

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

An ordinance amending the City of Mackinac Island Ordinance with respect to Ferry Boats.

THE CITY OF MACKINAC ISLAND ORDAINS:

DIVISION 1. GENERALLY

Section 1. Repealer.

The previous Ferry Boats Ordinance, No. 445, is hereby repealed and replaced by this ordinance.

Section 2. Definitions.

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

Annual Regulatory Fee means the fee assessed to franchisee(s) for the cost of regulation of Ferry Boat Service rates, schedules, parking fees, and other services

City means the City of Mackinac Island.

Council means the City Council of the City of Mackinac Island, Michigan

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

Ferry Boat Company means any person which owns, controls, operates or manages a Ferry Boat providing a Ferry Boat Service.

Ferry Boat Service means the transporting of persons and/or property for pay to or from the City by Ferry Boat.

Franchisee means any person who is granted a franchise under this article to provide Ferry Boat Service.

Invested capital means direct equity investment of a Ferry Boat Company in the Ferry Boat Services.

Monopoly in Ferry Boat Service means the condition under which (1) there is only one Ferry Boat Company providing Ferry Boat Service; or (2) all of the Ferry Boat Companies providing Ferry Boat Service are under the ownership or control of one entity; or (3) only one entity owns or controls all or substantially all of the boats, or docks, or parking facilities necessary to operate a Ferry Boat Service; or (4) a single person or entity with significant and durable market power.

Monopoly Ferry Boat Company means a Ferry Boat Company or Companies that the Council has determined has a Monopoly in Ferry Boat Service.

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

Regular Ferry Boat Season means the period of time between April 21 of any calendar year and October 31 of the same calendar year.

Return on Equity means a return on equity for a Monopoly Ferry Boat Company that is based on comparable authorized return on equity of other regulated monopoly service utility providers in Michigan.

Schedule of Services means the times and places of departure of Ferry Boat Services.

Service Class means any type or classification (or sub-classification) of service for which the Ferry Boat Company charges a separate Service Rate.

Service Rate means any rate, fare, fee and/or charge the Ferry Boat Company charges for any service related to the Ferry Boat Service, including but not limited to transportation of passenger, transportation of property, luggage, and parking fees.

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

Winter Ferry Boat Season means the period of time between November 1 of any calendar year and April 20 of the following calendar year.

Section 3. Declaration of purpose.

The purpose of this ordinance is to:

- (1) Provide fair regulation of ferry service to and from the City in the interest of the public;
- (2) Promote and encourage adequate, economical and efficient ferry service to and from the City;
- (3) Promote and encourage harmony between Ferry Boat Companies and their customers and passengers;
- (4) Provide for the furnishing of Ferry Boat Service without unjust discrimination, undue preferences or advantages; and
- (5) Provide for the payment of franchise fees to the City.

Section 4. Violations; penalties.

(a) Any person or Ferry Boat Company who violates any provision of this article shall be guilty of a civil infraction and liable for a fine not to exceed \$500.00. Each day that the violation continues is a separate offense.

(b) In addition to pursuing a violation as a civil infraction, or as an alternative to pursuing a violation as a civil infraction, the Council may pursue revocation of the franchise of the violating person or Ferry Boat Company as provided in [section 66-496](#).

(c) In addition to pursuing a violation as a civil infraction, or as an alternative to pursuing a violation as a civil infraction, the Council may file a civil suit seeking injunctive relief pursuant to [section 66-464](#).

Section 5. Injunctive relief.

A violation of any provision of this article by any person or Ferry Boat Company is deemed to be a nuisance per se, causing irreparable harm, and shall constitute grounds for injunctive relief. In the event injunctive relief is sought and granted by the Council, the franchisee against which the injunctive relief was granted shall reimburse the Council for all costs and reasonable attorney's fees.

Section 6. Majority concurrence required.

Any approval, denial or waiver by the Council pursuant to this article shall require the concurrence of a majority of all the elected aldermen. Any request for increases to fares or rates, or decreases in the Schedule of Services shall require a minimum of thirty (30) days' notice of such changes prior to any such Council discussion or decision.

Section 7. Schedule of services; additional services.

(a) A Ferry Boat Company granted a franchise must provide Ferry Boat Service during the entire Regular Ferry Boat Season and the Ferry Boat Company selected from time to time to provide Ferry Boat Service during the Winter Ferry Boat Season must in addition provide Ferry Boat Service during the entire Winter Ferry Boat Season, ice conditions and weather permitting.

(b) A Ferry Boat Company not selected to provide winter Ferry Boat Service shall not provide Ferry Boat Service during the Winter Ferry Boat Season without specific authorization from the Council.

(c) A Ferry Boat Company granted a franchise must operate in accordance with its Schedule of Services as is on file with the Council. Provided, however:

- (1) A Ferry Boat Company is not obligated to provide service on any day when, in the good faith judgment of the Ferry Boat Company, it would be unsafe to provide service because of the weather.
- (2) A Ferry Boat Company may change its filed Schedule of Services; however no changes shall occur until after the new Schedule is approved by the Council.

Section 8. Safety regulations; reporting requirement.

(a) The Ferry Boats operated in connection with a Ferry Boat Service shall meet all of the safety regulations of the United States Coast Guard. Any person operating a Ferry Boat in connection with a

Ferry Boat Service must provide written evidence of satisfaction of all of the United States Coast Guard regulations prior to the commencement of any Ferry Boat Service.

(b) Any person operating a Ferry Boat in connection with a Ferry Boat Service must give notice to the Council, in writing, of any marine casualty or violation of the United States Coast Guard regulations of which such person has been informed by the United States Coast Guard, either in writing or by verbal communication.

(c) All docks used by the franchisee shall be inspected for safety of all services in use every five (5) years or upon reasonable request from the Council, whichever event occurs first. Safety inspections shall be conducted by an independent engineer of the Council's choosing, and shall be paid for by the franchisee.

Section 9. Rates: filing requirements.

(a) No Ferry Boat Company shall make any unjust or unreasonable discrimination in rates, charges, classifications, promotions, practices, regulations, facilities or services for or in connection with Ferry Boat Services, nor subject any person to any prejudice or disadvantage in any respect whatsoever; however, this shall not be deemed to prohibit the establishment of a graded scale of charges and classification of rates to which any customer or passenger coming within such classification shall be entitled.

DIVISION 2. FRANCHISE

Section 10. Franchise; required.

(a) The Council may grant a franchise to operate a Ferry Boat Service.

(b) No person shall operate a Ferry Boat Service nor shall any person provide a Ferry Boat Service in the City without such person having first obtained a franchise therefore from the Council.

(c) No person shall use, occupy or traverse any public place or public way in the City or any extensions thereof or additions thereto for the purpose of establishing or maintaining a Ferry Boat Service or any facility used in conjunction therewith, including, but not limited to, any building, pier, piling, bulkhead, reef, breakwater or other structure in, upon or over the waters in the City limits, without such person having first obtained a franchise therefore from the City.

(d) The Council (or its designee) is able to operate Ferry Boat Service to and from the City without a franchise, and it is exempt from all franchise requirements herein.

Section 11. Application; contents; fees; acknowledgement.

(a) An application for a franchise to operate a Ferry Boat Service shall be made in writing to the Council and shall include such information as requested by the Council, including but not limited to:

- (1) The applicant's name, and if other than a single individual, a certified copy of the partnership agreement, articles of association, or articles of incorporation, as the case may be.
 - (2) The applicant's principal place of business.
 - (3) A description, including passenger capacity, of each Ferry Boat which will be used to provide a Ferry Boat Service.
 - (4) A description, including passenger capacity, of each Ferry Boat which will be used to provide a Ferry Boat Service.
- (b) The application shall be accompanied by an application fee established by ordinance.
- (c) The application must be signed by an individual with authority to legally bind the Ferry Boat Company, and provide that the company, its officers, employees and agents, will operate according to the terms of this article.

Section 12. Issuance; display; transfer.

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

Section 13. Nonexclusive; term; form.

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

Section 14. Fees; reporting; record.

- (a) During the term of any franchise granted pursuant to this division for the operation of Ferry Boat Service, the person granted such franchise shall pay to the Council in consideration of the granting of such franchise a franchise fee determined as follows:
- (1) For calendar year 2012 or any part of 2012 a franchisee shall pay a sum equal to \$600,000.00 divided by the number of ferry boat franchises in effect. Provided, however, that any amount paid by a franchisee in 2012 as franchisee fees pursuant to City of

Mackinac Ordinance No. 454 shall be credited against that franchisee's obligation to pay franchisee fees under this Ordinance No. 465 for 2012.

- (2) During all calendar years beginning on or after January 1, 2013, a franchisee shall pay a monthly fee equal to the base sum of \$50,000.00 divided by the number of ferry boat franchises in effect for the month the franchise fee is owed; provided, however, on July 1 of each calendar year after 2012, the \$50,000.00 base sum shall be adjusted by an increase equal to any percentage increase in the cost-of-living for the preceding one-year period as reflected in the Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average published by the Bureau of Labor Statistics of the U.S. Department of Labor. If that Consumer Price Index is subsequently discontinued, the Council shall select comparable statistics on the cost of living as they are computed and published by the federal government.

(b) The monthly franchise fee shall be due and payable on the last day of each month, provided, however, at the election of the franchisee, the total franchise fee owed by that franchisee for a calendar year, may be paid, without penalty, in six equal installments on the 15th day of June, July, August, September, October and November of that year. Such franchise fee shall be paid at the treasurer's office of the city during regular business hours. If the city treasurer's office is closed on the due date, then payment may be made during regular business hours on the next following day on which the office is open for business.

(c) No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable as a franchise fee under this section or for the performance of any other obligation under this division.

Section 15. Revocation.

A franchise granted pursuant to this ordinance may be revoked by the Council in the event a franchisee defaults in its performance of the terms and provisions of this article. Such revocation shall not be effective until the franchisee has been advised of the violation and, except for a violation of subsections [66-466\(a\)](#) or [66-466\(b\)](#) of this article, given a period of ten calendar days to cure the default, and if the default is not cured within that ten-day period, provided with a hearing before the Council. The ten-day period to cure does not apply to violations of subsection [66-466\(a\)](#) or subsection [66-466\(b\)](#) of this article. The Council decision shall be based on a preponderance of the evidence.

Section 16. Rights of city; public utility.

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

Section 17. Recourse of franchisee.

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

Section 18. Value.

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

Section 19. Monopoly.

In the event that it is found that a Monopoly in Ferry Boat Service exists, any franchise granted under this Division shall be subject to the terms and conditions of Division 3 of this Article XI.

DIVISION 3. MONOPOLY REGULATION

Section 20. Regulation required.

- (a) The Council shall have and exercise complete power to regulate all rates, fares, fees, charges, services, rules, conditions of service, Schedules of Service and all other matters pertaining to Ferry Boat Service provided by a Monopoly Ferry Boat Company or Companies.
- (b) The Council may establish a Ferry Boat Service Regulatory Committee (FRC) to review a Monopoly Ferry Boat Company's proposed Service Rates, Schedule of Services, and all terms and conditions of service; and to provide the Council with a recommendation regarding those Service Rates, Schedule of Services, and terms and conditions. The FRC shall have the same authority as the Council to require a Monopoly Ferry Boat Company to supply all documentation necessary to determine if the proposed Service Rates and Schedule of Services are fair and reasonable. The FRC shall be composed of three members appointed by the mayor and approved by the Council. A minimum of one member shall be a member of the Council.

Section 21. Cost of regulation.

- (a) The Council shall determine the annual cost of regulation of Monopoly Ferry Boat Companies and assess those Companies an Annual Regulation Fee for the cost of regulation. Upon passage of this ordinance, the Council shall invoice the 2025 Annual Regulatory Fee of \$_____ to cover the estimated 2025 cost of regulation of a Monopoly Ferry Boat Company. A Monopoly Ferry Boat Company shall be required to pay such invoice in quarterly payments, with the first payment due 30 days after the date of the invoice and all subsequent payments due the first business day of April, July, and September of each year. The annual cost of regulation shall include all fees paid to consultants, legal services, court costs, litigation costs, and other costs directly associated with regulation of Monopoly Ferry Boat Companies.

(b) After 2025, the Council shall establish the Annual Regulatory Fee by the first Friday in February. The Annual Regulatory Fee shall be based on forecasted cost of regulation that year, the amount of regulatory costs incurred by the Council in the previous year, and the previous year's Annual Regulatory Fee. The Annual Regulatory Fee shall be calculated by subtracting any collected unused regulatory fees from the previous year from the projected annual regulatory costs. If the previous year's actual regulatory cost exceeded the previous year's Regulatory Fee, the cost in excess of the Regulatory Fee shall be added to the current years to projected regulatory costs.

Annual Regulatory Fee

*= Projected Current Year Regulatory Cost – (Previous Year Regulatory Fee
– Actual Regulatory Cost)*

Section 22. Regulatory procedure.

(a) In order to prepare for the review of a Monopoly Ferry Boat Company's 2026 Service Rates, upon passage of this Ordinance, all Monopoly Ferry Boat Companies shall provide documentation needed for the Council to review Monopoly Ferry Boat Company operations, cost to provide Ferry Boat Services, annual revenues, quantity of Service Classes provided, and any other documentation or information requested by the Council.

(b) A Monopoly Ferry Boat Company shall submit in writing to the Council proposed Service Rates and Schedule of Services for the following year, no later than September 1st of each year. A Monopoly Ferry Boat Company has the obligation to demonstrate that the Services Rates are just and reasonable for the services provided. A Monopoly Ferry Boat Company shall include all documentation required to justify the proposed Service Rates and Schedule of Services, including but not limited to, the prior year's revenues by Service Class, quantity of services provided by Service Class, number of vehicles assessed parking fees and associated revenue, cost to perform service, maintenance costs, capital investment, audited financials, fuel costs, overhead and administrative costs, proposed Return on Equity, debt cost, depreciation, taxes, and any other costs included in the Service Rates. The Monopoly Ferry Boat Company shall provide any additional requested documentation or other information to the Council or its designee within 10 business days of issuance of request.

(c) A Monopoly Ferry Boat Company shall provide the Council requested documentation within ten (10) business days of issuance of the Council's written request.

(d) The Council has the right to require an independent audit of a Monopoly Ferry Boat Company's financials if it is determined, in the Council's sole judgment, that the audited financials provided by a Monopoly Ferry Boat Company are deficient.

(e) A Monopoly Ferry Boat Company shall be entitled to a fair Return on Equity in the Ferry Boat Service. Return on Equity shall not include portions of capital financed through debt.

(f) The Council shall determine the Service Rates and Schedule of Services no later than November 30th of the year prior to the year the rates are scheduled to go into effect.

(g) A Monopoly Ferry Boat Company has the right to contest the Council's decision on Amended Service Rates to the Council. A Monopoly Ferry Boat Company shall include documentation that the

Amended Service Rates do not cover operating and maintenance costs, and provide a fair rate of return on capital investment and propose new Service Rates

(h) The Council shall provide final determination of the Service Rates and Schedule of Services no later than December 30th.

Section 23. Severability.

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

Section 24. Effective Date.

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

Margaret Doud, Mayor

Danielle Leach, Clerk

Adopted: _____

Effective: _____