Bower

Sharyn Bower, Village Clerk

ORD. 14

Ordinance No. 14

# VILLAGE OF ELBERTA
# MOBILE HOME ORDINANCE

AN ORDINANCE TO ESTABLISH REGULATIONS UNDER WHICH MOBILE HOMES MAY BE USED AS SINGLE FAMILY DWELLINGS ON LOTS OUTSIDE OF MOBILE HOME PARKS.

THE VILLAGE OF ELBERTA, BENZIE COUNTY, ORDAINS:

SECTION 1. NAME. This Ordinance shall be known and cited as the Village of Elberta Mobile Home Ordinance.

SECTION 2. PURPOSE. The Purpose of this Ordinance is to establish regulations under which mobile homes may be used as single family dwellings on lots outside of approved mobile home parks.

SECTION 3. DEFINITION OF MOBILE HOME. The term "mobile home" shall mean a structure, transportable in 1 or more sections, which is built on a chassis and designed to be used as a dwelling with or without permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. Mobile home does not include a recreational vehicle.

SECTION 4. MANUFACTURED HOUSING. It is hereby recognized that other forms of manufactured housing, commonly referred to as prefabricated, modular, or sectional housing, among other names, are and have been permitted in the Village of Elberta on individual lots, in any zoning district in which single-family dwellings are permitted, provided such units comply with the adopted building code and zoning requirements. This Ordinance intends to treat mobile homes in similar fashion, while recognizing the unique features of their construction. The regulations contained in this Ordinance are specifically designed to:

a. Insure compliance of mobile homes on individual lots with all zoning regulations applicable to other single-family dwellings permitted in the Village of Elberta.

b. Insure compliance with the National Manufactured Home Construction and Safety Standards Act of 1974 (Title VI of Pub. L. 93-383, 88 STAT. 700, 42 U.S.C. Section 5401, et seq.) and all Village of Elberta codes, in addition to this Ordinance, for the protection of the public health, safety and welfare.

c. To be aesthetically compatible with other single-family dwellings in the community.

SECTION 5. STANDARDS AND REQUIREMENTS. A mobile home may be used as a single-family dwelling on a lot outside a mobile home park, if the following standards and requirements are met. These standards and requirements shall not apply to a mobile home located in an approved mobile home park.

a. The lot shall be located in a zoning district which permits single-family dwellings.

b. The lot and the mobile home shall comply with all regulations of the zoning district in which located.

c. The mobile home shall meet all requirements for residential mobile units as provided in the National Manufactured Home Construction and Safety Standards Act of 1974 (Title VI of Pub. L. 93-383, 88 STAT. 700, 42 U.S.C. Section 5041, et seq.).

d. The mobile home shall be placed onto a permanent foundation wall. The wall shall meet all requirements of the Michigan State Construction Code and shall completely enclose the area under the mobile home. The area so enclosed shall not be less than the ground floor area of the mobile home. The mobile home shall be anchored and meet all State of Michigan requirements.

e. The wheels, tongue and hitch, or other towing appurtenances, shall be removed before attaching the mobile home to the foundation wall.

f. The mobile home shall be connected to public water and sanitary sewer lines, where available, according to the Village of Elberta standards and specifications, or to a well and septic tank approved by the County Health Department.

g. The mobile home shall be aesthetically compatible in design and appearance with conventional on site constructed housing, and other types of approved manufactured housing. Compatibility shall be determined by the following standards:

   I. Exterior walls shall be finished with natural or simulated natural materials, common to single-family dwellings, such as but not limited to beveled siding, vertical siding, board and batten siding, or brick.

   ii. Front and rear or front and side exterior doors.

   iii. A roof drainage system which will collect, and concentrate the discharge of roof drainage, and will avoid roof drainage along the sides of the dwelling.

h. A building permit shall be required for construction of the foundation wall,for placement of the mobile home on the lot, and for any addition to the mobile home. A building permit shall not be issued until a health permit has been issued by the County Health Department, where applicable and until a land use permit has been issued in accordance with Article V, section 5.5 herein and is in effect. Any addition to a mobile home shall meet all requirements of the Michigan Construction Code if the addition is of conventional construction (stick built). If the addition is constructed by the mobile home manufacturer, then it shall meet the standards of

subsection (c) above.

I. The mobile home, prior to any additions, shall have a minimum floor area of 1,000 square feet, a minimum exterior width of 24 feet for at least one side elevation. Every habitable room and bathroom shall have a minimum ceiling height of not less than 7 feet, 0 inches for a minimum of 50 per cent of the room's floor area. The remaining area may have a ceiling with a minimum height of 5 feet, 0 inches. Minimum height under dropped ducts, beams, etc. shall be 6 feet, 4 inches.

j. Not more than one mobile home shall be used as a single-family dwelling on a lot, nor shall a mobile home be placed on any lot on which another single-family dwelling is located. A mobile home shall not be used as an accessory building in any residential district.

k. A mobile home shall not be removed from a foundation until a permit therefore has been issued by the Zoning Administrator, in accordance with the Michigan State Construction Code.

SECTION 6. ACCESSORY BUILDINGS AND STRUCTURES. Accessory buildings may be used if the following standards and requirements are met:

(1) All accessory buildings shall be in the side yard or rear yard, except when built in a district where land abuts water bodies, in which case said structures shall only be in side yards.

(2) Not more than one (1) accessory building shall be permitted on a lot.

(3) An accessory building shall not be closer than ten (10) feet to the principal building.

(4) An accessory building shall meet all setback requirements of the district in which it is to be erected, altered or moved.

SECTION 7. NUISANCE. Any violation of the provisions of this Ordinance is hereby declared to be a public nuisance and a nuisance per se which may be enjoined or which may subject the violator to municipal civil infraction fines and penalties herein provided for.

SECTION 8. SAVING CLAUSE. The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section, or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of the ordinance other than said part or portion thereof.

SECTION 9. PENALTY. Any person, firm, or corporation who violates any of the provisions of this Ordinance shall be responsible for a municipal civil infraction. Every day that any such violation continues shall constitute a separate and distinct offense. Nothing in this section shall exempt such person from compliance with the provisions of this ordinance.

The fine for a municipal civil infraction shall not be less than $50.00 plus costs for each infraction and $250.00 plus costs for any repeat offense.

The issuing of a municipal civil infraction pursuant to this Ordinance will be governed by Section 8 of the Village of Elberta Zoning Ordinance, including the Civil Infraction of Enforcement Policy Resolution passed on _____, 2000.

SECTION 10. EFFECTIVE DATE. This Ordinance shall take effect twenty days after adoption. All ordinances or parts of ordinances in conflict with any of the provisions of this ordinance are hereby repealed.

Adopted: September 21, 2000

Sharyn K. Bower, Village Clerk

Posted: October 4, 2000

**RESOLUTION**

**MOBILE HOME ORDINANCE**

At a regular conducted meeting of the Elberta Village Council of the Village of Elberta, with a quorum of members being present, the following resolution was adopted:

**BE IT RESOLVED,** the Village of Elberta Ordains that Ordinance Number 14 be added to the Village Ordinance Book. Ordinance Number 14 is a Mobile Home Ordinance.

Motion by D Jenks Supported by Holmes

Yeas 6 Nays 0

Approved this 21st day of September, 2000.

Sharyn Bower

Sharyn Bower, Village Clerk

ORD. 15

Ordinance No: 15

# HAZARDOUS SPILLS EXPENSE RECOVERY ORDINANCE

The Village of Elberta Ordains:

**Section 1: Intent**

Surface waters, groundwater, soils, vegetation, and atmosphere inside the Village of Elberta are susceptible to damage from the handling , storage, use processing and disposal of hazardous material and the expense incurred by the taxpayer as a result of the Village or its Designee having to respond in the emergency to protect life, property and the environment when there has been a release of hazardous materials should be recovered from the person responsible for the emergency.

**Section 2: Definitions**

CFR means the Code of Federal Regulations.

COMPRESSED GAS means any material regulated as a compressed gas by the United States Department of Transportation, by regulations found in 49 CFR #173.300.

DESIGNEE means such public or private agency authorized in writing by the Village to respond to hazardous materials incidents within the Village.

EMERGENCY ACTION means all of the activities conducted in order to prevent or mitigate injury to human health or to the environment inside the Village from a release or threatened release of any hazardous material or hazardous substance into or upon the environment.

EXPLOSIVE means any material regulated as a class A or class B explosive by the United States Department of Transportation by regulations found in 49 CFR #'s 173.53 and 173.88.

FLAMMABLE LIQUID means any material regulated as flammable liquid by the United States Department of Transportation by regulations found in 49 CFR 173.115.

FLAMMABLE SOLID means any material regulated as flammable solid by the United States Department of Transportation, by regulations found in 49 CFR. #173.150.

HAZARDOUS MATERIAL means any of the following:

(1) Any material listed in the list of toxic pollutants found in 40 CFR #401.15, as amended.

(2) Any material designated as hazardous material or hazardous substance by applicable State or Federal Law.

(3) Any compressed gas, explosive, flammable solid, oxidizer, poison or radioactive material.

HAZARDOUS SUBSTANCE means 1 or more of the following, but does not include fruit, vegetable, or field crop residuals or processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with general accepted agricultural management practices developed pursuant to the Michigan right to farm act, Act N. 93 of the Public Acts of 1981, being section 286. 471 to 286.474 of the Michigan Compiled Laws:

(I) Any substance that the department of environmental quality demonstrates, on a case by case basis, poses an unacceptable risk to the public health, safety, or welfare, or the environment, considering the fate of the material, dose-response, toxicity, or adverse impact on natural resources.

(II) Hazardous substance as defined in the comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767.

(III) Hazardous waste as defined in part 111 of the natural resources and environmental protection act.

(IV) Petroleum as described in part 213 of the natural resources and environmental protection act.

OXIDIZER means any material regulated as an oxidizer by the United States Department of Transportation to have type A packaging or other special protection or closed transport vehicles, under regulations found in 49 CFR #173.425.

PERSON shall include any individual, corporation, association, partnership, firm, trustee, or legal representative.

POISON means any liquid or gas that is life threatening when mixed with air in small amounts and shall also include all those materials regulated as poison class A by the United States Department of Transportation by regulations found in 49 CFR # 173.326.

RADIOACTIVE MATERIAL means any material required by the United States Department of Transportation to have type A packaging or other special protection or closed transport vehicles, under regulations found in 49 CFR #173.425.

RELEASE means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,

injection, escaping, leaching, dumping or disposing into or upon the environment, which causes danger or harm to the public health or to the environment including, but not limited to, the release of any material classified as hazardous material or a hazardous substance by any federal legislation or regulation by any state legislation or regulation, or by any Village ordinance.

RESPONSE ACTIVITY means: evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety and welfare, or the environment or the natural resources. Response activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of public health and enforcement actions related to any response activity.

THREATENED RELEASE means any imminent or impending event potentially causing but not resulting in a release, but causing the Village to undertake an emergency action.

VILLAGE means the Village of Elberta or its Designee.

**Section 3: Notice and Response**

A. Any person who has damaged the surface waters, groundwater, soils or atmosphere by the handling or storage of hazardous materials, or who has violated any local, state or federal environmental laws with respect to hazardous materials or substances, is required to immediately notify the Village.

B. The requirements of this ordinance shall not be construed to forbid or forgive any person from using all diligence necessary to control a hazardous material or hazardous substance release prior or subsequent to the notification to the Village, especially if such efforts may result in the containment of the release or the abatement of extreme hazard to the employees or general public. Delays in reporting releases due to in-house notification of off-site owners or supervisors may result in penalties as provided for herein. Nothing in this ordinance shall be construed to exempt or release any person from any other notification or reporting required by any state or federal agency.

C. The Village Fire Chief or the Village's Designee are authorized to direct an emergency action and the clean up and/or abatement of any release, or threatened release, within the Village.

**Section 4: Liability for Costs**

A. Any person causing or contributing to the causing of a release or threatened release of a hazardous material or substance shall be liable to the Village for all costs associated with response to the release.

B. The following described persons shall be jointly and severally liable to the Village as a result of such clean up or abatement:

(1) Any person who is responsible for an activity causing a release of a hazardous material or substance.

(2) The person who owned or had custody or control of the hazardous material or substance at the time of such release, discharge, or deposit without regard to fault or proximate cause; and

(3) The person who owned or had custody or control of container which held such hazardous material at the time of or immediately prior to such release, discharge or deposit, without regard to fault or proximate cause.

**Section 5: Recovery of Costs**

A. The Village or its Designee shall keep an itemized record of recoverable costs resulting from a release or threatened release, including an emergency action.

B. The Village or its Designee shall submit a written itemized claim to the responsible person for the total costs incurred by the Village or its Designee relate to the release or threatened release and any emergency action and a written notice that unless the amounts are paid in full within thirty (30) days after the date of the mailing of the claim and notice, a civil action will be commenced seeking recovery for the stated amount plus any amounts occasioned by such suit.

C. For the purpose of this ordinance, costs of the Village or its Designee shall mean all direct and indirect costs of a response action or activity and shall include but not be limited to the following:

1. Actual labor costs of personnel, including workers compensation benefits and fringe benefits;
2. Administrative overhead;

3. Costs of equipment operations;

4. Costs of materials;

5. Laboratory costs of analyzing samples taken during the emergency action;

6. Medical expenses incurred as result of response activities;

7. Costs of any contract labor;

8. Costs to supervise or verify the adequacy of the cleanup or abatement by others; and

9. Legal expenses that may be incurred as a result of the release or threatened release, including actions for recoverable costs pursuant to this ordinance.

D. Costs recovered related to the emergency action incurred by the Village's Designee shall be transferred to the Designee as soon as possible.

**Section 6: Civil Suit**

The Village or its Designee may bring a civil action for payment of the recoverable costs against any and all persons liable under this ordinance. All costs of such suit, including actual attorney fees, shall also be a recoverable cost within the same civil action.

**Section 7: Conflict with State or Federal Law**

Nothing in this ordinance shall be construed to conflict with State or Federal laws requiring persons causing or responsible for release or threatened releases from engaging in remediation activities or paying the cost thereof, or both

**Section 8: Non-exclusive Remedy**

The remedies provided by this ordinance shall be in addition to any other remedies available in equity or at law and such penalties as provided by law or ordinance.

**Section 9: 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 provisions of this ordinance.

**Section 10: Effective Date**

This ordinance shall take effect 30 days after publication in accordance with MCLA 41.184

Signed By: Sharyn Bowers

## RESOLUTION

## HAZARDOUS SPILLS EXPENSE RECOVERY ORDINANCE

At a regular conducted meeting on the 16th day of November, 2000, the Elberta Village Council of the Village of Elberta, with a quorum of members being present, the following resolution was adopted:

**BE IT RESOLVED,** the Village of Elberta Ordains that Ordinance Number 15 be added to the Village Ordinance Book. Ordinance Number 15 is a Hazardous Spills Expense Recovery Ordinance.

Motion by D.Jenks Supported by Ness

Yeas 7 Nays 0

Approved this 16th day of November, 2000.

Sharyn Bower

Sharyn Bower, Village Clerk

ORD. 16

Village Ordinance No. 16

# VILLAGE OF ELBERTA
# SIGN ORDINANCE

THE VILLAGE OF ELBERTA, BENZIE COUNTY, ORDAINS:

SECTION 1. PURPOSE. The purpose of this Ordinance is to regulate commercial and non-commercial outdoor signs designed to be visible off the premises on which the sign is located, in a manner which does not significantly restrict the content thereof, while:

1. recognizing the mass communications needs of both businesses and other parties;
2. protecting property values and neighborhood character;
3. creating a more attractive business climate;
4. promoting pedestrian and traffic safety by reducing side distractions, obstructions and other hazards; and
5. promoting pleasing community environmental aesthetics.

SECTION 2. DEFINITIONS.

A. Abandoned Sign: A sign which was erected on property in conjunction with a particular use which has been discontinued for a period of one hundred twenty (120) days or more, or a sign to the content of which pertains to a time, event, or purpose which no longer applies.

B. Accessory Signs. A sign which is incidental to or found in connection with and located on the same lot as the principal sign and use to which it is related. Accessory signs may include wall mounted, temporary, interior, directional, address signs, and signs on accessory structures.

C. Accessory Structures. A structure which is incidental to and customarily found in connection with the principal structure of a lot or parcel such as a shed, garage, cooler or gas pump. Accessory structures shall not include natural features, fences, lamps or lamp posts.

D. Address Sign. A sign identifying a numerical designation commonly used to indicate the location of a building on a given street.

E. Billboards. See "Off Premises Signs".

F. Construction Sign. A temporary freestanding or wall sign erected on a site designated on a building permit issued by the Village as the site of construction of a new building or for renovation of an existing building, which advises the public of

pertinent facts regarding the construction, management, and leasing of the new building.

G. Directional Sign. A sign whose content tells the location of or route to a use or occupancy.

H. Directory Sign. A sign whose content indicates the names and location of at least five (5) businesses, as well as the location of related customer convenience services and facilities.

I. Electronic Message Sign. An electrical sign utilizing lights going on and off periodically for conveyance of information.

J. Exterior Business Sign. A sign which is outside the walls of a building.

K. Flashing Signs. Any lighted or electrical sign which emits light in sudden intermittent bursts. On/off time and temperature signs and non-commercial message signs are not considered flashing signs for the purpose of this Ordinance.

L. Freestanding (Or Ground Signs). A sign supported by permanent uprights or braces in the ground.

M. Fuel Price Sign. Signs indicating the price per unit of fuel.

N. Ground Floor Wall Area. Shall be computed by multiplying the width of the wall times a ground floor height of fifteen feet.

O. Height. The permitted height of signs shall be measured from the existing or finished grade.

P. Illuminated Sign. Means any sign which is directly lighted by an electrical source, internal or external.

Q. Internal Business Sign. A sign within the walls of a building utilizing and/or door display area for exterior viewing.

R. Non-Conforming Signs. Any sign erected or displayed prior to the effective date of this Ordinance or subsequent amendments thereto which does not conform with the standards of this Ordinance.

S. Off-Premise Sign. Any sign which is located on property and transmits a message pertaining to a product, use, occupancy, or function which is not located on the same property as the sign.

T. Overhanging Sign. A sign which is affixed to any building or structure other than a marquee and any part of which extends beyond the building wall and the sign surface

is perpendicular to the building wall. Such signs are to be distinguished from projecting nameplates based upon restrictions as to permitted zoning districts, size, height, and location.

U. Permanent Signs. Signs of a durable material anchored or secured to a building, accessory structure, or the ground.

V. Political Sign. A temporary sign which refers only to a political candidate, political party, or the issues involved in an upcoming political election.

W. Portable Sign. A sign not permanently affixed, anchored, or secured to the ground or a structure on the lot it occupies, including trailered signs, tripod, and sandwich board signs.

X. Principal Sign. The nameplate, wall mounted, free-standing or overhanging sign for the premises which identifies the principal use of the premises.

Y. Projecting Nameplate. A sign indicating only the name and/or logo of a resident or business and which is perpendicular to the building wall.

Z. Roof Mounted Sign. A sign which is located upon or over the roof of a structure, or in the case of a building with a mansard roof, a sign which is above the deck line of the mansard roof.

AA. Sign. A sign is a structure, including its base, foundation and erection supports upon which is displayed any words, letters, figures, emblems, symbols, designs, or trademarks by which any such message or image is afforded public visibility from out of doors, on behalf of and for the benefit of any product, place, activity, individual, firm, institution, profession, association, business, or organization.

BB. Sign Area. The sign area shall be defined as the maximum height multiplied by the maximum width of the sign components including any frame or other material or color or open spaces forming an integral part of the display or used to differentiate such sign from the background against which it is placed; excluding the necessary supports or uprights on which such sign is placed. Both sides of a sign structure may be used for sign purposes, provided the notices have a one hundred and eighty (180) degrees back to back relationship. In the case of a broken sign (a sign with open spaces between the letters) the total surface area shall be measured by multiplying the height of the individual letters or combination of letters by the distance between the outer edges of two (2) furthermost letters.

CC. Temporary Sign. Any sign intended to be erected or displayed for a limited period of time.

DD. Wall Mounted Sign. A display sign which is attached directly to a building wall and/or marquee and the sign surface is parallel to the building wall.

EE. Window Area. The area of a window as measured by the perimeter of the window glass, including glass windows in doors.

SECTION 3. GENERAL PROVISIONS.

The following provisions shall apply to all signs in the Village.

(1) Signs Over A Right-of-Way. Any sign which overhangs a dedicated public right-of-way shall require the approval of the governmental unit having jurisdiction over that right-of-way and shall comply with all local provisions as well.

(2) Sign Maintenance. All signs shall be maintained in a clearly legible condition and shall be kept in good repair. Wall mounted signs, overhanging signs and projecting nameplates shall be thoroughly secured to the building by metal anchors, bolts, supports, rods, or braces. Any permanent sign which is determined structurally or electronically unsafe by the Building and/or Electrical Department shall be removed or repaired within ten (10) days of notification of hazard at owners expense subject to procedures as provided in Section 8. A temporary sign found by the Building Department to be in an unsafe condition must be removed by the owner within three (3) days after notice to do so. Signs which are an emergency hazard shall be removed immediately upon notification.

(3) Abandoned Signs. Any business sign or sign structure now or hereafter existing which no longer advertises a bonafide business conducted or product sold, or an abandoned sign, shall be removed at the expense of the property owner within one hundred twenty (120) days after the cessation of business as provided in the permit provisions of Section 8.

(4) Signs Constituting a Traffic Hazard. No sign shall be located so as to obstruct or impair driver vision at driveways and/or intersections. A sign shall not obstruct the view or effectiveness of any official traffic sign, traffic signal or traffic marking. Signs which by reason of their location, shape, size, or color can be confused with an official traffic sign, signal, or marking shall not be permitted where a traffic hazard is created by such signs. All such determinations shall be made by the Chief of Police.

(5) Obstruction to Doors, Windows, Sidewalks, and Fire Escapes. No sign shall be erected, re-located or maintained so as to prevent free ingress or egress from any door, window, sidewalk, or fire escape.

(6) Signs Constituting a Public Nuisance. Where a sign is determined to be a public nuisance as defined in Article VIII of the Village of Elberta Zoning Ordinance and the Village of Elberta Ordinance Code, such signs shall be abated in accordance with procedures provided in the Village of Elberta Nuisance Ordinance, Article VIII of the

SECTION 4. PERMITTED SIGNS.

The following signs are permitted in all districts except where restrictions are indicated, in accordance with provisions of this Section and shall not require permits for erection.

(1) Signs of a branch of local, state, or federal government, including traffic or similar regulatory devices, or signs required to be maintained or posted by law or governmental order, rule, or regulation.

(2) Flags or emblems of governmental, civic, philanthropic, educational, or religious organizations.

(3) Memorial plaques, cornerstones, historical markers or tablets and the like.

(4) Four (4) freestanding directional signs per lot, none of which shall exceed three square feet in surface area, displayed strictly for the direction, safety, or convenience of the public, including signs which identify restrooms, parking area entrances or exits, visitor parking, clearance, freight entrances or the like. The size may be increased to sixteen (16) square feet provided only two (2) such signs are permitted.

(5) Permanent signs on accessory structures such as gas pumps, cooler, or storage sheds indicating only the name, contents, or service of such devices. The total sign area per each device may not exceed 20% of the mounting wall of the structure or device.

(6) Warning signs such as "No Trespassing", "No Hunting", "Danger", "Beware of Dog", and "Private Parking", not exceeding four (4) square feet in area and no more than two (2) signs per one hundred (100) foot frontage.

(7) Fuel Price Signs. A gasoline service station shall be permitted additional signs erected upon supports for existing freestanding signs, lightposts, and similar structures on the site. These permanent signs indicating the price of fuels or accessory products or services sold on the site must be set back at least eight (8) feet from any public street. Such signs may be double-faced with a maximum area of all fuel price signs not to exceed twenty-four (24) square feet and no individual sign shall exceed twelve (12) square feet in area.

SECTION 5. TEMPORARY SIGNS.

Non-illuminated exterior temporary signs may be erected in accordance with the regulations of this section and shall not require permits for erection.

(1) Real estate signs used for advertising land or building for rent, lease and/or for sale shall be permitted on the land or building intended to be rented, leased and/or sold.

(2) Construction signs with a total area of fifty (50) square feet may be permitted on a site currently being developed. Such signs pertaining to identification of a project and its owners, architects, engineers, contractors, development agencies, and financial institutions shall be removed within thirty (30) days following final inspection by the building department. Such signs shall have a maximum height of ten (10) feet.

(3) Political signs may be erected no sooner than thirty (30) days prior to an election and shall be removed within ten (10) days following that election day.

(4) Three banners may be displayed per organization for no more than ten (10) days for community "special events". Such advertisement, only over a Village or state right-of-way, shall be limited to non-profit organizations and service groups advertising functions occurring in the Village limits. The maximum width of banners are to be set by the Public Works Department and erection of these banners is subject to approval by the Village Clerk.

(5) Garage sale (yard sale, estate sale, moving sale) signs are permitted for a period not to exceed seven (7) days in a given ninety (90) day period. Off-premise garage sale signs shall be removed by the sponsor of the sale within forty-eight (48) hours after end of sale.

SECTION 6. SIGNS REQUIRING A PERMIT.

The following signs may be erected, altered, or re-located in accordance with regulations of this Section and subject to permit requirements of Section 8.

(1) R I and R II Districts. One (1) sign allowed for each dwelling unit comprising a maximum of nine (9) square feet each and a maximum height of fifteen (15) feet. Setback shall be at the property line.

(2) Waterfront, Lakebluffs Developmental District DD and General Industrial District - "I". One (1) advertising sign allowed per business or use comprising a maximum of one hundred twenty-eight (128) square feet and maximum height determined by structure size in each Zoned District. Setback shall be at the property line.

(3) Commercial Districts. Signs in these districts shall be governed by the following:

A. Projecting Signs Over Sidewalk. Maximum of five (5) feet projecting, twenty (20) square feet in area and minimum height of ten (10) feet.

B. Cornices. Maximum of three (3) feet projecting over sidewalk.

C. Overhangs. Maximum of eight (8) feet projecting over sidewalk and minium height of ten (10) feet.

D. Canopies. Same restrictions as overhangs with the exception of seasonal canopies which may have minimum height of eight (8) feet. Seasonal canopies must be removed between months of December through March.

E. The number of signs per business shall be limited to one (1) projecting and one (1) wall, either to be used for advertising or identification, plus two (2) informational signs at six (6) square feet each.

F. Signs setback to property line or rearward shall be to the property line.

G. Maximum sign height shall be according to structure height in that Zoned District.

(4) Wall mounted signs shall be permitted in the Commercial, Waterfront, Lakebluffs Development District DD and General Industrial District - "I" with the total area of such signs not to exceed 25% of the ground floor wall area of the mounting wall. Such signs shall be mounted no higher than the height of the facade of the building upon which they are mounted.

(5) Off-premise or Billboard signs are subject to Village Council's approval and must meet all the requirements as specified in Section 8 and 9.

SECTION 7 NON-CONFORMING SIGNS.

Existing signs which do not comply with the provisions of this Ordinance shall be deemed non-conforming signs. Non-conforming signs may be maintained or repaired but shall not be enlarged, rebuilt, altered or remodeled unless:

(1) they will become conforming because of such enlargement, rebuilding, alteration or remodeling; and
(2) a permit to do so is obtained pursuant to Section 8 of this Ordinance.

All non-conforming signs shall either be removed or made to conform with this Ordinance by six months from the date this Ordinance is adopted. After the six month deadline has passed and the non-conforming sign has not been brought into compliance with this Ordinance, the Village shall then be able to enforce compliance with this Ordinance pursuant to Section 8.

SECTION 8. ADMINISTRATION AND ENFORCEMENT.

(1) ADMINISTRATION AND ENFORCEMENT. The Zoning Administrator or his or her designee shall have the duty and authority to administer and enforce the provisions of this ordinance.

(2) PERMITS AND PROCEDURES. No signs identified in Section 4 shall be erected, altered or relocated unless a permit for the sign is obtained from the Zoning Administrator in accordance with the following regulations:

A. Off-premise signs identified in Section 6 shall require review and approval by the Village Council. Such review may accompany the site plan review where new development is proposed.

B. Application for Sign Permit. An application for a sign permit shall contain the following information as indicated on the Application Form.

1. Name, address and telephone number of the applicant and of the property owner.
2. Location of building, structure or lot to which the sign is to be attached or erected.
3. Position of the sign in relation to near-by buildings, structures, other on-site and property lines.
4. Two drawings of the proposed sign(s) to be erected on the site shall be submitted upon application for review by the Zoning Administrator and in those cases where Village Council review is required, ten (10) days prior to scheduled site plan review.
    a. Height of the sign above the ground and support structure(s).
    b. Area and dimensions of sign surface.
    c. Lettering of sign as it will appear on the erected sign need not be in the style of the finished sign, but must be printed in the size and weight approximating that of the final constructed sign.
5. If deemed necessary by the Zoning Administrator, a copy of stress sheets and calculations showing the structure as designed for dead load and wind pressure in accordance with regulations adopted by the Village Council.
6. Name and address of the person, firm, corporation or association erecting the structure.
7. A certificate of insurance may be required for installation of freestanding or overhanging signs.
8. Such other information as the Zoning Administrator or Village Council may require to show full compliance with this and all other applicable laws of the Village of Elberta and the State of Michigan.

9. At the discretion of the Zoning Administrator, when in his opinion the public safety requires it, the application containing the aforesaid material shall, in addition, bear the certificate or seal of a registered architect or engineer as a condition to the issuance of a permit.

C. All other signs permitted in this ordinance which are not identified in Section 6 shall not require permits but shall be regulated as provided in this ordinance.

D. No permit shall be required for ordinary servicing, repainting of existing sign message, or cleaning of a sign. No permit is required for change of message of a sign designed for periodic message change without change of structure, including a bulletin board, but not including a sign to which a new permanent face may be attached.

(3) PERMIT FEE. As established by the Village Council. All permits issued for the erection of a sign shall become invalid unless the work authorized by it shall have been commenced within six (6) months after its issuance.

(4) INTERPRETATION AND CONFLICT. The standards and provisions of this ordinance shall be interpreted as being the minimum requirements necessary to uphold the purposes of this ordinance. Whenever this ordinance imposes a higher standard than required by other regulations, ordinances or rules, or by easements, covenants or agreements, the provisions of this ordinance shall govern. When the provisions of any other statutes impose higher standards, the provisions of such statutes shall govern.

(5) VILLAGE COUNCIL'S APPROVAL. In cases where the Village Council is empowered to approve certain signs under provisions of this ordinance, the applicant shall furnish such surveys, plans, or other information as may be reasonably required by said Council for the proper consideration of the matter.
The Village Council shall investigate the circumstances of each case and shall notify such parties, who may in its opinion be affected thereby, of the time and place of any hearing which may be held relative thereto as required under its rules of procedure.

The Village Council may impose such conditions or limitations in granting approval as may in its judgment be necessary to fulfill the spirit and purpose of this ordinance.

(6) STANDARDS FOR SIGN REVIEW. In reviewing signs as provided in Section 6, the Village Council shall consider the following standards as a basis for establishing setback, location, placement of signs:

A. Visibility of vehicular and pedestrian traffic off-site and on the site.

B. Impact upon visibility of traffic signals, regulatory signs and other traffic safety or control devices.

C. Visibility and legibility of signs for drivers and or pedestrians.

D. Negative impact of signs upon adjacent properties and their signage.

E. Negative visual impact of lighting and appearance of signs upon nearby residential areas.

F. Particular site characteristics such as yard areas, landscaping, topography, and the like.

(7) CHANGES AND AMENDMENTS. The Village Council may from time to time, on recommendation from the Zoning Administrator or on petition of the Council initiative, amend, supplement, or change the regulations herein.

(8) VIOLATIONS AND PENALTIES. Whoever violates or fails to comply with any of the provisions of this Section is responsible for a civil infraction in accordance with the terms and conditions of Section 8 of the Village of Elberta Zoning Ordinance and shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), for each offense. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

The Zoning Administrator and any other officers appointed by the Village Council are authorized to issue and serve civil infraction tickets with respect to any violation of this Section. Civil Infraction tickets shall be in such form as determined by the Village Clerk and shall be in conformity with all statutory requirements and all requirements set forth in Section 8 of the Village of Elberta Zoning Ordinance.

SECTION 9. APPEALS.

(1) The Zoning Board of Appeals shall have the power to authorize, upon appeal, specific variances from the various requirements specified in this sign ordinance and to extend the term to continue non-conforming signs otherwise provided for herein.

(2) Applications for Zoning Board of Appeals authorization as provided for herein shall be submitted to the Village Clerk or his or her designee on a form supplied for such purposes and shall be processed in the following manner:

A. The Village Clerk or his or her designee shall forward the application and

supporting data to the Village Zoning Board of Appeals.

B. The Zoning Board of Appeals shall hold a public hearing or hearings on the subject application. The notice of a public hearing shall be posted not less than ten (10) days in advance, in writing, by first class mail to such property owners or occupants located within three hundred (300) feet of the property which is the subject of the application. After public hearing procedures, the Zoning Board of Appeals may grant approval of the application. Said approval shall be in writing with any conditions or reasons for rejection, if it be so, which authorization shall be sent promptly to the Village Clerk or his or her designee to the applicant.

C. All of the following conditions in the judgment of the Zoning Board of Appeals shall exist before any authorization as provided for in this Chapter shall be granted. Any such authorization granted shall:

1. Not be contrary to the public interest or the general intent and purpose of this Chapter.

2. Not cause substantial adverse effect to properties in the immediate vicinity or in the sign district where the authorized deviation is located.

D. Special Findings. If all of the foregoing conditions can be satisfied, an authorization for a sign variance may be granted when the Zoning Board of Appeals determines that any one of the following special findings can be clearly demonstrated:

1. There are exceptional or extraordinary circumstances or conditions which apply to the property in question.

2. That such deviation is necessary for the preservation of a substantial property right possessed by other properties within the same sign district.

Adopted: 12-20-01

Sharyn Bower

Sharyn Bower, Village Clerk

Posted: 01-02-02

ORD. 17

Village Ordinance No. 17

**VILLAGE OF ELBERTA**
**BURN ORDINANCE**

AN ORDINANCE PROHIBITING THE USE OF BURNING BARRELS, THE BURNING OF LEAVES, BUILDING MATERIAL AND BRUSH, AND REGULATING RECREATIONAL FIRES WITHIN THE VILLAGE AND PRESCRIBING PENALTIES THEREOF.

THE VILLAGE OF ELBERTA, BENZIE COUNTY, ORDAINS:

SECTION 1. NAME. This Ordinance shall be known and cited as the Village of Elberta Burn Ordinance.

SECTION 2. PURPOSE. The purpose of this Ordinance is to prohibit burning barrels, the burning of leaves, building material and brush, and to regulate recreational fires within the Village of Elberta as is necessary for the public health, safety and welfare.

SECTION 3. PROHIBITED BURNING. No person shall cause, allow or maintain any open burning of any waste materials or rubbish in any incinerator, barrel, can, pit, or similar container or enclosure; and no person in charge of or in possession of any premises upon which such burning occurs or any premises immediately adjacent to any public place upon which such burning occurs, shall fail to extinguish the fire; if he has knowledge of the fire and it is within his power to extinguish it.

SECTION 4. PERMITTED BURNING. Burning under the following conditions shall be permitted:

A. Fire places;
B. Controlled fires for training firefighters;
C. Personal use of smoking materials;
D. Use of matches for lighting authorized fires;
E. Burning of charcoal, kiln-dried, lumber scraps or non-ash producing fuel for the heating of building materials at construction sites;
F. Burning of charcoal when used for the exclusive preparation of food for human consumption;
G. Burning of fire wood and commercially produced fuel products in connection with indoor fires and stoves or fireplaces designed for food preparation, heating or decorative purposes;
H. Outdoor cooking fires that are confined to a barbecue grill, barbecue pit or other fire proof structure; and
I. Controlled brush fire at Village staging area supervised by Village Superintendent or designee.

SECTION 5. INCINERATORS. No person shall install, alter, operate or construct a commercial or industrial incinerator or any other refuse burning equipment without first obtaining a permit from the Air Quality Division of the Michigan Department of Environmental Quality.

SECTION 6. NUISANCE. Any violation of the provisions of this Ordinance is hereby declared to be a public nuisance and a nuisance per se which may be enjoined or which may subject the violator to municipal civil infraction fines and penalties which are provided for herein.

SECTION 7. SAVINGS CLAUSE. The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of the Ordinance other than said part or portion thereof.

SECTION 8. PENALTY. Any person, firm, or corporation who violates any of the provisions of this Ordinance shall be responsible for a municipal civil infraction. Every day that any such violation continues shall constitute a separate and distinct offense. Nothing in this section shall exempt such person from compliance with the provisions of this ordinance.

The fine for a municipal civil infraction shall be $50.00 plus costs for each infraction and $250.00 plus costs for any repeat offense.

The issuing of a municipal civil infraction pursuant to this Ordinance will be governed by Section 8 of the Village of Elberta Zoning Ordinance, including the civil infraction of enforcement policy resolution passed on 07-18-02, 2000.

SECTION 9. EFFECTIVE DATE. This Ordinance shall take effect twenty days after adoption. All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Adopted: 07-18-02

Sharyn K Bower
Sharyn Bower, Village Clerk

Posted: 07-31-02

Motion By D. Jenks
Support By K. Holmes.
yeas - 5 Nays - 1, NESS.

# *TELECOMMUNICATIONS ORDINANCE No. 18*

**Sec. 1 Purpose.**

The purposes of this ordinance are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) ("Act") and other applicable law, and to ensure that the Village qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

**Sec. 2 Conflict.**

Nothing in this ordinance shall be construed in such a manner as to conflict with the Act or other applicable law.

**Sec. 3 Terms Defined.**

The terms used in this ordinance shall have the following meanings:

*Act* means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.[1]

*Village* means the Village of Elberta.

*Village Council* means the Village Council of the Village of Elberta or its designee. This Section does not authorize delegation of any decision or function that is required by law to be made by the Village Council.

*Village Clerk* means the Village Clerk or his or her designee.

*Permit* means a non-exclusive permit issued pursuant to the Act and this ordinance to a telecommunications provider to use the public rights-of-way in the Village for its telecommunications facilities.

All other terms used in this ordinance shall have the same meaning as defined or as provided in the Act, including without limitation the following:

*Authority* means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the Act.

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[1] A copy of the Act can be obtained on the internet at http://www.cis.state.mi.us/mpsc/comm/rightofway/ rightofway.htm.

*MPSC* means the Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term "Commission" in the Act.

*Person* means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

*Public Right-of-Way* means the area on, below, or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

*Telecommunication Facilities* or *Facilities* means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

*Telecommunications Provider, Provider* and *Telecommunications Services* mean those terms as defined in Section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in Section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this ordinance only, a provider also includes all of the following:

(a) A cable television operator that provides a telecommunications service.

(b) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.

(c) A person providing broadband internet transport access service.

**Sec. 4 Permit Required.**

(a) *Permit Required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the

Village for its telecommunications facilities shall apply for and obtain a permit pursuant to this ordinance.

(b) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the Village Clerk, and one copy with the Village Attorney. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with Section 6(5) of the Act. [2]

(c) *Confidential Information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to Section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

(d) *Application Fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one-time non-refundable application fee in the amount of $500.00.

(e) *Additional Information.* The Village Clerk may request an applicant to submit such additional information which the Village Clerk deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the Village Clerk. If the Village and the applicant cannot agree on the requirement of additional information requested by the Village, the Village or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.

(f) *Previously Issued Permits.* Pursuant to Section 5(1) of the Act, authorizations or permits previously issued by the Village under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the Village to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan telecommunications act but after 1985 shall satisfy the permit requirements of this ordinance.

(g) *Existing Providers.* Pursuant to Section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the Village as of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, shall submit to the

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[2] A copy of the application form as approved by the Commission can be obtained on the internet at http://www.cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm.

Village an application for a permit in accordance with the requirements of this ordinance. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the $500.00 application fee required under subsection (d) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in Section 5(4) of the Act.

**Sec. 5 Issuance of Permit.**

(a) *Approval or Denial.* The authority to approve or deny an application for a permit is hereby delegated to the Village Clerk. Pursuant to Section 15(3) of the Act, the Village Clerk shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit under Section 4(b) of this ordinance for access to a public right-of-way within the Village. Pursuant to Section 6(6) of the Act, the Village Clerk shall notify the MPSC when the Village Clerk has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The Village Clerk shall not unreasonably deny an application for a permit.

(b) *Form of Permit.* If an application for permit is approved, the Village Clerk shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.[3]

(c) *Conditions.* Pursuant to Section 15(4) of the Act, the Village Clerk may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

(d) *Bond Requirement.* Pursuant to Section 15(3) of the Act, and without limitation on subsection (c) above, the Village Clerk may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

**Sec. 6 Construction/Engineering Permit.**

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the Village without first obtaining a construction or engineering permit as required under chapter 8001 of the Village

[3] Copies of the permit forms currently approved by the MPSC can be obtained on the internet at http://www.cis.state.mi.us/mpsc/comm/rightofway/rightofway.htm.

Code, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

**Sec. 7 Conduit or Utility Poles.**

Pursuant to Section 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this ordinance does not give a telecommunications provider a right to use conduit or utility poles.

**Sec. 8 Route Maps.**

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the Village, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the Village. The route maps should be in [paper or electronic] format unless and until the MPSC determines otherwise, in accordance with Section 6(8) of the Act.

**Sec. 9 Repair of Damage.**

Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the Village, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.

**Sec. 10 Establishment and Payment of Maintenance Fee.**

In addition to the non-refundable application fee paid to the Village set forth in subsection 4(d) above, a telecommunications provider with telecommunications facilities in the Village's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

**Sec. 11 Modification of Existing Fees.**

In compliance with the requirements of Section 13(1) of the Act, the Village hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of Section 13(4) of the Act, the Village also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the Village's boundaries, so that those providers pay only those fees required under Section 8 of the Act. The Village shall provide each telecommunications provider affected by the fee with a copy of this ordinance, in

compliance with the requirement of Section 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the Village's policy and intent, and upon application by a provider or discovery by the Village, shall be promptly refunded as having been charged in error.

**Sec. 12 Savings Clause.**

Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under Section 11 above shall be void from the date the modification was made.

**Sec. 13 Use of Funds.**

Pursuant Section 10(4) of the Act, all amounts received by the Village from the Authority shall be used by the Village solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the Village from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the Village under Act No. 51 of the Public Acts of 1951.

**Sec. 14 Annual Report.**

Pursuant to Section 10(5) of the Act, the Village Clerk shall file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority.

**Sec. 15 Cable Television Operators.**

Pursuant to Section 13(6) of the Act, the Village shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

**Sec. 16 Existing Rights.**

Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this ordinance shall not affect any existing rights that a telecommunications provider or the Village may have under a permit issued by the Village or under a contract between the Village and a telecommunications provider related to the use of the public rights-of-way.

**Sec. 17 Compliance.**

The Village hereby declares that its policy and intent in adopting this ordinance is to fully comply with the requirements of the Act, and the provisions hereof should be construed in such a manner as to achieve that purpose. The Village shall comply in all respects with the requirements of the Act, including but not limited to the following:

(a) Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in Section 4(c) of this ordinance;

(b) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with Section 4(f) of this ordinance;

(c) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the $500 application fee, in accordance with Section 4(g) of this ordinance;

(d) Approving or denying an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the Village, in accordance with Section 5(a) of this ordinance;

(e) Notifying the MPSC when the Village has granted or denied a permit, in accordance with Section 5(a) of this ordinance;

(f) Not unreasonably denying an application for a permit, in accordance with Section 5(a) of this ordinance;

(g) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in Section 5(b) of this ordinance;

(h) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with Section 5(c) of this ordinance;

(i) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with Section 5(d) of this ordinance;

(j) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with Section 6 of this ordinance;

(k) Providing each telecommunications provider affected by the Village's right-of-way fees with a copy of this ordinance, in accordance with Section 11 of this ordinance;

(l) Submitting an annual report to the Authority, in accordance with Section 14 of this ordinance; and

(m) Not holding a cable television operator in default for a failure to pay certain franchise fees, in accordance with Section 15 of this ordinance.

**Sec. 18 Reservation of Police Powers.**

Pursuant to Section 15(2) of the Act, this ordinance shall not limit the Village's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the Village's authority to ensure and protect the health, safety, and welfare of the public.

**Sec. 19 Severability.**

The various parts, sentences, paragraphs, sections, and clauses of this ordinance are hereby declared to be severable. If any part, sentence, paragraph, section, or clause of this ordinance is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any remaining provisions of this ordinance.

**Sec. 20 Authorized Village Officials.**

The Village Clerk or his or her designee is hereby designated as the authorized Village official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the municipal chapter violations bureau) for violations under this ordinance as provided by the Village Code.

**Sec. 21 Municipal Civil Infraction.**

A person who violates any provision of this ordinance or the terms or conditions of a permit is responsible for a municipal civil infraction, and shall be subject to Section 8-6, specifically, of the Village Zoning Ordinance. Nothing in this Section 21 shall be construed to limit the remedies available to the Village in the event of a violation by a person of this ordinance or a permit.

**Sec. 22 Repealer.**

All ordinances and portions of ordinances inconsistent with this ordinance are hereby repealed.

**Sec. 23 Effective Date.**

This ordinance shall take effect on or before December 25, 2002

C:\OFFICE\WPWIN\WPDOCS\TELECOM.ORD

# *TELECOMMUNICATIONS RESOLUTION* #18

**VILLAGE OF ELBERTA**
**COUNTY OF BENZIE, MICHIGAN**

At a regular meeting of the Village Council of the Village of Elberta, County of Benzie, Michigan,
held in said Village on the 19th day of December, 2002, there were:

PRESENT: Holmes, Jenks, Manville, Ness, Hendershott, K.Holmes

ABSENT: None

The following resolution was offered by Jenks and seconded by
Manville:

RESOLUTION IMPLEMENTING VILLAGE
TELECOMMUNICATIONS ORDINANCE

**WHEREAS**, the State of Michigan recently enacted the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002 (the "Act"); and

**WHEREAS**, the Act, among other things, provides for a uniform permit and permit fee for access to and use of the public rights-of-way by telecommunications providers; and

**WHEREAS**, the Act further provides, among other things, for a distribution of funds from the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority (the "Authority"), established pursuant to Section 3 of the Act, *provided* the Village takes certain action in compliance with the Act; and

**WHEREAS**, the Village has, contemporaneously with this resolution, adopted Ordinance No. 18 (the "Ordinance") for purposes of complying with the requirements of the Act, so as to ensure that the Village qualifies for distributions from the Authority under the Act; and

**WHEREAS**, the Village desires to give additional instruction and direction to the Village Clerk and other Village personnel charged with implementing the Ordinance;

**NOW, THEREFORE**, it is hereby

**RESOLVED**, that the Village Clerk is hereby authorized and directed to identify all telecommunications providers holding permits or authorizations issued by the Village and, as part of that process, to compile a list of all telecommunication providers who have paid fees to the Village since 1990, all telecommunications providers identified in the Village's engineering or construction permit files and all regulated telephone interexchange carriers and competitive access providers listed on the web site of the Michigan Public Service Commission and all regulated local telephone companies licensed in Michigan listed on such web site;

**FURTHER RESOLVED**, that the Village Clerk is hereby authorized and directed to provide a copy of the Ordinance to the cable companies providing service in the Village, and to all telecommunications providers identified above, in satisfaction of the requirements of Section 13(4) of the Act; and

**FURTHER RESOLVED**, that the finance department of the Village is hereby directed to return, to telecommunications providers, any checks or portion of checks received by the Village from such providers for access and usage of the public rights-of-way in the Village after November 1, 2002 (other than the $500 application fee allowed under the Act and any fees or funds received from the Authority).

Adopted this 19th day of December, 2002.

YEAS: Holmes, Jenks, Manville, Ness, Hendershott, K.Holmes

NAYS: None

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Village Council of the Village of Elberta, County of Benzie, and State of Michigan, at a meeting held on the 19th day of December, 2002, the original of which is on file in my office and available to the public. Public notice of said meeting was given pursuant to and in compliance with the Open Meetings

Act, Act No. 267 of the Public Acts of Michigan 1976, including in the case of a special or rescheduled meeting, notice by posting at least eighteen (18) hours prior to the time set for said meeting.

Dated: December 19, , 2002.

Sharyn K. Bower
Village Clerk

ORD. 14

Ordinance No. 19

AN ORDINANCE TO AMEND SECTION 13
OF CHAPTER 1001 OF THE VILLAGE CODE.

13. Penalty. Unless a violation of this Code or any ordinance of the Village is specifically designated in the Code or any ordinance as a civil infraction or a misdemeanor, the violation shall be deemed to be a municipal civil infraction. Every person convicted of a misdemeanor violation of any provision of this Code or any ordinance shall be punished by a fine of not more than Five Hundred Dollars ($500.00), plus costs of prosecution, or by imprisonment of not more than ninety-three (93) days or both, unless specific penalties are otherwise provided. The sanction for a violation of which is a municipal civil infraction shall be a civil fine in the amount provided by this Code or any ordinance, plus any costs and other sanctions under applicable laws. Increased civil fines may be imposed for repeat offenses. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any section of this Code or any ordinance of the Village.

Adopted: 5-18-06

Posted: 5-31-06

Sharyn Bower

Sharyn K. Bower, Village Clerk

ORO.20

**Ordinance No. 20**

**AN ORDINANCE TO REPEAL SECTION 8 OF THE VILLAGE OF ELBERTA ZONING ORDINANCE AND TO AMEND THE VILLAGE CODE BY ADDING A NEW CHAPTER, WHICH NEW CHAPTER SHALL BE DESIGNATED AS CHAPTER 1002 OF THE VILLAGE CODE.**

## VILLAGE OF ELBERTA

## CHAPTER 1002
## CIVIL INFRACTION ENFORCEMENT ORDINANCE

THE VILLAGE OF ELBERTA ORDAINS:

**1. Short Title.** This Ordinance shall be known and may be cited as the "Village of Elberta Civil Infraction Enforcement Ordinance" of May 18, 2006, and shall be known in short form as the "Civil Infraction Ordinance".

**2. Definitions.** As used in this Ordinance:

A. "Act" means Act No. 236 of the Public Acts of 1961, as amended.

B. "Authorized Village official" means the Village of Elberta Chief of Police, the Village Enforcement Officer, the Frankfort Police Officers or other personnel of the Village of Elberta or City of Frankfort authorized by this ordinance to issue municipal civil infraction citations or municipal civil infraction violation notices.

C. "Bureau" means the Village of Elberta Municipal Ordinances Violations Bureau as established by this Ordinance.

D. "Municipal civil infraction action" means a civil action in which the defendant is alleged to be responsible for a municipal civil infraction.

E. "Municipal civil infraction citation" means a written complaint or notice prepared by an authorized Village official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the person cited.

F. "Municipal civil infraction violation notice" means a written notice prepared by an authorized Village official, directing a person to appear at the Village of Elberta Municipal Ordinance Violations Bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the Village of Elberta, as authorized under Sections 8369 and 8707(6) of the Act.

**3. Municipal civil infraction action; commencement.** A municipal civil infraction action may be commenced upon the issuance by an authorized Village official of (1) a municipal civil infraction

citation directing the alleged violator to appear in court; or (2) a municipal civil infraction violation notice directing the alleged violator to appear at the Village of Elberta Municipal Ordinance Violations Bureau.

**4. Municipal civil infraction citations; issuance and service.** Municipal civil infraction citations shall be issued and served by authorized Village officials as follows:

A. The time for appearance specified in a citation shall be within a reasonable time after the citation is issued.

B. The place for appearance specified in a citation shall be the Benzie County District Court (hereinafter referred to as "District Court").

C. Each citation shall be numbered consecutively and shall be in a form approved by the state court administrator. The original citation shall be filed with the District Court. Copies of the citation shall be retained by the Village and issued to the alleged violator as provided by Section 8705 of the Act.

D. A citation for municipal civil infraction signed by an authorized Village official shall be treated as made under oath if the violation alleged in the citation occurred in the presence of the official signing the complaint and if the citation contains the following statement immediately above the date and signature of the official: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge and belief."

E. An authorized Village official who witnesses a person commit a municipal civil infraction shall prepare and subscribe, as soon as possible and as completely as possible, an original and required copies of a citation.

F. An authorized Village official who does not witness a person commit a municipal civil infraction may still issue a citation to a person if based upon his or her investigation, the official has reasonable cause to believe that the person committed the infraction; and either
   (1) the official has consulted with the Village attorney; or
   (2) in the case of a complaint by an alleged witness to the infraction, the prosecuting attorney or Village attorney approves, in writing, the issuance of the citation.

G. Municipal civil infraction citations shall be served by an authorized Village official as follows:

   (1) Except as provided in Section 4(G)(2), an authorized Village official shall personally serve a copy of the citation upon the alleged violator.

(2) If the municipal civil infraction action involves the use or occupancy of land, a building or other structure, a copy of the citation does not need to be personally served upon the alleged violator, but may be served upon an owner or occupant of the land, building or structure by posting the copy on the land or attaching the copy to the building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building or structure. In addition, a copy of the citation shall be sent by first class mail to the owner of the land, building or structure at the owner's last known address.

**5. Municipal civil infraction citations; comments.**

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

B. Further, the citation shall inform the alleged violator that he or she may do one of the following:

(1) Admit responsibility for the municipal civil infraction by mail, in person or be representation at or by the time specified for appearance.

(2) Admit responsibility for the municipal civil infraction with explanation by mail by the time specified for appearance or, in person, or by representation.

(3) Deny responsibility for the municipal civil infraction by doing either of the following:

a. Appearing in person for an informal hearing before a judge or district court magistrate, without the opportunity of being represented by an attorney, unless a formal hearing before a judge is requested by the Village.

b. Appearing in court for formal hearing before a judge, with the opportunity of being represented by an attorney.

C. The citation shall also inform the alleged violator of all of the following:

(1) That if the alleged violator desires to admit responsibility with explanation in person or by representation, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time for appearance.

(2) That if the alleged violator desires to deny responsibility, the alleged violator must apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing, unless a hearing date is specified on the citation.

(3) That a hearing shall be an informal hearing unless a formal hearing is requested by the alleged violator or the Village.

(4) That at an informal hearing the alleged violator must appear in person before a judge or district court magistrate, without the opportunity of being represented by an attorney.

(5) That at a formal hearing, the alleged violator must appear in person before a judge with the opportunity of being represented by an attorney.

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

**6. Municipal ordinance violations bureau.**

A. *Bureau established.* The Village hereby establishes a Municipal Ordinance Violations Bureau ("Bureau") as authorized under Section 8396 of the Act to accept admissions of responsibility for municipal civil infractions in response to municipal civil infraction notices issued and served by authorized Village officials and to collect and retain civil fines and costs as prescribed by the Code or any ordinance.

B. *Location*; supervision; employees; rules and regulations. The Bureau shall be located at the Village of Elberta Offices and shall be under the supervision and control of the Village Clerk. The Village Clerk, subject to the approval of the Village Council, may adopt rules and regulations for the operation of the Bureau and appoint any necessary qualified Village employees to administer the Bureau.

C. *Disposition of violations.* The Bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice (as compared with a citation) has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the Bureau. Nothing in this Chapter shall prevent or restrict the Village from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction violation at the Bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the Bureau shall not

prejudice the person or in any way diminish the person's rights, privileges and protection accorded by law.

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

E. *Municipal civil infraction violation notices.* Municipal civil infraction violation notices shall be issued and served by authorized Village officials under the same circumstances and upon the same persons as provided for citations in Section 4(E), (F), and (G) of this Ordinance. In addition to any other information required by this Ordinance or other ordinance, the notice of violation shall indicate the time by which the alleged violator must appear at the Bureau, the methods by which an appearance may be made, the address and telephone number of the Bureau, the hours during which the Bureau is open, the amount of the fine scheduled for the alleged violation, and the consequence for failure to appear and pay the required fine within the required time.

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

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

**7. Schedule of civil fines established.**

A. A schedule of civil fines payable to the Bureau for admissions of a responsibility by persons served with municipal ordinance violation notices is hereby established. The fines for violations of the Code are as follows:

| Offense | Fine |
|---|---|

**AN ORDINANCE TO AMEND CHAPTER 1002 THE CIVIL INFRACTION ORDINANCE.**

The Village of Elberta Ordains:

Section 2 Definitions shall be amended as follows:

Part B. Authorized Village official" means the Village Enforcement Officer or other personnel of the Village of Elberta, Benzie County Sheriff's Department, the State Police who are authorized by this ordinance to issue municipal infraction citations or municipal civil infraction violation notices. Animal Control officers are also authorized when enforcing Chapter 9006 - the Dog Ordinance.

Section 7. Schedule of civil fines established.

Part A. First Offence - $100.00

Adopted on April 16, 2009

Posted: 4-19-09

Effective date 5-19-09

Sharyn Bower

Sharyn Bower, Clerk
Village of Elberta

| | |
|---|---|
| First Offense: | $50.00 |
| First repeat offense ( a second violation of the same provision within any six (6) month period | $250.00 |
| Second repeat offense (any subsequent violation of the same provision within (6) six months of the first repeat offense | $500.00 |

B. A copy of this schedule, as amended from time to time, shall be posted at the Bureau.

**8. Saving Clause**. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional, invalid, void or unenforceable, for any reason, by a court of competent jurisdiction, the remaining portions of this Ordinance shall remain in full force and effect.

**9. Effective Date**. This Ordinance shall become effective immediately upon publication in a newspaper in general circulation within the Village of Elberta. All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Adopted: 5.18.06

Posted: 5.31.06

Sharyn Bower

Sharyn Bower, Village Clerk

ORD.21

**Ordinance No. 21**

**AN ORDINANCE TO REPEAL ORDINANCE NO. 13 ADOPTED ON SEPTEMBER 21, 2000, AND KNOWN AS THE RUBBISH ORDINANCE AND REPEAL OF CHAPTER 5032 OF THE VILLAGE CODE AND TO AMEND THE VILLAGE CODE BY ADDING A NEW CHAPTER WHICH NEW CHAPTER SHALL BE DESIGNATED AS CHAPTER 9103 OF SAID CODE**

**VILLAGE OF ELBERTA**

# CHAPTER 9103
# JUNK ACCUMULATION ORDINANCE

**1. Short Title**. This Ordinance shall be known and may be cited as the "Village of Elberta Junk Accumulation Ordinance" of May 18, 2006, and shall be known in short form as the "Junk Ordinance".

**2. Purposes**. The purpose of this Ordinance is to limit and restrict the outdoor storage, parking, or accumulation of unused, partially dismantled, abandoned or non-operating motor vehicles, house trailers, tractor trailers, or used or new parts thereof, unused household appliances, unused and/or abandoned fixtures or equipment, and regulate junk or rubbish and dangerous or hazardous conditions upon premises primarily used or zoned for any type of residential purposes within the Village of Elberta; to thereby avoid injury and hazards to people, including children, and others attracted to such vehicles, trailers, junk or rubbish, the devaluation of property and the psychological ill effect of the presence of such vehicles, trailers, junk or rubbish upon adjoining residents and property owners. This Ordinance is specifically designed to:

A. Define certain terms used herein.
B. Regulate the volume and conditions under which a person may store junk on one's own land.
C. Regulate and coordinate, with the zoning ordinance, the use and operation of junkyards.
D. Provide for enforcement and a system of due process for the removal of junk from one's land.
E. Provide for other miscellaneous provisions.

**3. Legal Basis**. This Ordinance is enacted pursuant to Michigan Public Act 3 of 1895, as amended, being Michigan Compiled Law 67.1, *et seq*.

**4. Definitions**.

A. **General**. For purposes of this Ordinance, certain terms are herewith defined. When not inconsistent with the context, the present tense includes the future, words used in

the singular number include the plural number. The word "shall" is always mandatory and not merely permissive.

B. **Undefined Words**. Any word not defined herein shall be interpreted within its common and approved usage.

C. **Definitions**. For the purposes of this Ordinance, the following terms are defined as follows:

(1) "FARM" means a business enterprise engaged in agricultural production, (and otherwise known as farms, ranches, dairies, nurseries, orchards) of crops, livestock and trees and:

a. Includes forty (40) or more acres of land in one ownership which is primarily devoted to agricultural use, or
b. Has five (5) or more acres of land in one ownership, but less than forty (40) acres, devoted primarily to agricultural use, which has produced a gross annual income from agriculture of two hundred dollars ($200.00) per year or more per acre of cleared and tillable land, or
c. Has been designated by the Michigan Department of Agriculture as a specialty farm in one ownership which has produced a gross annual income from an agricultural use of two thousand dollars ($2,000.00) or more.

(2) "JUNK" means, but is not limited to:

a. Old scrap ferrous or nonferrous materials, rubber, cloth, paper, rubbish, refuse, litter;
b. Any item or material which is inherently waste like
c. Materials from demolition, waste building materials; and
d. Junk, abandoned, discarded, scrap, dismantled, unused or wrecked (including parts of, or items held for salvaging parts): automobiles, motor vehicles, farm equipment, house trailers, tractor trailers, boats, boat hulls, trailers, mobile homes, furniture, stoves, refrigerators, freezers, cans, containers, snowmobiles, machinery, mobile homes, appliances, all other machines, and any other cast off material of any kind including rubbish, rags, paper, waste, or other similar materials.

But shall not include:

a. Items being held for a customer while parts are being sought for its repair;

b. Items that are classic or antique kept and collected for their antique or collectable value; and

c. Items and junk kept at a licensed Type I, II or III landfill for the purpose of disposal of solid waste, incineration, recycling and resource recovery.

(3) "JUNKYARD" means the lawful use of a lot for the storage or disposition of old and dilapidated automobiles, trucks, tractors, and other vehicles and parts thereof, scrap building materials and any other kind of scrap or waste materials.

(4) "PARCEL" means any tract or contiguous tracts of land in the same ownership, a condominium unit of the surface of land and associated limited commons, whether one of more platted lots or parts of lots, as owned by the same person.

(5) "PERSON" means a firm, association, organization, partnership, trust, company or corporation, as well as an individual.

(6) "ROAD" means a public or private road, highway, street, or right-of-way, which affords the means of ingress or egress to abutting property and the means of travel past a parcel of land.

(7) "SOLID WASTE MANAGEMENT ACT" means Article II Chapter 3 Part 115 of P.A. 451 of 1994, as amended, (being the Solid Waste Management part of the Natural Resources and Environmental Protection Act, M.C.L. 324.11501 *et. seq.*).

(8) "VILLAGE" means the Village of Elberta.

(9) "VILLAGE ENFORCEMENT OFFICER" means any person designated by the Village Council to enforce this Ordinance.

## 5. Regulations

A. It shall be unlawful for a person to park, store, place or accumulate junk on land other than that occupied by a licensed, permitted junkyard, except in the following manner:

(1) So that junk is consolidated on one part of the parcel; and
(2) So that the junk is not visible from a road or from adjacent parcels or so that the junk is inside an enclosed building; and
(3) So that it is not a nuisance.

B. No person shall park, store, place or accumulate junk upon any public right-of-way, public property, or premises that is primarily used or zoned for any type of residential purpose within the Village unless the same is contained within a fully enclosed building and does not violate any zoning or building laws of the Village, except for the following:

(1) Duly licensed and operable vehicles or trailers with substantially all main components attached.

(2) Any commercial vehicle or trailers must have the approval of the Zoning Administrator and/or the Village Council.

(3) Vehicles or trailers that are temporarily inoperable because of minor mechanical failure but are not, in any manner, dismantled and have substantially all main component parts attached, may remain on such private property for a period of time not to exceed fourteen (14) days.

(4) In no event shall any vehicle be parked in the front or side yard area of any residential premises, except as needed during the winter months.

C. No repairing, re-designing, modifying, or dismantling work or operations shall be allowed upon any vehicle or trailer or parts thereof upon any public right-of-way or public property, and no more than one vehicle on property primarily used or zoned for any type of residential purpose within the Village, may be repaired, re-designed, modified, or dismantled for a period in excess of forty-eight (48) hours, except such as shall be accomplished within fully enclosed buildings. Any such work within such forty-eight (48) hour period heretofore allowed shall not, however, consist of any major repair, re-designing, modifying, or dismantling work, but only such occasional minor work as may infrequently be required to maintain the vehicle or trailer or parts thereof in normal operation.

D. The use of dumpsters is allowed under this Ordinance, provided that the following conditions are met:

(1) That the person wishing to use a dumpster obtain a permit from the Zoning Administrator, which will allow the use of the dumpster for a period of thirty (30) days; and

(2) That the length of the dumpster not exceed twenty-five (25) feet.

E. No open storage of junk shall be permitted on any premises within the Village, except such premises as specifically provided for in the Village Zoning Ordinance, and such open storage, pilling up, or accumulation of junk shall constitute a violation of this Ordinance.

F. In the event the foregoing regulations create any special or peculiar hardship beyond the control of a particular violator thereof because of unforeseen circumstances, the

Village Enforcement Officer or Zoning Administrator of the Village is hereby given the authority to grant permission to an applicant to operate contrary to the provisions of this Ordinance for a limited period of time not to exceed fourteen (14) days, provided that no adjoining property owner or occupant is unreasonably adversely affected thereby and the spirit and purpose of the Ordinance are still substantially observed.

**6. Farms**. Section 5 of this Ordinance shall not apply to farms, provided the storage of junk on a farm meets the following standards:

A. So that the junk is not visible from a road or from adjacent parcels or so that the junk is inside an enclosed building;

B. All junk from the operation of the farm is being kept on the premises for future use of the farm;

C. The depositing of the junk is not a violation of Solid Waste Management Act or constitutes fill in violation of any other state or local law; and

D. So that it is not a nuisance.

**7. Junkyards**.

A. **Junkyard Conformance to Zoning and Municipal Regulation**. Junkyards shall not accept business or do business unless they are:

(1) Permitted under a zoning ordinance in effect for the area by use permit, special use permit, planned unit development, or certified as a non-conforming use, and

(2) Licensed by a township under authority of P.A. 12 of 1929, as amended (being M.C.L. 445.451 *et. seq.*), if applicable, and

(3) Shall meet each of the following conditions:

a. Have a Michigan Sales Tax license; and

b. Have records of sales and other transactions which are required by, and whose business falls under the jurisdiction of P.A. 350 of 1917, as amended (the Second Hand Junk Dealers Act, being M.C.L. 445.401 *et. seq.*).

B. **Landfills.** For purposes of this Ordinance, and for purposes of coordinating this Ordinance with any zoning ordinances of jurisdiction, the operation of a junkyard shall be considered an accessory use to a landfill, operating under the jurisdiction of the Solid Waste Management Act. Nothing in this Ordinance shall require any additional licensing, registration, or permits other than required by the Solid Waste Management Act and the adopted county solid waste plan.

C. **Standards**. A junkyard shall be constructed, designed and operated according to the following standards:

(1) Shall be designed to comply with one of the following:

a. Shall be set back from parcel boundaries at lease 300 feet, shall be set back 300 feet from a road right-of-way or 333 feet from the centerline of a road, whichever is greater; or

b. Setback the distance required by the zoning ordinance and shall be screened from view of a road and from adjacent parcels by means of an opaque fence, vegetation, earth berm, or another form of screening, or a combination of the above; or

c. Setback the distance required by the zoning ordinance and shall not be visible from a road or from adjacent parcels.

(2) Shall be designed and operated so that noise, under normal operational circumstances, shall not be over 80 decibels at the boundary of the parcel and at the nearest road.

(3) Shall not be operated so that burning or incineration of junk or any other material results in smoke; other emissions and effluent shall meet or exceed all applicable state and federal air pollution, surface and groundwater quality standards.

(4) Shall comply with Public Act 219 of 1966, as amended (the Control of Junkyards Adjacent to Highways Act, being M.C.L. 252.201 *et. seq.*; P.A. 350 of 1917, as amended (the Second Hand Junk Dealers Act, being M.C.L. 445.401 *et. seq.*); the Solid Waste Management Act; and, if applicable, Public Act 12 of 1929, as amended, (township licensing of junk yards, being M.C.L. 445.451 et. seq.), if applicable.

(5) Shall not operate a landfill, as defined in the Solid Waste Management Act, as an accessory function to a junkyard.

(6) Shall be more than 1,000 feet from a school, campground, or park

(7) Shall be restricted to operation during the hours of 8:00 a.m. to 7:00 p.m., Monday through Friday.

(8) Shall operate only in a specifically allowed zoning district and shall comply in all respects with applicable zoning restrictions.

**8. <u>Grandfathering</u>.**

A. **Inventory**. Upon the enactment of this Ordinance, the Village Zoning Administrator shall cause to be made an inventory of all junkyards presently in business in the Village of Elberta. Such inventory shall include a site plan of each junkyard.

B. **Continuance.** Any junkyard found to be in lawful business in the Village of Elberta at the time of enactment of this Ordinance shall be able to continue in business as a junkyard on the parcel of land, or portion of the parcel of land, where they are presently located except as noted below in Section 8(C) and Section 8(D) of this Ordinance.

C. **Abandonment, Relocation, Enlargement**. A junkyard in lawful business under Section 8(B) of this Ordinance, which:

(1) Ceases to operate for one year or more;
(2) Enlarges so to occupy more land than what was used at the time of enactment of this Ordinance as shown on the inventory site plans made pursuant to Section 8(A) of this Ordinance; or
(3) Relocates to different land than what was used at the time of enactment of this Ordinance as shown on the inventory site plans made pursuant to Section 8(A) of this Ordinance;

shall be required to comply with all aspects of this Ordinance.

D. **Required Improvement to Existing Junkyards**. Any junkyard in lawful business at the time of enactment of this Ordinance shall, by two (2) years after this Ordinance is adopted, cause to have the junkyard screened from view from a road and from adjacent parcels by means of an opaque fence, vegetation, earth berm, or another form of screening, or a combination of the above so it shall not be visible from a road or from adjacent parcels.

**9. Enforcement; Penalties**

A. **Authorized Local Official**: The Village Enforcement Officer is hereby designated as the authorized local official to issue municipal civil infraction citations or notices and otherwise enforce this Ordinance as provided herein.

B. **Nuisance Per Se**: Any violation of this Ordinance is hereby declared to be a public nuisance and a nuisance per se.

C. **Violation as a Municipal Civil Infraction.** Any person, including, but not limited to, an individual, partnership, corporation, limited liability company, or other incorporated or unincorporated, voluntary association, who violates any provision of this Ordinance shall be guilty of a municipal civil infraction.

D. **Abatement by Village**: If the owner or possessor of any property on which a nuisance exists fails to eliminate a nuisance after having received Notice from the Village of the existence of the nuisance, the Village Enforcement Officer or any agent appointed on his or her behalf, after receiving authorization by the Village Council, may take such steps as are necessary to abate or eliminate the nuisance. The Notice shall describe the location of the property, describe the nature of the nuisance and give ten (10) days in which the owner or possessor may eliminate the nuisance without intervention by the Village. The written Notice may be served personally or may be sent by first-class mail and certified mail with return receipt to the last known address of the owner or occupier of the premises. The time period shall commence on the date of the personal service or incase of mailing service shall be deemed to have taken place on the date of mailing. The cost of elimination of the nuisance by the Village, including reasonable attorney fees, may be collected in a lawsuit against the

owner and/or possessor of the property on which the nuisance existed and/or against the person who committed, created, or maintained the nuisance.

E. **Cost Recovery; Lien**: The costs incurred by the Village to abate or eliminate the nuisance, including reasonable attorney fees, shall be reimbursed to the Village by the owner or party in interest in whose name the property appears. The owner or party in interest in whose name the property appears upon the last local tax assessment roll shall be notified by the Village Clerk of the amount of the costs of eliminating the nuisance by first-class mail and certified mail with return receipt at the address shown on the records. If the owner or party in interest fails to pay the costs within thirty (30) days after mailing by the Village Clerk of the notice of the amount of the costs, the Village shall have a lien for the costs incurred by the Village to bring the property into compliance with this Ordinance. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. The lien provided for in this subsection does not have priority over previously filed or recorded liens and encumbrances. The lien for the costs shall be collected and treated in the same manner as provided for property tax liens under the state General Property Tax Act.

F. **Cumulative Remedies**: The rights and remedies provided for herein are cumulative and in addition to all other remedies provided by law. The issuance of a municipal civil infraction citation and a finding or admission of responsibility for violation of this Ordinance in a civil infraction proceeding shall not bar a civil action seeking equitable relief beyond the jurisdiction of the Benzie County Judicial District Court under this Chapter, arising from the same violation.

**10. Savings Clause**. The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section, or provision is declared void or unenforceable, for any reason, by a court of competent jurisdiction, the remaining portions of said Ordinance shall remain in full force.

**11. Effective Date**. This Ordinance shall take effect twenty (20) days after adoption by the Council of the Village of Elberta. All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Adopted: 5-18-06

Posted: 5-31-06

Sharyn K. Bower

Sharyn K. Bower, Village Clerk

(1)22

Ordinance No. 22

AN ORDINANCE TO REPEAL SECTIONS 1 AND 2 OF CHAPTER 2046 AND NEW SECTION 13 OF CHATPER 2046 OF THE CODE, ENACTED AT A SPECIAL MEETING, AND TO AMEND SECTIONS 1 AND 2 OF CHAPTER 2046 OF THE VILLAGE CODE AND TO ADD A NEW SECTION THERETO, WHICH NEW SECTION SHALL BE SECTION 13 OF CHAPTER 2046 OF SAID CODE.

1. Definitions. The following definitions shall apply in the interpretation of this Chapter.

(a) The term "Department" shall mean the Department of Public Works of the Village.

(b) The term "meter" shall mean the device installed by the Department used for measuring the amount of water passing through the service.

(c) The term "owner" or the "owners" shall mean the person holding legal or equitable title to real property or a lesser estate therein, a mortgagee or vendee in possession, an assignee of rents, receiver, executor, trustee, lessee or any other person, firm or corporation directly or indirectly in control of a premise or premises or his duly authorized agent.

(d) The term "premise" or "premises" shall mean any single or multiple dwelling, home, office, store, building or property used for human occupancy, employment, recreation or other purposes.

(e) The term "water connection" shall mean that part of the water distribution system connecting the water main with the premises served.

(f) The term "water main" shall mean that part of the water distribution system located within easement lines or streets designed to supply more than one water connection.

2. Mandatory Connection; Abandonment of Private Wells; Service Connection; Failure to Connect

(a) Mandatory connection. The owners of premises situated within the Village and abutting on any street, alley or right-of-way in which there is located or may in the future be located, a municipal water supply system of the Village, are hereby required to connect to the municipal system for all water used for any purpose, provided that such water systems are within 200 feet of the nearest property line of such premises. This connection will be done in accordance with provisions of this Chapter and under direction of the Department of Public Works of the Village. Pre-existing noncomplying situations are required to be connected within 90 days after the effective date of this Ordinance unless specifically approved by the Village as a variance to this Section. Such approval may be granted, with the approval of the state and local health department, only under demonstration of hardship or unique circumstances. The Village Council may limit the time period for which such approval or variance shall be valid.

(b) Required abandonment of private wells. At such time as the public water system becomes available to a property served by a private well, as provided by this Chapter, a direct connection shall by made to the public water system in compliance with the provisions of this Chapter and the private well shall be abandoned as required and

specified by Part 127, Act 368 PA 1978, or other governing statute, the Michigan Department of Environmental Quality and the local health department. The private well may not be utilized for any purpose, except by variance granted by the Village Council.

(c) Service Connections. Service connections shall be installed by the Department upon payment of the required connection fee and meter installation fee. All meters and water connections shall be the property of the Village. Connection fees and meter installation charges shall not be less than the cost of materials, installation and overhead attributable to such installations and a schedule thereof shall be prescribed by Council resolution.

(d) Failure to connect. If the owner of any premises fails to connect within the time allotted by this Chapter, the Village shall proceed to take such action as is authorized to require the connection including but not limited to having an injunction issued to prevent the premises from being occupied or used until there is compliance with this Chapter.

13. Violations

(a) Civil infraction. Any person who violates any provision of this Chapter shall be responsible for a municipal civil infraction as set forth in this Code.

(b) Nothing contained in this Chapter shall prohibit the Village from seeking other legal, equitable, or injunctive relief against a violator or such other appropriate relief as may be available or provided by law.

Adopted: 10-19-06

Posted: 10-25-06

Sharyn Bower

Sharyn Bower, Elberta Village Clerk

ORD. 23

ORDINANCE NO. 23

**AN ORDINANCE TO AMEND THE VILLAGE ZONING ORDINANCE TO CREATE THE DEEP WATER PORT DISTRICT WITHIN THE VILLAGE OF ELBERTA, TO DESIGNATE THE PROPERTY TO BE INCLUDED IN THE DEEP WATER PORT DISTRICT, TO REZONE THE GENERAL INDUSTRIAL DISTRICT TO WATERFRONT AND LAKEBLUFFS DEVELOPMENT DISTRICT WITHIN THE VILLAGE AND TO REPEAL SECTION 6.5 OF THE CODE.**

THE VILLAGE OF ELBERTA ORDAINS:

The following section is added to the Village Zoning Ordinance:

Section 6.8 Deep Water Port District "PD":

a) **Intent:** To establish an area for residential and commercial land uses in the Village, that recognizes the unique features of the Elberta Deep Water Port, whereby flexibility is granted from the strict application of the zoning district requirements. This will allow the property owner to propose a unified development plan for a single property, or group of properties under a single ownership, which combines commercial and residential uses at densities consistent with R-1 Zoning District, allowing a development plan which maximizes the recreational opportunities of the Elberta Deep Water Port and provides the opportunity for public access to the waters edge.

It is the intent of the Village of Elberta to require all proposed developments within the PD Zoning District to conform to site plan review provisions, Section 7.2 of Article VII of this ordinance concerning site plan review. Before submission of the site plan to the Village Council, as provided in Article VII, the site plan shall be reviewed by the Planning Commission, which shall recommend disapproval, approval, or approval with modifications, to the Village Council.

b) **Permitted Uses:**

1) A single building may be erected, altered or used, and a lot may be occupied or used for any permitted use specified in the R-1 Residential Zoning Districts or the Commercial Zoning District.
2) Deep draft marine vessel operations and support facilities which are recreational or commercial tourism based in nature.

c) **Special Uses:** All special uses specified in the R-1 Residential Zoning District and Commercial Zoning District of this Ordinance. Additional uses which may be authorized by issuance of a Special Use Permit include:

1) Marinas and boat liveries, whether commercial or recreational in nature, and facilities designed to retail marine pleasure craft.
2) Marine vessel storage or repair facilities within completely enclosed buildings.
3) Marine vessel sales outlets.
4) Hotels and Motels.
5) Outdoor recreational or public amusement facilities, including tourism facilities, historical displays and other facilities.

d) **Supplemental Regulations for Deep Water Port District Uses:** All uses of Deep Water Port District zoned properties shall have the burden of demonstrating to the Planning Commission and the Village Council that provisions will be made to adequately reduce and/or minimize the impact of the proposed development on the coastal environment of the Village, including but not limited to air and

water pollution, wetlands, coastal sand dunes, and floodplain. Evidence shall be provided in the form of approved permits from all local, state and federal responsible agencies prior to the issuance of land use permits by the Village for buildings and structures for the proposed project.

There shall be no minimum lot size requirements for Deep Water Port District uses. However, all buildings and structure proposed for development shall occupy no more than 33% of the total property(ies) included within the site plan subject to the zoning designation. The remaining lot area may be used for parking, access roads, amenities, and landscaping. A portion of the water shoreline shall remain available for a public trail corridor consistent with the intent to link together surrounding trail segments and be shown as part of the landscaping plan, subject to public safety design requirements stemming from the use of the deep-water port. Upon recommendation of the Planning Commission, the Village Council may approve a landscaping plan prior to the issuance of a land use permit for the building and/or structures.

There shall be no specific maximum density for development within the Deep Water Port District. Commercial space usage shall be limited to no more than 50% of the total building area within a mixed use building or structure housing both residential and/or over night rental accommodations and allowable uses specified in the Commercial District.

The maximum building height shall be 35 feet. The front yard and side yard set back requirement shall be those of the Residential R-1 District, however, upon recommendation of the Planning Commission, the Village Council may waive the height restriction where a development proposal contains an approved fire suppression system and is constructed with approved fire fighting access ways as determined by the State Fire Marshall in accordance with the Village and State of Michigan Building Construction and Fire Codes. The burden of demonstrating conformance with these provisions shall be born by the applicant for the special use approval.

On site parking spaces shall be provided according to the following schedule, unless otherwise required by the Planning Commission and the Village Council. Where an applicant proposes multiple uses within a proposed unified development project, the number of parking spaces required shall be determined by tabulation of all parking required by the number of units and square footage proposed in the development and the following schedule of required parking spaces.

- Two parking spaces for each single family detached living unit.
- One and one-half parking spaces for each multi-family living unit.
- One parking space for each over night rental sleeping accommodation and each worker for hotels and other like accommodations.
- One parking space for each 250 square feet of building floor area for all commercial uses. Where commercial uses require off street loading/unloading services, additional parking area shall be provided to accommodate the services.

e) **Saving Clause.** The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional, invalid, void or unenforceable, for any reason, by a court of competent jurisdiction, the remaining portions of this Ordinance shall remain in full force and effect.

## THE VILLAGE OF ELBERTA FURTHER ORDAINS:

1) That the Deepwater Port District is created in an area described as part of the Waterfront Lakebluffs Development District and located along the southern shores of Betsie Lake; such property is further

described as:

All that part of Sections 27 and 28, Township 26 North, Range 16 West, Village of Elberta, Benzie County, Michigan, described as: Commencing at the West quarter corner of said Section 27; thence North 00°34'25" West, along the West line of said Section 27, 609.71 feet to the Point of Beginning: thence North 89°54'20" East, 494.33 feet; thence North 00°05'40" West, 66.28 feet to a point on the North Right of Way line of Highway M-168; thence South 84°27'17" East, along the North Right of Way line of said Highway, 12.07 feet; thence South 84°49'46" East 245.49 feet to the Point of Curvature of a 416.06 foot radius curve to the right; thence Easterly along the arc of said curve, 87.90 feet, chord bearing South 78°46'39" East, 87.73 feet; thence North 00°00'00" West, 215.77 feet; thence North 69°29'40" West, 106.77 feet; thence South 12°54'30" West, 29.30 feet; thence South 89°23'35" West, 804.57 feet; thence South 46°45'35" West, 80.02 feet; thence South 01°34'45" East, 57.38 feet; thence South 89°23'20" West 378.12 feet; thence South 00°36'40" East, 93.32 feet; thence North 89°01'10" East, 507.42 feet; thence South 00°34'25" East, 42.08 feet to the Point of Beginning, less and except M-168 Highway right-of-way.

2) The property zoned General Industrial District is hereby rezoned to Waterfront and Lakebluffs Development District.

3) Section 6.5 of the Village Code is repealed.

4) The Clerk of the Village shall, within a reasonable time, cause the zoning map to be amended to reflect the above-stated actions.

Adopted: 11-15-07

Posted: 11-21-07

Sharyn K Bowers

Sharyn Bower, Village Clerk

OKD 24

The Village of Elberta ordains: Ordinance 24

AN ORDINANCE TO AMEND THE VILLAGE CODE, BY ADDING A NEW SECTION WHICH NEW SECTION SHALL BE DESIGNATED AS SECTION 5040 OF THE CODE.

**Section 5040.**

**1. Established.** A planning commission is hereby established for the Village of Elberta. This planning commission shall be known as the "Village of Elberta Planning Commission."

**2. Members; number; qualifications; appointment; compensation; term; removal; vacancies.**

a. The planning commission shall consist of five members who shall represent, insofar as possible, different professions or occupations. Four (4) of the members shall be appointed by the Village President, and confirmed by a majority vote of the members of the Village Council. The other member, who shall serve ex officio, shall be one (1) member of the Village Council to be selected by it.

b. All members of the planning commission shall serve without compensation, and all four (4) appointed members shall hold no other municipal office, except that one (1) of the appointed members may also be a member of the zoning board of adjustment or appeals.

c. The term of the ex officio member shall correspond to his or her respective official tenure. The term of each appointed member shall be three (3) years, except that one (1) member of the first planning commission to be appointed shall serve for a term of one (1) year and two (2) members for a term of two (2) years. All members shall hold office until their successors are appointed and have qualified.

d. Members, other than the member selected by the Village Council, after a public hearing, may be removed by the Village President for inefficiency, neglect of duty or malfeasance in office. The Village Council may for like cause remove the member selected by it. Vacancies occurring other than through the expiration of term shall be filled for the unexpired term by the Village President in the case of members selected or appointed by him or her, and by the Village Council in the case of the member selected by it.

**3. Chairperson and officers; meetings; rules; records.** The planning commission shall elect a chairperson from amongst the appointed members and may create and fill by election such other offices as it determines necessary. The term of chairperson and any other officers shall be one (1) year, with eligibility for reelection. The planning commission shall hold at least one (1) regular meeting in each month. A majority of the planning commission shall constitute a quorum for the transaction of the ordinary business of the planning commission and all questions which arise at their meetings shall be determined by a majority vote. It shall adopt rules for the transaction of its business and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record.

**4. Powers and duties.**

a. The planning commission may contract with planners, engineers, architects, attorneys and other consultants for such service as it may require. The expenditures of the planning commission shall be within the amounts appropriated for those purposes by the Village Council, which shall provide the funds, equipment, and accommodations necessary for the planning commission work.

b. The planning commission shall have all the powers and duties conferred on a planning commission by Act 285 of the Public Acts of 1931, as amended, all the powers and duties conferred on the village zoning commission by Act 110 of the Public Acts of 2006, as amended, and any other powers

and duties conferred on planning commissions by the other provisions of law. Any and all such powers and duties are hereby conferred and incorporated as if fully set forth herein.

c. Any amendments made to Act 285 of the Public Acts of 1931 and to Act 110 of the Public Acts of 2006, shall hereby be declared to automatically control the powers an duties of the planning commission.

**5. Existing zoning ordinances**. Any existing ordinances shall remain in full force and effect until otherwise amended, altered or repealed by the Village Council, except where such ordinances may be in conflict with Act 110 of the Public Acts of 2006.

**6. Savings clause**. The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section, or provision is declared void or unenforceable, for any reason, by a court of competent jurisdiction, the remaining portions of said Ordinance shall remain in full force.

**7. Effective date**. This Ordinance shall be published and shall take effect fifteen (15) days after adoption by the Council of the Village of Elberta. All ordinances or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Adopted: June 21, 2007

Posted: June 27, 2007

Sharyn K. Bower, Village Clerk

U10 25

**AN ORDINANCE TO AMEND THE VILLAGE CODE BY REPEALING SECTION 5040 OF THE CODE AND ADOPTING A NEW SECTION 25 OF THE CODE.**

VILLAGE OF ELBERTA PLANNING COMMISSION ORDINANCE
OF SEPTEMBER 18, 2008

WHEREAS, The People of Village of Elberta did establish the Village of Elberta Planning Commission Ordinance of July 19, 2007, and it is now desired to repeal the existing ordinance and adopt this ordinance to insure proper record of the action is created, NOW THEREFORE, THE PEOPLE OF THE VILLAGE OF ELBERTA DO ORDAIN THAT SAID ORDINANCE SHALL READ AS FOLLOWS:

## VILLAGE OF ELBERTA PLANNING COMMISSION ORDINANCE

AN ORDINANCE to create a Planning Commission for the Village of Elberta as authorized by P.A. 33 of 2008, as amended, being the Michigan Planning Enabling Act, M.C.L. 125.3801 *et. seq.* for the purpose of having planning and zoning in Village of Elberta, to create, organize, enumerate powers and duties, and to provide for the regulation and subdivision of land, coordinated and harmonious development of the Village of Elberta; and to function in cooperation with other constituted authorities of incorporated and unincorporated areas within the state where the Village of Elberta exists.

THE PEOPLE OF THE VILLAGE OF ELBERTA DO ORDAIN:

1. **Creation**: There shall be a Village of Elberta Planning Commission pursuant to P.A. 33 of 2008, as amended, being the Michigan Planning Enabling Act, M.C.L. 125.3801 *et. seq.*, hereinafter referred to as the Commission with the powers and duties as therein set forth and as hereinafter provided. This ordinance shall be officially known and described as the "Village of Elberta Planning Commission Ordinance."
2. **Membership**:
   - 2.1 The Commission shall consist of 5 members appointed by the Village of Elberta Council. To be qualified to be a member and remain a member of the Commission, the individual shall meet the following qualifications:
     - a. shall be a qualified elector of the Village of Elberta, except 1 non-qualified elector may be a member;
     - b. shall not be a declared candidate for any political office, except this condition shall not apply to the Council representative to the Commission;
     - c. provided there is sufficient budget funding, as determined by the Council, after an individual's first appointment and before reappointment, shall have attended training for Commission members, pursuant to section 4 of this Ordinance;
     - d. shall meet the conditions provided for each individual member in sections 2.2 - 2.6 of this Ordinance, except the geographical location of the individual's residency may be considered optional.
   - 2.2 Members shall be appointed for three-year terms. However, when first appointed a number of members shall be appointed to one-year, two-year, or three-year terms such that, as nearly as possible, the terms of no more than 2 of all Commission members will expire each year. If a vacancy occurs, the vacancy shall be filled for the unexpired term in the same manner as provided for an original appointment such

that, as nearly as possible, the terms of 1/3 of all commission members continue to expire each year.

2.3 Ex officio members shall include 1 member of the Village Council. The terms of office of ex officio members shall coincide with their elected terms of office on the Council.

2.4 The membership shall be representative of the important segments of the of community, such as the economic, governmental, educational, and social development of the Village of Elberta, in accordance with the major interests as they exist in the Village of Elberta, as follows:

a. Natural resources;
b. Recreation;
c. Development and Commerce;
d. Infrastructure (water, sewer, electric, gas); and
e. Government;

2.5 The membership shall also be representative of the entire geography of the Village of Elberta to the extent practicable, and as a secondary consideration to the representation of the major interests.

2.6 A member of the Council of the Village of Elberta shall not be chair of the Commission.

3. **Liaisons**: The Commission, in its Bylaws, may name "liaisons" to the Commission. The purpose of liaisons is to provide certain Vi llage of Elberta and quasi-Village of Elberta officials ability to participate in discussion with the Commission in addition to speaking in public participation, and nothing else. At a minimum liaisons shall include: Village of Elberta Zoning Administrator; Consultants employed by the Village; and Legal counsel retained by the Village to advise the Planning Commission.

4. **Training**: Appointed members of the Commission shall attend educational programs designed for training members of Michigan planning commissions if the adopted Village of Elberta budget for that fiscal year includes funds to pay for tuition, registration, and travel expenses for the training. Nothing in this paragraph shall deem a member who has not had training from finishing his term of office unless the member resigns or is removed by action of the Council. The member shall be ineligible for reappointment at the conclusion of the term of office if they did not attend training if funding for such training was available. The Commission shall include in its Bylaws what training programs qualify to meet this requirement.

5. **Members, Appointment and Terms**: In June of each year the Village of Elberta Clerk shall determine which members' terms of office expire and inform the Village Council of the expiring terms. Interested individuals may apply for membership by submitting an application to the Village Clerk or individuals may be nominated by members of the Council. In July of each year the Council shall consider the applications and nominations receive, and appoint members to the Commission by a majority vote for a three-year term of office which shall end July 30, at 9:00 a.m. of the respective year. However, unless otherwise provided by law, any Commission member with an expired term may continue in that capacity until such time as their replacement is appointed.

6. **Removal from Office**:

6.1 The Council may remove a member of the Commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. Failure to disclose a potential conflict of interest shall be considered malfeasance in office. Failure to repeatedly attend Commission meetings shall be considered nonfeasance in office.

6.2 The secretary of the Planning Commission shall report any member who has missed three regular meetings in a row to the Council.

7. **Membership; Vacancies**: The Council shall fill any vacancy in the membership of the Commission for the unexpired terms in the same manner as the initial appointment.

8. **Membership; Transition**: The transition from the previous Village of Elberta Planning Commission and the Commission established in this Ordinance shall be gradual and shall take place over the next three years. The Council shall continue to make annual appointments, appointing approximately 1/3 of the membership of the Commission as specified in this Ordinance, so that three years from the effective date of this Ordinance the membership, membership representation, and number of members have completed the transition to fully comply with this Ordinance. All other aspects of this Ordinance shall have immediate effect.
9. **Membership; Compensation**: Members shall serve without compensation.
10. **Meetings**:
    - 10.1 The Commission shall meet at least 4 times a year and a majority of the Commission shall constitute a quorum for the transaction of the ordinary business of said Commission and all questions which shall arise at their meetings shall be determined by a vote of the majority of the members of the Planning Commission.
    - 10.2 The affirmative vote of 2/3 of the total number of seats for members of the Commission, regardless if vacancies or absences exist or not, shall be necessary for the adoption, or recommendation for adoption, of any plan or amendment to a plan.
11. **Powers and Duties**:
    - 11.1 The Commission shall have their powers and duties as set forth in P.A. 33 of 2008, as amended, being the Michigan Planning Enabling Act, M.C.L. 125.3801 *et seq.*; and P.A. 110 of the Public Acts of 2006, as amended, being the Michigan Zoning Enabling Act, (M.C.L. 125.3101*et seq.*).
    - 11.2 The Commission shall have authority to apply for and receive grants from any government agency or the federal government and to receive gifts.
12. **Meetings; Records**: The Commission shall adopt Bylaws for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, which records shall be a public record.
13. **Approval, Ratification, and Reconfirmation**: All official actions taken by all Village of Elberta County Planning Commissions preceding the Commission created by this Ordinance are hereby approved, ratified and reconfirmed. Any project, review, or process taking place at the effective date of this Ordinance shall continue with the Commission created by this ordinance, subject to the requirements of this Ordinance, and shall be deemed a continuation of any previous Village of Elberta Planning Commission. This Ordinance shall be in full force and effect from and after its adoption and publication.
14. **Repeal**. Ordinance No. 5040 is hereby repealed.

Passed by the Council of the Village of Elberta on September 18, 2008, at its regular meeting.

Douglas Holmes

Doug Holmes, President.

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I hereby certify that the foregoing was duly adopted by the Village of Elberta of Village of Elberta, Benzie County, Michigan, at its regular meeting on September 18, 2008, that of 7 members of the Council, 5 were in attendance and 5 voted for the adoption of the Ordinance.

Sharyn Bowes

Sharyn Bower, Clerk
September 18, 2008

# YARD MAINTENANCE
# ORDINANCE NO. 26

**Yard Maintenance and Duty of Owner**

Every owner of property within the Village shall maintain his/her property and the Village right-of-way in a safe condition and free of debris and rubbish. Except for trees, gardens, and other landscaping, all growth shall be cut and maintained to a height of not more than eight (8) inches.

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

Adopted: 11-17-2011

Sharyn Bower, Village Clerk

Posted: 11-30-2011