

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF ESSEXVILLE BY ADDING  
A NEW CHAPTER ENTITLED "MEDICAL MARIHUANA DISPENSARY LICENSE"  
WHICH NEW CHAPTER SHALL BE DESIGNATED AS CHAPTER 5 OF TITLE VII  
(BUSINESS AND TRADES) OF SAID CODE.

Ordinance No. 2011-02:

The City of Essexville ordains.....

**SECTION 1:** In accordance with Section 1.102 of Chapter 1 of Title I of the Code of Ordinances of the City of Essexville, a new Chapter of the Code of Ordinances is hereby created, which shall be entitled "Medical Marihuana Dispensary License", shall be designated Chapter 5 of Title VII of the Code of Ordinances, and read as follows:

CHAPTER 5

MEDICAL MARIHUANA DISPENSARY LICENSE

Sec. 7.501. Purpose.

The purpose of this chapter is to establish standards and procedures for the review and input of the City of Essexville on the issuance, renewal and/or revocation of medical marihuana licenses for medical marihuana dispensaries in order to:

- (1) Serve and protect the health, safety and welfare of the general public;
- (2) Establish a set of rules and regulations which are fair and equitable for those interested in establishing medical marihuana dispensaries.
- (3) To provide reasonable regulation pursuant to the City's general police power granted to cities by the Michigan Constitution of 1963 and the Home Rule City Act, MCL §117.1 et.seq., as amended.

Sec. 7.502. Definitions.

All words and terms used in this chapter shall have the same meaning as those defined in Section 2.8 of the Essexville Zoning Ordinance and include *Drug paraphernalia, Greenhouse, Marihuana , Marijuana, Cannabis, Medical Use of Marihuana, Primary Caregiver,, Qualifying Patient, and Medical Marihuana Dispensary.* Any term defined in the Michigan Medical Marihuana Act, Initiated law 1 of 2008, MCL

§333.26243a *et seq.* but not defined herein shall have the definition as stated in said Act.

Sec. 7-503. Adoption of state rules and regulations.

All activities related to medical marihuana shall be in compliance with the General rules of the Michigan Department of Community Health and the Michigan Medical Marihuana Act, Initiated law 1 of 2008, MCL §333.26243a *et seq* (hereafter called the Michigan Medical Marihuana Act).

Sec. 7.504. License required.

(1) No person shall own or operate a medical marihuana dispensary in the City without first applying for and receiving a license from the city clerk's office.

(2) Any medical marihuana dispensary opened prior to the adoption of this ordinance must file for a license within thirty (30) days of the adoption of this ordinance.

(3) All activities of licensed medical marihuana primary caregivers as defined by the Michigan Marihuana Act shall be considered to be operating a medical marihuana dispensary, which shall require a license to operate with the city.

(4) Licenses shall only be issued to operate medical marihuana dispensaries at the specific locations allowed by the city zoning ordinance and shall not be issued for use as a home occupation in a residential zoning district or any other area of the city.

(5) Licenses are non-transferrable and shall only apply to the person listed on the license at the address listed on the application.

(6) Medical marihuana dispensary licenses shall be valid for a period of one year, from January 1 to December 31 of each year.

(7) A license shall be issued or renewed upon payment of the required fee, the submission of a completed application in compliance with the provisions of this chapter, and compliance with all provisions and requirements of this chapter and the city zoning ordinance. Application to renew a license to operate a medical marihuana dispensary shall be filed at least 30 days prior to the date of expiration. Such renewal shall be as required in the time periods stated in paragraph (4) above and shall be accompanied by the required fee.

(8) Every applicant shall pay a non-refundable fee at the time of the application for an initial or renewal license, which fee shall be set by city council resolution.

(9) The license requirements set forth in this chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law.

(10) The issuance of any license pursuant to this chapter does not create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the production, distribution or possession of marihuana.

Sec. 7.505. Application.

- (1) An applicant for a license to maintain, operate or conduct a medical marihuana dispensary must be a person who possesses a registry identification card issued as a primary caregiver as defined by the Michigan Medical Marihuana Act and may not be a corporation, partnership, or other legal entity not an individual person as required by said Act.
- (2) Application for a Medical Marihuana Dispensary. Every applicant for a license to maintain, operate or conduct a medical marihuana dispensary shall file an application under oath with the city clerk's office upon a form provided by the city, which shall fulfill all of the requirements indicated on the form, including but not limited to:
  - (a) The name and address of applicant including:
    - i. Name, age and address of the applicant including proof that the applicant and proposed employees are at least 21 years of age,
    - ii. Photo identification of the applicant and/or operator's driver's license,
    - iii. Business occupation or employment of the applicant for the three years immediately preceding the date of the application,
    - iv. The medical marihuana dispensary history of the applicant; whether such person has had a business license revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such action of suspension or revocation,
    - v. Proof that the applicant is a primary caregiver in possession of a registry identification card issued under the authority of the Michigan Medical Marihuana Act;
  - (b) The location and mailing address and all telephone numbers where the business is to be conducted, and the name and address of the owner, if different from the holder of the license, and written evidence of the applicant's right to possession of the premises;
  - (c) An area map, drawn to scale, indicating within a radius of five hundred feet (500') and one thousand feet (1,000') from the boundaries of the proposed dispensary, the proximity of the site to any school or library, existing dispensary,

nursery school, or child care center or possess a clearance from the zoning administrator verifying the proposed use of the location at which the license will be utilized is in compliance with the zoning ordinance;

(d) A statement signed by the applicant that he or she has read and understands the city zoning ordinance requirements relating to medical marihuana dispensaries, will not violate any of the laws of the State of Michigan or the ordinances of the City of Essexville in conducting the business in which the license will be used, and that any false statements in the application or a violation on the premises may be cause for objecting to renewal of the license, or for requesting revocation of the license;

(e) A description of the security plan for the facility, including, but not limited to, any lighting alarms, barriers, recording/monitoring devices, and /or security guard arrangements proposed for the dispensary and premises;

(f) Proof of insurance for fire damage in the amount of the value of the premises and liability insurance with minimum limits of \$500,000.00;

(g) A description of the process for tracking medical marihuana quantities and inventory controls including medical marihuana products received from outside sources, as well as caregivers/patients on the premises;

(h) A description of the products and services to be provided by the Dispensary, including retail sales of food and/or beverages, if any, and any related accommodations or facilities;

(i) A floor plan, drawn to scale showing the layout of the dispensary and the principle uses of the floor area depicted therein, including a detailed interior depiction of where any services other than the dispensing of medical marihuana and proposes to occur on the premises;

(j) Detailed description of all marihuana storage facilities;

(k) Description of the process for tracking medical marihuana quantities and inventory controls, including on-site cultivation and processing; and

(l) Detailed description of all medical marihuana storage facilities and equipment including enclosed, locked facilities, if any, as may be required by the Act.

Sec. 7.506. Approval of application.

The City Manager or designee may issue a license for a medical marihuana dispensary if inspections for safety, zoning compliance, criminal history background checks, and all other information available to the city verify that the applicant has submitted a full and complete application, paid the appropriate fee, and has made

improvements to the location consistent with the application and is prepared to operate the business in compliance with this code, the city zoning ordinance, and any other applicable law, rule or regulation. The City Manager or designee will deny any application that does not meet the requirements of this chapter or any other applicable law, rule or regulation, or that contains any false or incomplete information.

Sec. 7.507. Conditions necessary.

- (1) No license, or renewal of a license, to conduct a medical marihuana dispensary shall be issued unless the city, if it is deemed necessary, confirms by inspection of a premise before the issuance of a license or during its term that the proposed medical marihuana facility complies with all of the following minimum requirements:
  - (a) Conforms to all provisions of the city building, fire, electrical and health codes;
  - (b) All provisions of the Essexville zoning ordinance for medical marihuana dispensaries have been fulfilled;
  - (c) The applicant does not have any felony convictions;
  - (d) In the case of renewals, the existing facility shall not have experienced an excessive amount of criminal activity on the premises or related to the business of 3 or more calls in any 30 day period;
- (2) Any violation of this chapter, the city zoning ordinance, or of the laws of this State or any other State relating to the operation of a medical marihuana dispensary may be considered sufficient grounds for the denial of a license or the suspension or revocation of a license issued pursuant to the provisions of this chapter. These grounds for denial, suspension or revocation of a license provided for in this chapter shall be in addition to other grounds for denial, suspension or revocation of licenses or permits provided for in this chapter.

Sec. 7.508. Non-Renewal or revocation.

The City Manager may choose to not renew or revoke a license based on any of the following:

- (1) A failure to meet the conditions or maintain compliance with the standards established by this division in reference to applications for a new license or the renewal of an existing license; or
- (2) One or more violations of any city ordinance on the premises; or

(3) Maintenance of a nuisance on the premises; or

(4) A demonstrated history of excessive calls for public safety (police, fire, and EMS) services originating from the premises, being three or more calls in any 30 day period, or

(5) Any of the conditions of Section 7.507 (2) above are found to exist or have occurred.

Sec. 7.509. Appeal Process.

If an applicant or licensee chooses to appeal denial of a license or revocation of a license, the applicant or licensee can enter in a written appeal to the clerk's office, and the matter will go before the city council for a decision at its next regularly scheduled meeting more than seven (7) days after the written appeal is filed with the city clerk.

Sec. 7.510. Violations and penalties.

Whosoever violates any of the provisions of the Chapter shall be guilty of a misdemeanor and subject to a penalty of up to five hundred dollars (\$500.00) fine and/or ninety (90) days in jail. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

**SECTION 2: Severability.** If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this Ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance.

**SECTION 3: Conflicts with Other Laws or Regulations.** If any provision of this Chapter differs from a provisions of any other applicable law, ordinance, rule or regulation, both the provision of this Chapter and the differing provision shall apply if possible. If the two (2) provisions are in conflict, then the provision establishing the higher or stricter standard shall apply.

Authorizing signature:

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Russell R. Tanner  
Mayor, City of Essexville

Attested by:

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Sarah J. Wilcox  
Essexville City Clerk

The foregoing Ordinance was offered by Councilperson Rehmus and supported by Councilperson Link.

Ayes: Rehmus, Link, Gradowski, Lutz, Mantei, Tanner

Nays: None

Absent: Connelly

Adopted: May 10, 2011

First Reading: April 12, 2011

Second Reading: May 10, 2011

Published: May 12, 2011

Effective Date: May 25, 2011

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF  
ESSEXVILLE TO ADD PROVISIONS TO SEVERAL SECTIONS AND SUBSECTIONS  
TO PROVIDE FOR MARIHUANA MEDICAL DISPENSARIES AS MAY BE  
AUTHORIZED BY MICHIGAN LAW AND STATUTES

Ordinance no. 2011-01

The City of Essexville ordains . . . . .

**SECTION 1:** The Zoning Ordinance of the City of Essexville is hereby amended to include the following provisions and revisions as are set forth below:

The following definitions shall be added to Section 2.8 (entitled “Definitions Pertaining to Building Use”):

Drug paraphernalia: All equipment, products and materials of any kind, which is used, intended for use, or designed for use in planting, propagation, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance as defined in Section 7104 of the Michigan Public Health Code (Act No. 368 of the MI Public Acts of 1978, as amended), in violation of the laws of the State of Michigan.

Greenhouse: A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants.

Marihuana, also known as Marijuana, also known as Cannabis: The term shall have the meaning given to it in Section 7601 of the Michigan public health code, 1978 PAS 368, MCL 333.7106, as referred to in section 3(d) of the Michigan Medical Marihuana Act, PA 2008, Initiated Law, MCL 333.26423(d). Any other term pertaining to marihuana used in this Chapter and not otherwise defined shall have the meaning given to it in the Michigan Medical Marihuana Act and/or the General Rules of the Michigan Department of Community Health issued in connection with that Act.

Medical use of Marihuana: The acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition, as defined under the Medical Marihuana Act, PA 2008, initiated Law, MCL 333.26421 *et seq.*

Primary Caregiver: Means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs and who possesses a medical marihuana registry identification card issued by an agency of the State of Michigan under the authority of the Michigan Medical Marihuana Act, PA 2008, initiated Law, MCL 333.26421 *et seq*

Qualifying Patient: Means a person who has been diagnosed by a physician as having a debilitating medical condition and who possesses a medical marihuana registry identification card issued by an agency of the State of Michigan under the authority of the Michigan Medical Marihuana Act, PA 2008, initiated Law, MCL 333.26421 *et seq*

A new subpart F. to the definition of "Home Occupation" as found in Section 2.8 is hereby enacted, which shall read as follows:

"F. Activities of a primary caregiver of medical marihuana as defined in this Section shall not be considered within the definition of a home occupation and shall be prohibited in all areas of the city except when conducted as a medical marihuana dispensary within the provisions and requirements of ARTICLE 11A.4 B. of this ordinance and subject to licensing as may be required by the general ordinances of the city."

ARTICLE 11A (BP – BUSINESS PARK) is hereby amended to add a new Part B. to Section 11A.4 (entitled "Uses Permitted by Special Land Use Permit") that shall read as follows:

"B. Medical Marihuana Dispensaries, if allowed by Michigan law.

The following conditions shall apply:

1. Primary caregivers and/or qualified patients at the facility must be registered by the Michigan Department of Community Health (MDCH) to assist qualified patients with the medical use of marihuana in accordance with the Michigan Medical Marihuana Act, as amended. Such ability to operate shall be limited to those who are a registered primary caregiver, as defined by and in compliance with the General Rules of the Michigan Department of Community Health, Michigan Admin Code, R 333.101 through R 333.133 (the General Rules), the Michigan Medical Marihuana Act, PA 2008, Initiated Law, MCL 333.26421 *et seq* (the "Act") and the requirements of this subpart. Nothing in this subpart, or in any companion regulatory provision, adopted in any other provision of the city zoning or general ordinances

is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution for growing, sale, consumption, use, distribution, or possession of marihuana not in strict compliance with that Act and the General Rules. Also, since Federal law is not affected by that Act or the General Rules, nothing in this subpart, or in any companion regulatory provision, adopted in any other provision of the city zoning or general ordinances is intended to grant, nor shall they be construed as granting, immunity from criminal prosecution under Federal law. The Act does not protect users, caregivers or owners of the properties on which the medical use of marihuana is occurring under the Federal Controlled Substances Act.

2. The facility shall not be allowed within 500 feet of a nursery school, child care center, another medical marihuana facility or medical marihuana grow operation, or an Article 7 single-family residential districts, and outside of a one-thousand (1,000) foot radius from any school, or library, as defined by the Michigan Public Health Code, 1978 PA 368, as amended MCL 333.7410, to insure community compliance with Federal "Drug-Free School Zone" requirements.
3. Any person operating a medical marihuana facility shall first obtain a license from the city prior to doing so by filing an application form developed by the City and which may require a fee as determined by the City Council. Such application shall document that the medical marihuana dispensary shall be conducted in accordance with the terms of this Part B of Section 11A.4.
4. The facility shall be available for inspection, during business hours, by the City Manager or the City Manager's designee to confirm the facility is operating in accordance with all applicable laws, including state law and city ordinances.
5. The grow operation shall open no earlier than 8:00 a.m. and close no later than 8:00 p.m., except staff may be at the operation necessary to attend to the grow operation.
6. The facility shall not be permitted to have drive-through facilities.
7. Smoking or consumption of medical marihuana shall not be allowed on the site of the facility.
8. All medical marihuana shall be grown and contained within a main building in an enclosed, locked facility inaccessible on all sides and equipped with locks or other security devices that permit access only by the registered primary caregiver or qualifying patient, as reviewed and approved by the Building

Official and the City of Essexville Department of Public Safety. A greenhouse as defined in this ordinance shall not be used to grow or store medical marihuana even if attached to or considered part of a main building. No medical marihuana shall be grown out of doors whether planted in the ground or in containers temporarily placed upon or in the ground or any other surface.

9. A security plan and floor plan shall be submitted with applications for a facility as required by Section 17.2. The facility shall identify the number of plants, chemical storage, space and other critical aspects of the layout. The security and floor plan shall be a confidential document by the City exempt from disclosure under the Freedom of Information Act.
10. A waste disposal plan shall be included with all applications for a facility as required by Section 17.2 detailing plans for chemical disposal and plans for plant waste disposal.
11. The facility shall be in compliance with City's Fire Protection Code and shall be subject to inspection and approval by the city fire inspector.
12. The grow operation shall receive OSHA/MIOSHA certifications regarding safety of environment for facility's caregivers.
13. The grow operation shall obtain MDEQ and the city's waste water disposal system approval regarding discharge of growing by-products into the city sewer system.
14. The following shall be prohibited:
  - a. Storage of toxic, flammable or hazardous materials;
  - b. Discharge of any toxic, flammable or hazardous materials into the city sewer system;
  - c. Residential use of the main building or structure;
  - d. Outdoor storage;
  - e. Persons under the age of eighteen (18) years within the facility at any time with the exception of those in the presence of a qualifying patient or their primary caregiver;

- f. Any persons, including patients or caregivers, who are not the licensee or employees within the facility before or after the allowed hours of operation;
  - g. Sales of drug paraphernalia;
  - h. The warehousing, growing, or storage of quantities of marihuana in excess of those amounts allowed by state law per qualifying patient for which the licensee of the facility is currently the caretaker.
15. Medical marihuana dispensaries shall not grow more than sixty (60) plants at any one time.
16. The medical use of marihuana shall comply at all times and in all circumstances with the Michigan Medical Marihuana Act and the General Rules of the Michigan Department of Community Health, as they may be amended from time to time.
17. The dispensary shall be operated in compliance with regulations the City may issue regarding security measures, record keeping, proper identification for patients, delivery of medical marihuana by employees of the medical marihuana dispensary to patients who would otherwise not be able to obtain it from a dispensary by reason of physical or mental disability, storage of marihuana on the site, on-site cultivation and the maximum amount that may be dispensed in any single transaction. Such regulations may be modified from time to time as the City deems appropriate.”

ARTICLE 17 (SPECIAL LAND USE PERMIT REQUIREMENTS AND STANDARDS) is hereby amended to add a new Part X. to Section 17.1 (entitled “Intent and Purposes”) that shall read as follows:

“X. Medical Marihuana Dispensaries (17.31)”

ARTICLE 17 (SPECIAL LAND USE PERMIT REQUIREMENTS AND STANDARDS) is hereby amended to add a new Section 17.27 (entitled “Intent and Purposes”) that shall read as follows:

“Section 17.27. Medical Marihuana Dispensaries.

- A. See Section 11A.4.
- B. See requirements of the Article 17, Section 17.1, 17.2, and 17.3.”

**SECTION 2: Severability.** If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance.

**SECTION 3: Conflicts with Other Laws or Regulations.** If any provision of this Chapter differs from a provisions of any other applicable law, ordinance, rule or regulation, both the provision of this Chapter and the differing provision shall apply if possible. If the two (2) provisions are in conflict, then the provision establishing the higher or stricter standard shall apply.

Authorizing signature:

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Russell R. Tanner  
Mayor, City of Essexville

Attested by:

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Sarah J. Wilcox  
Essexville City Clerk

The foregoing Ordinance was offered by Councilperson Rehmus and supported by Councilperson Link.

Ayes: Rehmus, Link, Gradowski, Lutz, Mantei, Tanner

Nays: None

Absent: Connelly

Adopted: May 10, 2011

First Reading: April 12, 2011

Second Reading: May 10, 2011  
Published: May 12, 2011  
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AN ORDINANCE TO AMEND THE CODE OF THE CITY OF ESSEXVILLE BY ADDING A NEW CHAPTER ENTITLED "REGISTRATION OF RENTAL DWELLING UNITS AND PROPERTIES" WHICH NEW CHAPTER SHALL BE DESIGNATED AS CHAPTER 6 OF TITLE VII (BUSINESS AND TRADES) OF SAID CODE.

Ordinance No. 2011-03:

The City of Essexville ordains.....

**SECTION 1:** In accordance with Section 1.102 of Chapter 1 of Title I of the Code of Ordinances of the City of Essexville, a new Chapter of the Code of Ordinances is hereby created, which shall be entitled "REGISTRATION OF RENTAL DWELLING UNITS AND PROPERTIES", shall be designated Chapter 6 of Title VII of the Code of Ordinances, and read as follows:

CHAPTER 6

REGISTRATION OF RENTAL DWELLING UNITS AND PROPERTIES

Sec. 6.601. Purpose. The purpose of this chapter is to establish standards and procedures for the registration of rental dwelling units within the city for the following purposes:

- (1) To serve and protect the health, safety and welfare of the general public;
- (2) To ensure that rental unit owners, legal agents, and tenants are informed of and adhere to all applicable code provisions governing the use and maintenance of rental units;
- (3) To protect a tenant's right to safe and habitable housing;
- (4) To establish standards for obtaining rental permits, inspection of rental units, and the issuance of certificates of compliance of rental units; and
- (5) To reduce crime by promoting, conserving, and preserving healthy neighborhoods through the maintenance of housing standards and the reduction of nuisances.

Sec. 6.602. Registry of owners and premises.

- (1) A registry of owners and premises of dwelling units as provided in subsections (2) shall be maintained in the office of the city clerk.
- (2) All legal and equitable owners of a dwelling unit, rooming unit, rooming house, private dwelling, two-family dwelling or multiple dwelling containing one or more units offered to let, rent, or hire shall register their names, places of residence, dates of birth, drivers license numbers or state identification numbers, and the location of the premises regulated by this article with the building department. If the registering entity is a partnership, limited liability company or corporation the registration shall include all partners, members, or officers, respectively. Registration shall be completed prior to occupancy. The provisions of this section shall not apply to a hotel or motel unless the hotel or motel offers units to let or hire on a weekly or more lengthy basis.
- (3) If the premises are managed or operated by an agent, the agents name and place of business shall be placed with the name of the owner in the register. Any owner who does not reside or have a usual place of business within a 50-mile radius of the limits of the city shall be required to designate an agent who has a place of residence or place of business within a 50-mile radius of the limits of the city.
  - (a) Registration is not transferable and every transfer of legal or equitable ownership of any premises regulated by this article shall require registration by the new owner within 30 days of such transfer of ownership.
  - (b) All fees charged for registrations as required in (2) above and shall be approved by the city council and on file with the city clerk.

Sec. 6.603. Inspection, right of entry, notice of correction, fee.

- (1) A structure covered by this code which is damaged by fire, windstorm, structure failure, shifting of soil or land there under, or any other catastrophe, or is reported to be otherwise in violation of the code, shall be inspected within the shortest possible time after such occurrence.
- (2) Inspections shall also be conducted upon the occurrence of any of the following events:
  - (a) If a complaint is received, the complaint will be inspected within a reasonable time after receipt of the complaint by the code official.

- (b) The code official has reasonable cause to believe that building code violations exist at the dwelling place or upon the real property of the rented property.
  - (c) A follow-up inspection is required to insure that previous violations have been corrected and compliance has occurred.
  - (d) An inspection may be performed by the code official, or by a team of code officials.
- (3) Inspections shall be subject to all required fees approved by the city commission in compliance with the Code of Ordinances.
  - (4) If the cost of performing any inspection referred to in this section remains uncollected or unpaid for a period of 90 days after the bill for the same has been rendered, the cost shall constitute a special assessment against and a lien upon the property and shall be collected as a special assessment as provided by the Code of Ordinances.

Sec. 6.604. Warrant to inspect, preparation, issuance.

- (1) Upon refusal of the owner or occupant to permit entry to perform an inspection as required by this article, the code official shall obtain a warrant from the court of competent jurisdiction. The city attorney shall prepare the warrant, stating the address of the building to be inspected, the nature of inspection as defined in this article and other applicable codes or laws, and the reason for the inspection.
- (2) The court shall issue the warrant when it finds the warrant is in proper form and in accordance with this section.

Sec. 6.605. Order to vacate.

Where a notice of violation and order to comply has been issued and upon re-inspection at the end of the time ordered for compliance it is found that any violation has not been corrected, the code official shall be permitted to order the structure vacated in accordance with the following procedures:

- (1) The code official shall order the structure vacated within a reasonable time not to exceed 60 days.
- (2) Vacated structures shall have all outer doors, windows or other openings securely boarded up by the owner, his agent or the city at the owner's expense so as to prevent entry.
- (3) The structure shall be posted: "DO NOT ENTER, UNSAFE TO OCCUPY."

- (4) Any notice or placard posted by the code official shall not be removed, obstructed or mutilated except as approved by the code official.
- (5) Such structures shall not be occupied until all violations have been corrected and written approval has been obtained from the code official.

Sec. 6.606. Abatement of violations.

- (1) The code official shall be permitted to bring an action in the court of jurisdiction to abate or enjoin a violation of an order contained in a notice of violation.
- (2) The code official shall be permitted to seek a preliminary injunction or other temporary relief appropriate to remove a danger when any uncorrected violation creates an imminent danger to the health and safety of an occupant of a structure.
- (3) The court, having obtained jurisdiction, shall make such orders and determinations as are consistent with the objectives of this code. The court may enjoin the maintenance of any unsafe, unhealthy or unsanitary condition, or any violation of this article and may order repairs or corrections necessary to abate the conditions. The court may authorize the code official to make repairs at the expense of the owner.
- (4) When the expense of repairs is not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof. The order may establish the priority of the lien and may provide that it shall be a lien senior to all other liens except a mortgage of record having a recording date prior to all other liens of record. The order may also specify the time and manner for foreclosure on the lien if not satisfied. A true copy of the order shall be filed in the office of the register of deeds for the county.

Sec. 6.607. Facilities not to be shut off. No owner, operator or occupant shall cause any service, facility, equipment or utility which is required under this article or the code adopted in this article to be removed from or shut off from or discontinued for any occupied dwelling let or occupied by him except for such temporary interruption as may be necessary while actual repairs or alterations are being made.

Sec. 6.608. Responsibilities of occupants. Every occupant shall cooperate with and assist the owner so as to meet the requirements of this article and the code adopted in this article.

Sec. 6.609. Violations and penalties. Whosoever violates any of the provisions of the Chapter shall be guilty of a misdemeanor and subject to a penalty of up to five hundred dollars (\$500.00) fine and/or ninety (90) days in jail. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

**SECTION 2:** If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this Ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance.

**SECTION 3:** If any provision of this Chapter differs from a provisions of any other applicable law, ordinance, rule or regulation, both the provision of this Chapter and the differing provision shall apply if possible. If the two (2) provisions are in conflict, then the provision establishing the higher or stricter standard shall apply.

Authorizing signature:

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Russell R. Tanner  
Mayor, City of Essexville

Attested by:

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Sarah J. Wilcox  
Essexville City Clerk

The foregoing Ordinance was offered by Councilperson Rehmus and supported by Councilperson Link.

Ayes: Rehmus, Link, Connelly, Gradowski, Lutz, Mantei, Tanner

Nays: None

Absent: Connelly

Adopted: May 10, 2011

First Reading: April 12, 2011

Second Reading: May 10, 2011

Published: May 12, 2011

Effective Date: May 25, 2011

AN ORDINANCE TO AMEND SECTIONS 4.301 AND 4.302 AND BY ADDING NEW SECTIONS WHICH NEW SECTIONS SHALL BE DESIGNATED AS SECTIONS 4.303 AND 4.304 OF CHAPTER 3 OF TITLE IV OF THE CODE OF THE CITY OF ESSEXVILLE

Ordinance No. 2011-04

The City of Essexville ordains.....

**SECTION 1:** In accordance with Section 1.102 of Chapter 1 of Title I of the Code of Ordinances of the City of Essexville, Chapter 3 of Title IV of the Code of Ordinances is hereby amended to read as follows:

**TITLE IV: STREETS AND SIDEWALKS**

CHAPTER 3

SNOW REMOVAL

Sec. 4.301. Ice and Snow-Clearing of sidewalks by owner or occupant of adjoining property. No person shall allow the accumulation of snow or ice on the sidewalk adjoining any premises owned or occupied by him for a greater length of time than twenty-four (24) hours after the cessation of any storm of snow or sleet. When ice is formed on any sidewalk, it shall be the duty of the owner or occupant of property adjoining thereto to remove the same from the entire width of the sidewalk as soon as it has formed, and to cause a sufficient quantity of salt, sawdust, sand or ashes to be strewn on the sidewalk in such a manner as will render it safe for persons walking thereon.

Sec. 4.302. Ice and Snow-Depositing on Public Property. No person shall remove any snow or ice from any private property, including any private driveway, road, or parking area, and deposit the same in or upon any public property, including streets, sidewalks, the out lawn adjoining private property owned by a person other than the person depositing the ice and snow, crosswalks, ditches and gutters

Sec. 4.303. Penalties and actions upon failure to remove ice or snow. The failure of the owner or occupant of real property to remove ice or snow within 24 hours as required herein shall cause them to be guilty of a misdemeanor as stated in paragraph (1) below and the City shall have the right to take the actions stated thereafter:

- (1) Whosoever violates any of the provisions of this Chapter shall be guilty of a misdemeanor and subject to a penalty of up to five hundred dollars (\$500.00) fine and/or ninety (90) days in jail. A separate violation shall be deemed to have been committed each day during which a violation occurs and continues to occur.

(2) In addition to the penalties herein, upon 24 hours notice by the City to property owner or occupant of its right to do so as stated in Sec. 4.304 below, the City may cause the snow or ice upon the sidewalks adjoining the property to be cleared and to bill the property owners or occupants for the actual cost of its doing so plus the administrative fee established by the city council.

(3) A bill stating the cost of the snow and ice removal shall be sent to the owner of the property by first class mail to the address stated on the records of the City treasurer to which tax statements are regularly sent.

(4) If the bill for such services are not paid within sixty (60) days of mailing, the amounts required to be paid therein shall become a tax lien on the property in the manner and under the procedures as allowed and required by the City ordinances as a special assessment or tax lien otherwise and the statutes of the State of Michigan for the enforcement of tax liens.

Sec. 4.304. Notice of intent to remove ice and snow. 24 hours prior to the City's removal of ice and snow from the sidewalks abutting a property, at least one of the property owners or occupants of the property shall be provided with a copy of this ordinance. Such notice may be delivered by personal service by any city public safety officer, employee, or official, or by first class mail with delivery presumed on the next day mail is delivered after posting with the U.S. Postal Service. This requirement of notice prior to the City's removal of ice and snow shall not be required before a misdemeanor shall be deemed to have been occurred under the provisions of sec. 4.303 (1) above.

**SECTION 2: Severability.** If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this Ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance.

**SECTION 3: Conflicts with Other Laws or Regulations.** If any provision of this Chapter differs from a provisions of any other applicable law, ordinance, rule or regulation, both the provision of this Chapter and the differing provision shall apply if possible. If the two (2) provisions are in conflict, then the provision establishing the higher or stricter standard shall apply.

Authorizing signature:

\_\_\_\_\_  
Russell R. Tanner  
Mayor, City of Essexville

Attested by:

\_\_\_\_\_  
Sarah J. Wilcox  
Essexville City Clerk

The foregoing Ordinance was offered by Councilperson Link and supported by Councilperson Lutz.

Ayes: Link, Lutz, Connelly, Gradowski, Mantei, Rehmus, Tanner

Nays: None

Adopted: May 10, 2011

First Reading: April 12, 2011

Second Reading: May 10, 2011

Published: May 12, 2011

Effective Date: May 25, 2011

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF ESSEXVILLE BY ADDING A NEW CHAPTER ENTITLED "SPECIAL ASSESSMENTS" WHICH NEW CHAPTER SHALL BE DESIGNATED AS CHAPTER 4 OF TITLE I: (ADMINISTRATION) OF SAID CODE.

Ordinance No. 2011-05

The City of Essexville ordains.....

**SECTION 1:** In accordance with Section 1.102 of Chapter 1 of Title I of the Code of Ordinances of the City of Essexville, a new Chapter of the Code of Ordinances is hereby created, which shall be entitled "SPECIAL ASSESSMENTS", shall be designated Chapter 4 of Title I of the Code of Ordinances, and read as follows:

CHAPTER 4

SPECIAL ASSESSMENTS

Sec. 1.401. Definitions. The following words, terms and phrases when used in this chapter shall have the meanings ascribed to them within it except where the context clearly indicates a different meaning:

(1) Cost, when referring to the cost of any public improvement, means the cost of services, plans, condemnation, spreading of rolls, notices, advertising, financing, engineering fees, construction and legal fees and all other costs incident to the making of such improvement, the special assessments therefore and the financing thereof.

(2) Council shall mean the Essexville city council.

(3) Public improvement means any improvements upon public property which results in a special or ordinary benefit to the real property, the property abutting it, or in the vicinity of such improvement.

(4) Owner of privately owned taxed parcels of real property within a special assessment district, for the purposes of Sec. 1.414 (4) of this Chapter, shall mean one owner even if there is more than one person titled to the property. If there are more than one titled owners to a property and one person titled as an owner objects in writing to the assessment, all owners of the property shall be deemed to have objected for the purposes of said Section. An owner of more than one taxed parcel in the district proposed for a special assessment who objects in writing to the assessment shall have

the each separately taxed parcel owned count as a separate vote in determining a 50% total.

Sec. 1.402. Special Assessment. The entire cost and expense or any part thereof of all public improvements as defined in this chapter or any other chapter or provision of the City Charter, may be defrayed by special assessment upon the lands specially benefited by the improvement in the manner provided in this chapter.

Sec. 1.403. Methods of Creation of an Assessment. A special assessment subject to this chapter may be created by any of the follows causes:

(1) By Council Resolution. Proceedings for making public improvements and defraying the entire cost or any part thereof by creating a special assessment district may be initiated by resolution of the council. For the purpose of determining whether a sufficient number of property owners are interested in a public improvement, the council may require petitions from the owners of property in the proposed special assessment district. Whenever the council shall determine to make any public improvement and defray the entire cost and expense thereof or any part thereof by special assessment, the council shall by resolution direct the city manager to make an investigation of the proposed public improvement and report his findings to the council. The report shall include an analysis of the following:

- (a) The estimated cost of the proposed public improvement;
- (b) plans and specifications for the public improvement;
- (c) the portion of the cost to be borne by the special assessment district and the portion, if any, to be borne by the city at large;
- (d) the extent of the improvement and boundaries of the district; and
- (e) any other facts or recommendations which will aid the council in determining whether the improvement shall be made and how the improvement shall be financed.

(2) By Ordinance. A special assessment against a specific property may be created by an ordinance that requires property to be maintained to a certain level and if not so maintained allows for the city to improve the property to the required level. Prior to taking such action, the city shall give notice as required by the ordinance of the compliance level required and if not so created or maintained by the date required after such notice, the city may make the improvements and assess the cost thereof against the property benefited.

(3) By Charter. Any special assessment allowed or required by the City Charter may be assessed and collected by the procedures stated in this chapter.

(4) By State Statute. Any special assessment created by Michigan state statute shall be collected by the procedures stated in this chapter unless the procedural requirements for creation and collection of the state statute for a special assessment shall be different or conflicting. In such case, the requirements of the state statute shall be controlling and followed if required by law.

(5) Any Other Special Assessment Existing By Law. Any other special assessment allowed by law shall be collected by the procedures and requirements of this chapter unless superior law or authority requires otherwise.

Sec. 1.404. Procedure for Assessment if to be Created by Council Resolution. If a special assessment is initiated by council resolution, the following procedure shall be followed to enact the special assessment:

(1) Expenditures Limited before Approval. No control or expenditure, except for the necessary procedures of the council and for the preparing of necessary profiles, plans, specifications and estimates of cost, shall be made for any public improvement, the cost of which is to be paid by special assessment upon the property especially benefited thereby, until the council has passed a resolution determining to proceed with such public improvement.

(2) Procedure to Approve. Upon receipt of the report of the city manager, if the council shall determine to proceed with the improvement, it shall by resolution approve the report and the plans and specifications and the estimate of cost for the public improvement as stated. In addition, by such resolution, the council shall determine to proceed with the public improvement, determine the necessity and the nature thereof, designate the limits of the special assessment district to be affected, describe the lands to be assessed, determine the part or proportion of the cost of the public improvement to be paid by the lands specially benefited thereby and the part or proportion, if any, to be paid by the city at large for benefit to the city at large, determine the number of installments in which the special assessment may be paid, the rate of interest, not exceeding ten percent per annum, to be charged if the payment of any balance is to be deferred. The terms of the resolution shall direct the city assessor to make a special assessment roll of the part or the proportion of the cost to be borne by the lands specifically benefited according to the benefits received and report the special assessment roll to the council.

(3) Special Assessment Roll and Notice of Meeting to Review. When the special assessment roll shall have been reported to the council, it shall order the special assessment roll filed in the office of the city clerk for public examination along with the report of the city manager required to be made pursuant to section 1.403 (1) and shall fix a date, time and place when the council shall meet and review such special assessment roll.

(4) Petition Objecting to Special Assessment. If at or prior to final confirmation of any special assessment, more than 50 percent of the owners of privately owned

taxed parcels of real property within a special assessment district, as defined in Sec. 1.401 (4) of this Chapter, to be assessed for improvements shall object in writing to the proposed improvement, it shall not be made by the proceedings authorized in this section without a five-sevenths vote of the members of the council.

Sec. 1.405. Procedure for Assessment if to be Created by City Ordinance, City Charter, State Statute, or Otherwise Allowed by Law. If a special assessment created by any other cause other than initiation by the council, the council shall confirm the creation of those special assessments at a public hearing to be held annually at the council's May or October monthly meetings wherein property owners of property proposed to be specially assessed may protest such assessments as allowed by law.

Sec. 1.406. Notice of Hearings for All Special Assessments. Notice of all hearings contemplating creation of special assessments shall be given as follows:

(1) Notice by Publication. The city clerk shall give notice of the meeting of the council to review such special assessment roll by publication at least once in a newspaper circulated in the city at least ten days prior to the time of such meeting.

(2) Notice by Mail. Notice of hearings and special assessment proceedings shall also be given to each owner of, or party in interest in, property to be assessed whose name appears upon the last local tax assessment records, by mailing by first class mail addressed to that owner or party in interest at the address shown on the tax records, at least ten days before the date of such hearing.

(a) For the purposes of paragraph (2) above, the last local tax assessment records means the last assessment roll for ad valorem tax purposes which has been reviewed by the local board of review, as supplemented by any subsequent changes in the names or the addresses of such owners or parties listed on that roll.

(b) The notice of hearing that is mailed shall include a statement that appearance and protest at the hearing in the special assessment proceedings is required in order to appeal the amount of the special assessment to the state tax tribunal and an owner or party in interest, or his agent, may appear in person at the hearing to protest the special assessment, or shall be permitted to file his appearance or protest by letter and his personal appearance shall not be required; and shall include a statement that the owner or any person having an interest in the real property may file a written appeal of the special assessment with the state tax tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

Sec. 1.407. Conduct of All Special Assessment Confirmation Hearings. The council shall meet and review the special assessment roll at the time and place appointed or at an adjourned meeting thereof and shall consider any objections thereto. An owner or party in interest, or his agent, may appear in person at the hearing to protest the special assessment, or shall be permitted to file his appearance or protest by

letter and his personal appearance shall not be required. The council shall maintain a record of parties who appear to protest at the hearing. If a hearing is terminated or adjourned for the day before a party is provided the opportunity to be heard, a party whose appearance was recorded is considered to have protested the special assessment in person. The council may correct the roll as to any assessment or description of any lot or parcel of land or other errors appearing therein. Any changes made in such roll shall be noted in the council's minutes. After such hearing and review the council may confirm such special assessment roll with such corrections as it may have made, if any, or may refer it back to the city assessor for revision, or may annul it or any proceedings in connection therewith. The city clerk shall endorse the date of confirmation upon each special assessment roll. Such roll shall be, upon confirmation, final and conclusive.

Sec. 1.408. 2/3rds Vote of Council Members Elected and Serving Required to Create Assessment. All special assessments of whatever sort created by the council shall require an affirmative vote of not less than 2/3rds of its members elected and serving who shall declare in its creating resolution that it has determined that the whole or part of the cost of any public improvement or repair shall be defrayed by special assessment upon the parcels of property especially benefited.

Sec. 1.409. Special Assessments Shall Constitute a Lien. All special assessments contained in any special assessment roll, including any part thereof to be paid in installments, shall from the date of confirmation of such roll constitute a lien upon the respective lots or parcels of land assessed and until paid shall be a charge against the respective owners of the several lots and parcels of land and a debt to the city from the persons to whom they are assessed. Such liens shall be of the same character and effect as the lien created by the City Charter for city taxes and shall include accrued interest and fees. No judgment or decree or act of the council vacating a special assessment shall destroy or impair the lien of the city upon the premises assessed for such amount of the assessment as may be equitably charged against the premises or as by a regular mode of proceeding might be lawfully assessed thereon. All special assessments shall become due upon confirmation of the special assessment roll or in annual installments, not to exceed 20 in number, as the council may determine at the time of confirmation, and, if in annual installments, the council shall determine the date on which the first installment payment is to be made, the amount thereof, and the subsequent installments to be due either on July 1 or on December 1 of the next year, in the discretion of the council, or at such other date, or dates, as the council shall determine, and annually on that day and month of each succeeding year.

Sec. 1.410. Statements of Assessment. Whenever any special assessment roll shall be confirmed and be payable, the council shall direct the city clerk to transmit such assessment roll to the city treasurer for collection. The city treasurer shall mail statements of the assessments to the respective owners of the lots and parcels of land assessed, as indicated by the records of the city assessor, stating the amount of the assessment and the manner in which it may be paid; provided, however, that failure to

mail any such statement shall not invalidate the assessment or entitle the owner to an extension of time within which to pay the assessment.

Sec. 1.411. Payment. The whole or any part of any such assessment may be paid prior to the date of the treasurer's transmittal of the assessment roll to the city assessor without further interest or penalty.

Sec. 1.412. Rights and Remedies. Each special assessment shall be collected by the City treasurer with the same rights and remedies as provided in the City Charter for the collection of taxes, except as otherwise provided in this chapter. Special assessments and all interest and charges thereon, from the date of confirmation of the roll shall be and remain a lien upon the property assessed of the same character and effects as the lien created by general law for the state and county taxes and by this charter for City taxes, until paid. From such date after confirmation as shall be fixed by the council, the same collection fees, penalties and interest shall be paid on delinquent special assessments and upon delinquent installments of such special assessments as are provided by this chapter to be paid on delinquent city taxes. In case any assessment or any part thereof, shall remain unpaid on the first Monday of May or October following the date when the assessment becomes delinquent, the assessment shall be reported unpaid by the treasurer to the council, and such delinquent assessments, together with all accrued interest and any authorized administrative fee shall be transferred and reassessed on the next annual city tax roll in a column headed "Special Assessments".

Sec. 1.413. Expiration of Payment Period. After the expiration of the period provided in Section 1.411 for payment without interest or fees, any installment may be discharged by paying the face amount thereof together with fees and interest thereon from the date of confirmation to the date of payment; provided, however, that if the public improvement has been financed by the sale of non-callable bonds or other evidences of indebtedness which are not pre-payable, then the interest shall be computed from the date of confirmation to the date upon which such installment would have fallen due had it not been prepaid.

Sec. 1.414. Financial Report to Council. Upon completion of the improvement, the financing thereof and the payment of the cost thereof, the city manager shall certify to the council the total cost of such improvement together with the amount of the original roll for the improvement.

Sec. 1.415. Additional Assessments. Should the assessments in any special assessment roll, including the amount assessed to the city at large, prove insufficient for any reason to pay the cost of the improvement for which they were made, then the council may make additional assessments to supply the deficiency against the city and the several lots and parcels of land in the same ratio as the original assessments.

Sec. 1.416. Assessment Larger Than Cost. The excess by which any special assessment prove larger than the actual cost of the improvement and expenses

incidental thereto may be placed in the public improvement/public building fund or the general fund of the city if such excess is five percent or less of the assessment, but should the assessment prove larger than necessary by more than five percent the entire excess shall be refunded on a pro rata basis to the owners of the property assessed. Such refund shall be made by credit against future unpaid installments to the extent such installments then exist and the balance of such refund shall be paid to the property owners. No refunds may be made which contravene the provisions of any outstanding evidence of indebtedness secured in whole or in part by such special assessment.

Sec. 1.417. Apportioning Assessments After Division of Land. Should any lots or lands be divided after a special assessment thereon has been confirmed and divided into installments, the city assessor shall apportion the uncollected amounts upon the several lots and lands so divided, and shall enter the several amounts as amendments upon the special assessment roll. The city treasurer shall, within ten days after such apportionment, send notice of such action to the persons concerned at their last known address by first class mail. The apportionment shall be final and conclusive on all parties unless protest in writing is received by the city treasurer within 20 days of the mailing of the notice.

Sec. 1.418. Invalid or Illegal Assessments. Whenever the council deems any special assessment invalid or defective, or whenever a court adjudges an assessment to be illegal in whole or in part, the council may cause a new assessment to be levied for the same purpose, whether or not the improvement or any part thereof has been completed, or any part of the special assessment collected. In reassessment proceedings pursuant to this article, it shall not be necessary for the council to re-determine the necessity of the improvement or to hold a hearing thereon. If any portion of the original special assessment is collected and not refunded, it shall be applied upon the reassessment, and the reassessment shall to that extent, be deemed satisfied. If more than the amount reassessed is collected, the balance shall be refunded to the person making such payment.

Sec. 1.419. Judgment in Lieu of Improper Judgment. If in any action it shall appear that by reason of any irregularities or informalities the assessment has not been properly made against the person assessed or upon the lot or premises sought to be charged, the court may nevertheless, on satisfactory proof that expense has been incurred by the city which is a proper charge against the person assessed or the lot or premises in question, render judgment for the amount properly chargeable against such person or upon such lot or premises.

Sec. 1.4120. City Charter Procedure for Contesting Assessment. No suit of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of any special assessment:

- (1) unless the special assessment is protested at the hearing held for the purpose of confirming the special assessment roll, and

(2) unless such suit or action shall be commenced within 30 days after confirmation of the roll.

**SECTION 2: Severability.** If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this Ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this ordinance.

**SECTION 3: Conflicts with Other Laws or Regulations.** If any provision of this chapter differs from a provisions of any other applicable law, ordinance, rule or regulation, both the provision of this chapter and the differing provision shall apply if possible. If the two (2) provisions are in conflict, then the provision establishing the higher or stricter standard shall apply.

Authorizing signature:

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Russell R. Tanner  
Mayor, City of Essexville

Attested by:

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Sarah J. Wilcox  
Essexville City clerk

The foregoing Ordinance was offered by Councilperson Connelly and supported by Councilperson Link.

Ayes: Connelly, Link, Gradowski, Lutz, Mantei, Rehmus, Tanner

Nays: None

Adopted: July 6, 2011

First Reading: June 14, 2011

Second Reading: July 6, 2011

Published: July 7, 2011

Effective Date: July 21, 2011

