

## Chapter 1 – GENERAL PROVISIONS

### **Section 1. Designation and citation of Code.**

The ordinances embraced in this and the following chapters shall collectively constitute and be designated as the "Code of Ordinances, Charter Township of Eureka, Montcalm County, Michigan," and may be so cited. Such ordinances may also be cited as the "Eureka Charter Township Code."

### **Section 2. Definitions and rules of construction.**

The following definitions and rules of construction shall apply to this Code and to all chapters unless the context requires otherwise:

**“Generally”** – When provisions conflict, the specific shall prevail over the general. All provisions shall be liberally construed so that the intent of the township board may be effectuated. Words and phrases shall be construed according to the common and approved usage of the language, but technical words, technical phrases and words and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings.

**“Civil infraction”** – The term "civil infraction" means an act or omission prohibited by law which is not a crime and for which civil sanctions may be ordered.

**“Code”** – The term "Code" means the Code of Ordinances, Charter Township of Eureka, Montcalm County, Michigan, as designated in Section 1, above.

**“Computation of time”** – In computing a period of days, the first day is excluded and the last day is included. If the last day of any period or a fixed or final day is a Saturday, Sunday, or legal holiday, the period or day is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

**“Conjunctions”** – In a provision involving two or more items, conditions, provisions, or events, which items, conditions, provisions, or events are connected by the conjunction "and," "or," or "either ... or," the conjunction shall be interpreted as follows:

- a. The term "and" indicates that all the connected terms, conditions, provisions, or events apply.
- b. The term "or" indicates that the connected terms, conditions, provisions, or events apply singly or in any combination.
- c. The term "either ... or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

**“County”** – The term "county" means Montcalm County, Michigan.

**“Crime”** – The term "crime" means an act or omission forbidden by law that is not designated as a civil infraction and that is punishable, upon conviction, by any one or more of the following:

- a. Imprisonment.

- b. A fine not designated as a civil fine.
- c. Other penal discipline.

**“Delegation of authority”** – A provision that authorizes or requires a Township officer or township employee to perform an act or make a decision authorizes such officer or employee to act or make a decision through subordinates.

**“Gender”** – Words of one gender include the other genders.

**“Health department and department of public health”** – The terms "health department" and "department of public health" mean the county health department.

**“Health officer”** – The term "health officer" means the director of the county health department.

**“Highway”** – The term "highway" includes any street, road, alley, highway, avenue, or public place or square, bridge, viaduct, tunnel, underpass, overpass or causeway, dedicated or devoted to public use.

**“Includes and including”** – The terms "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and the use of the terms does not create a presumption that components not expressed are excluded.

**“Joint authority”** – A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members as fixed by statute or ordinance.

**“May”** – The term "may" is to be construed as being permissive and not mandatory.

**“May not”** – The term "may not" states a prohibition.

**“MCL”** – The abbreviation "MCL" means the Michigan Compiled Laws, as amended.

**“Month”** – The term "month" means a calendar month.

**“Must”** – The term "must" is to be construed as being mandatory.

**“Number”** – The singular includes the plural and the plural includes the singular.

**“Oath, affirmation, sworn, affirmed”** – The term "oath" includes an affirmation in all cases where an affirmation may be substituted for an oath. In similar cases, the term "sworn" includes the term "affirmed."

**“Officers, departments, etc.”** – References to officers, departments, boards, commissions, or employees are to Township officers, Township departments, Township boards, Township commissions, and Township employees.

**“Owner”** – The term "owner," as applied to property, includes any part owner, joint owner, land contract purchaser and owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole or part of such property. With respect to special assessments, however, the owner shall be considered to be the person whose name appears on the assessment roll for the purpose of giving notice and billing.

**“Person”** – The term "person" means any individual or human being, partnership, corporation, association, club, joint venture, estate, trust, entity, limited liability company, governmental unit, and any other group or combination acting as a unit, and the individuals constituting such group or unit.

**“Personal property”** – The term "personal property" means any property other than real property.

**“Preceding and following”** – The terms "preceding" and "following" mean next before and next after, respectively.

**“Premises”** – The term "premises," as applied to real property, includes land and structures.

**“Property”** – The term "property" means real and personal property.

**“Public acts”** – References to public acts are references to the Public Acts of Michigan. (For example, a reference to Public Act No. 359 of 1947 is a reference to Act No. 359 of the Public Acts of Michigan of 1947.) Any reference to a public act, whether by act number or by short title, is a reference to the act as amended.

**“Real property, real estate, land and lands”** – The terms "real property," "real estate," "land," and "lands" include lands, tenements and hereditaments.

**“Roadway”** – The term "roadway" means that portion of a street improved, designed or ordinarily used for vehicular traffic.

**“Shall”** – The term "shall" is to be construed as being mandatory.

**“Sidewalk”** – The term "sidewalk" means any portion of the street between the curb, or the lateral line of the roadway, and the adjacent property line, intended for the use of pedestrians.

**“Signature and subscription”** – The terms "signature" and "subscription" include a mark when the person cannot write.

**“State”** – The term "state" means the State of Michigan.

**“Street”** – The term "street" means any street, private street, road, alley, highway, avenue, or public place or square, bridge, viaduct, tunnel, underpass, overpass or causeway, dedicated or devoted to public use.

**“Swear”** – The term "swear" includes the term "affirm."

**“Tense”** – The present tense includes the past and future tenses. The future tense includes the present tense.

**“Township”** – The term "township" means the Charter Township of Eureka, Montcalm County, Michigan.

**“Township board, township board of trustees, board of trustees and board”** – The terms "township board of trustees," "township board," "board of trustees" and "board" mean the governing body of the Charter Township of Eureka, Montcalm County, Michigan.

**“Week”** – The term "week" means seven consecutive days.

**“Written”** – The term "written" includes any representation of words, letters, symbols or figures.

**“Year”** – The term "year" means 12 consecutive months.

**Section 3. Catchlines of sections; history notes; state law references.**

- a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, or of any part of the section, nor unless expressly so provided shall they be so deemed when any such section, including the catchline, is amended or reenacted.
- b) Unless specified otherwise, all references to chapters or sections are to chapters or sections of this Code.

**Section 4. Effect of repeal of chapters.**

- a) Unless specifically provided otherwise, the repeal of a repealing chapter does not revive the chapter originally repealed nor impair the effect of any saving provision in it.
- b) The repeal or amendment of a chapter does not affect any punishment or penalty incurred before the repeal took effect, nor does such repeal or amendment affect any rights, privileges, suit, prosecution, or proceeding pending at the time of the amendment or repeal.

**Section 5. Amendments to Code; effect of new chapters; amendatory language.**

- a) All chapters adopted subsequent to this Code that amend, repeal, or in any way affect this Code may be numbered in accordance with the numbering system of the Code and printed for inclusion in the Code. Portions of this Code repealed by subsequent chapters may be excluded from this Code by omission from reprinted pages affected thereby.
- b) Amendments to provisions of this Code may be made with the following language: "Section (chapter, article, division, or subdivision, as appropriate) \_\_\_\_\_ of the Code of Ordinances, Charter Township of Eureka, Montcalm County, Michigan, is hereby amended to read as follows:...."
- c) If a new section, subdivision, division, article, or chapter is to be added to the Code, the following language may be used: "Section (chapter, article, division or subdivision, as appropriate) \_\_\_\_\_ of the Code of Ordinances, Charter Township of Eureka, Montcalm County, Michigan, is hereby created to read as follows:...."
- d) All provisions desired to be repealed should be repealed specifically by section, subdivision, division, article, or chapter number, as appropriate, or by setting out the repealed provisions in full in the repealing chapter.

**Section 6. Severability.**

If any provision of this Code or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Code that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Code are severable. If any provision of this Code or its application to any person or circumstance is held to be over broad, that provision or application will nevertheless be enforced to the fullest extent permitted by law.

**Section 7. Provisions deemed continuation of existing ordinances.**

The provisions of this Code, insofar as they are substantially the same as legislation previously adopted by the Township relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

**Section 8. Code does not affect prior offenses or rights.**

- a) Nothing in this Code or the chapter adopting this Code, affects any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established before the effective date of this Code.
- b) The adoption of this Code does not authorize any use or the continuation of any use of a structure or premises which was in violation of any Township chapter on the effective date of this Code.

**Section 9. Certain ordinances not affected by Code.**

- a) Nothing in this Code or the chapter adopting this Code affects the validity of any ordinance or portion of any ordinance:
  - 1. Promising or guaranteeing the payment of money or authorizing the issuance of bonds or other instruments of indebtedness.
  - 2. Authorizing or approving any contract, deed, or agreement.
  - 3. Granting any right or franchise.
  - 4. Making or approving any appropriation or budget.
  - 5. Providing for the duties of township officers or employees not codified in this Code.
  - 6. Providing for salaries or other employee benefits.
  - 7. Adopting or amending a comprehensive plan or master plan.
  - 8. Levying or imposing any special assessment.
  - 9. Dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing, or vacating any street, sidewalk, or alley.
  - 10. Establishing the grade of any street or sidewalk.
  - 11. Dedicating, accepting, or vacating any plat or subdivision.
  - 12. Not codified in this Code that levies, imposes, or otherwise relates to taxes, exemptions from taxes and fees in lieu of taxes.
  - 13. Pertaining to water and sewer.
  - 14. Pertaining to zoning.
  - 15. That is temporary, although general in effect.
  - 16. That is special, although permanent in effect.

17. The purpose of which has been accomplished.

- b) The chapters or portions of chapters designated in subsection (a) of this section continue in full force and effect to the same extent as if published at length in this Code.

**Section 10. General penalty; continuing violations.**

- a) In this section, the term "violation of this Code" means any of the following:
  - 1. Doing an act that is prohibited or made or declared unlawful, an offense, or a violation by chapter or by rule or regulation authorized by chapter.
  - 2. Failure to perform an act that is required to be performed by chapter or by rule or regulation authorized by chapter.
  - 3. Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense, or a violation or by chapter or by rule or regulation authorized by chapter.
  - 4. Aiding and abetting a violation.
- b) Any provision of this Code that is made or declared to be a misdemeanor, civil infraction or municipal civil infraction is a violation of this Code.
- c) In this section, the term "violation of this Code" does not include the failure of a Township officer or Township employee to perform an official duty unless it is specifically provided that the failure to perform the duty is to be punished as provided in this section.
- d) Except as specifically provided by state law, Township ordinance or a specific provision of this Code, all violations of this Code are municipal civil infractions. The fine shall be not less than \$50.00 nor more than \$500.00 for the first offense and not less than \$100.00 nor more than \$2,500.00 for subsequent offenses, in the discretion of the court, and such fine shall be in addition to all other costs, attorney fees, damages, expenses, and other remedies as provided by law. For purposes of this section, the term "subsequent offense" means a violation of the provisions of the same Code provision committed by the same person within 12 months of a previous violation of the same provision or similar of this Code for which said person admitted responsibility or was adjudicated to be responsible; provided, however, that offenses committed on subsequent days within a period of one week following the issuance of a citation for a first offense shall all be considered separate first offenses.
- e) Except as otherwise provided by law or chapter, a person convicted of a violation of this Code that is a misdemeanor shall be punished by a fine not to exceed \$500.00 and costs of prosecution or by imprisonment for a period of not more than 90 days, or by both such fine and imprisonment. However, unless otherwise provided by law, a person convicted of a violation of this Code which substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days shall be punished by a fine not to exceed \$500.00 and costs of prosecution or by imprisonment for a period of not more than 93 days or by both such fine and imprisonment.
- f) Except as otherwise provided by law or chapter, with respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense. As to other violations, each violation constitutes a separate offense.
- g) The imposition of a penalty does not prevent suspension or revocation of a license, permit or franchise or other administrative sanctions.

- h) Violations of this Code that are intermittent or ongoing are a nuisance *per se* and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief or civil or quasi-judicial enforcement.
- i) All remedies available to the township under this Code and state law shall be deemed to be cumulative and not exclusive.
- j) Anyone who assists another in violating this Code, or who aids and abets another in violation of this Code, shall also be deemed to be in violation of this Code.
- k) In addition to the above-mentioned remedies, the Township is also authorized (at its option and discretion) to pursue a civil lawsuit to enforce and/or ensure compliance with this Code in the Montcalm County Circuit Court. The remedies and penalties provided in this Code are cumulative and not exclusive.
- l) Except when expressly stated otherwise in this Code, this Code may be enforced in court by the Township Zoning Administrator, the Township Building Inspector, the Township Zoning Enforcement Officer, a Deputy County Sheriff, a State Police Officer, and such other Township officials or agents as the Township Board may designate from time to time by resolution. Any such official may also issue one or more civil infraction citations or tickets pursuant to this Code.
- m) A violation of this Code is also hereby declared to be a nuisance *per se* (which should be abated) and is also declared to be offensive to the public health, safety and welfare.

**Section 11. Repeal**

Any ordinance of the Township that existed prior to the adoption of this Code and which conflicts with any provision of this Code is hereby repealed but only to the extent of such express conflict.