

CITY OF MACKINAC ISLAND

AGENDA

SPECIAL CITY COUNCIL MEETING - FERRY BOAT MATTERS

Wednesday, March 05, 2025 at 1:00 PM

City Hall – Council Chambers, 7358 Market St., Mackinac Island, Michigan

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance
- IV. Additions to / Adoption of Agenda
- V. Correspondence
- VI. Old Business
- VII. New Business
 - a. Ferry Boat Ordinance - 2025 Revision - Clean Draft
 - b. Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry Service, and Mackinac Island Ferry Company d/b/a Arnold Transit Company vs. The City of Mackinac Island – 03.03.2025
 - c. Request for approval to enter in to closed session to discuss ongoing litigation
- VIII. Adjournment

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The previous Ferry Boats Ordinance, No. 445, is hereby repealed and replaced by this ordinance.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 \$ [redacted] 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

$$= \text{Projected Current Year Regulatory Cost} - (\text{Previous Year Regulatory Fee} - \text{Actual Regulatory Cost})$$

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: _____

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

An ordinance amending the City of Mackinac Island Ordinance with respect to ~~F~~ferry ~~b~~Bboats.

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

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City means the City of Mackinac Island.

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

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Ferry ~~boat~~ Boat means any boat used to transport persons and/or property to and from the ~~C~~city as part of a ~~f~~Ferry ~~b~~Bboat ~~s~~Service.

Ferry ~~B~~boat ~~company~~ Company means any person which owns, controls, operates or manages a ~~f~~Ferry ~~B~~boat providing a ~~f~~Ferry ~~b~~Bboat ~~S~~service.

Ferry ~~boat~~ Boat ~~service~~ Service means the transporting of persons and/or property for pay to or from the ~~city~~ City by ~~f~~Ferry ~~b~~Bboat.

Franchisee means any person who is granted a franchise under this article to provide ~~f~~Ferry ~~b~~Bboat ~~s~~Service.

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

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Nondisclosure Agreement or NDA means the certificate or agreement provided by Ferry Boat Company and executed by an individual which restricts disclosure of Protected Material.

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

~~Protected Material means consists of trade secrets or confidential, proprietary, or commercially sensitive information provided in by Ferry Boat Company to the Council for any reason, including discovery or audit responses, any exhibit and testimony, and any arguments of counsel describing or relying upon the Protected Material.~~

~~Regular fFerry bBoat sSeason~~ 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 Ferry Boat Company that is based on comparable authorized return on equity of other regulated 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 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 ~~fFerry bBoats~~ depart, or are destined to points and places within the State of Michigan, respectively.

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

Section 4. Violations; penalties.

(a) Any person or ~~fFerry boat Boat company 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.

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Commented [RP1]: Do we need to define Freight?

(b) In addition to pursuing a violation as a civil infraction, or as an alternative to pursuing a violation as a civil infraction, the ~~city~~Council may pursue revocation of the franchise of the violating person or ~~F~~ferry ~~B~~boat ~~e~~Ccompany 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 ~~city~~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 ~~F~~ferry ~~B~~boat ~~C~~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~~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 ~~F~~ferry ~~B~~boat ~~C~~company granted a franchise must provide ~~F~~ferry ~~B~~boat ~~S~~service during the entire ~~R~~egular ~~F~~ferry ~~B~~boat ~~S~~season and the ~~f~~Ferry ~~b~~Boat ~~e~~Ccompany selected from time to time to provide ~~f~~Ferry ~~b~~Boat ~~s~~Service during the ~~W~~winter ~~F~~ferry ~~B~~boat ~~S~~season must in addition provide ~~F~~ferry ~~B~~boat ~~S~~service during the entire ~~W~~winter ~~F~~ferry ~~B~~boat ~~S~~season, ice conditions and weather permitting.

(b) A ~~F~~ferry ~~B~~boat ~~C~~company not selected to provide winter ~~F~~ferry ~~B~~boat ~~S~~service shall not provide ~~F~~ferry ~~B~~boat ~~S~~service during the ~~W~~winter ~~F~~ferry ~~B~~boat ~~S~~season without specific authorization from the ~~council~~Council.

(c) A ~~F~~ferry ~~B~~boat ~~C~~company granted a franchise must operate in accordance with its ~~schedule~~ Schedule of services-~~Services~~ as is on file with the ~~council~~Council. Provided, however:

- (1) A ~~F~~ferry ~~B~~boat ~~C~~company is not obligated to provide service on any day when, in the good faith judgment of the ~~F~~ferry ~~B~~boat ~~C~~company, it would be unsafe to provide service because of the weather.
- (2) A ~~f~~Ferry ~~b~~Boat ~~e~~Ccompany may change its filed Schedule of Services; however no changes shall occur until after the new Schedule is filed with the approved by the city Council.

Section 8. Safety regulations; reporting requirement.

(a) The ~~F~~ferry ~~b~~Boats operated in connection with a ~~F~~ferry ~~b~~Boat ~~s~~Service shall meet all of the safety regulations of the United States Coast Guard. Any person operating a ~~F~~ferry ~~b~~Boat in connection with a ~~F~~ferry ~~b~~Boat ~~s~~Service must provide written evidence of satisfaction of all of the United States Coast Guard regulations prior to the commencement of any ~~f~~Ferry ~~b~~Boat ~~s~~Service.

(b) Any person operating a ~~f~~Ferry ~~b~~Boat in connection with a ~~f~~Ferry ~~b~~Boat ~~s~~Service must give notice to the ~~C~~council~~C~~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 ~~f~~Ferry ~~b~~Boat ~~e~~Company shall make any unjust or unreasonable discrimination in rates, charges, classifications, promotions, practices, regulations, facilities or services for or in connection with ~~f~~Ferry ~~b~~Boat ~~s~~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.

~~(b) Any ferry boat company operating under approval of the state public service commission, or which has filed tariffs with the state public service commission, shall file a summary of the authorities held from this commission with the council~~C~~Council. Such ferry boat company shall also file with the council~~C~~Council a true copy of its tariffs on file with this commission. The council~~C~~Council shall be given written notice of any proposed modification of the tariffs on file with this commission. Such notification shall be given to the council~~C~~Council by any ferry boat company, in writing, as soon as any letter, form, or other document is filed with this commission seeking a modification of such ferry boat company's tariffs.~~

DIVISION 2. FRANCHISE

Section 10. Franchise; required.

(a) The ~~city council~~Council may grant a franchise to operate a ~~F~~ferry ~~b~~Boat ~~s~~Service.

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

(c) No person shall use, occupy or traverse any public place or public way in the ~~city~~City or any extensions thereof or additions thereto for the purpose of establishing or maintaining a ~~ferry-Ferry b~~Boat ~~s~~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~~City limits, without such person having first obtained a franchise therefore from the ~~city~~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 ~~f~~Ferry ~~b~~Boat ~~s~~Service shall be made in writing to the ~~city council~~Council and shall include such information as requested by the ~~city council~~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 ~~f~~Ferry ~~b~~Boat which will be used to provide a ~~f~~Ferry ~~b~~Boat ~~s~~Service.
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(c) The application must be signed by an individual with authority to legally bind the ~~f~~Ferry ~~b~~Boat ~~e~~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-Ferry boats-Boats~~ providing a ~~f~~Ferry ~~b~~Boat ~~s~~Service.

(b) No franchise granted under this section may be sold, transferred or assigned unless such transaction is first approved by the ~~council~~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~~Council may approve and shall be issued in the form to be determined

by the ~~council~~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 ~~f~~Ferry ~~b~~Boat ~~s~~Service, the person granted such franchise shall pay to the ~~city~~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~~Council shall select comparable statistics on the cost of living as they are computed and published by the federal government.

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(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.~~

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(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 ~~city council~~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 ~~city council~~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 ~~city council~~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 ~~f~~Ferry ~~b~~B~~oat~~ ~~e~~C~~ompany~~ 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 ~~f~~Ferry ~~b~~B~~oat~~ ~~e~~C~~ompany~~ 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 ~~f~~Ferry ~~b~~B~~oat~~ ~~e~~C~~ompany~~ 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.

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~~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. 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 Ferry Boat Company or Companies.~~

~~(b) The Council may establish a Ferry Boat Service Regulatory Committee (FRC) to review a 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 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 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 \$ [redacted] to cover the estimated 2025 cost of regulation of a Ferry Boat Company. A 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 days 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 Ferry Boat Companies.

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(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 current year 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 Ferry Boat Company's 2026 Service Rates, upon passage of this Ordinance, all Ferry Boat Companies shall provide documentation needed for the Council to review 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.

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(b) A 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 Ferry Boat Company has the obligation to demonstrate that the Services Rates are just and reasonable for the services provided. A 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 franchisee shall provide any additional requested documentation or other information to the Council or its designee within 10 business days of issuance of request.

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(c) A 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 Ferry Boat Company's financials if it is determined, in the Council's sole judgment, that the audited financials provided by a Ferry Boat Company are deficient.

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(e) A 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.

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(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.

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

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

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Section 1923. 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 2024. Effective Date.

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

Margaret Doud, Mayor

Danielle Leach, Clerk

Adopted: _____

Effective: _____

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.

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 Ferry Boat Company that is based on comparable authorized return on equity of other regulated 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. 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 Ferry Boat Company or Companies.

(b) The Council may establish a Ferry Boat Service Regulatory Committee (FRC) to review a 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 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 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 Ferry Boat Company. A 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 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

$$= \text{Projected Current Year Regulatory Cost} - (\text{Previous Year Regulatory Fee} - \text{Actual Regulatory Cost})$$

Section 22. Regulatory Procedure.

(a) In order to prepare for the review of a Ferry Boat Company’s 2026 Service Rates, upon passage of this Ordinance, all Ferry Boat Companies shall provide documentation needed for the Council to review 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 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 Ferry Boat Company has the obligation to demonstrate that the Services Rates are just and reasonable for the services provided. A 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 franchisee 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 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 Ferry Boat Company’s financials if it is determined, in the Council’s sole judgment, that the audited financials provided by a Ferry Boat Company are deficient.

(e) A 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 Ferry Boat Company has the right to contest the Council’s decision on Amended Service Rates to the Council. A 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: _____

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry Service, and Mackinac Island Ferry Company d/b/a Arnold Transit Company,	Case No. 2:25-cv-36
Plaintiffs,	In Admiralty
v.	
City of Mackinac Island,	
Defendant.	

COMPLAINT

Plaintiffs Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry Service and Mackinac Island Ferry Company d/b/a Arnold Transit Company, as and for their Complaint against Defendant City of Mackinac Island, state and allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction in admiralty pursuant to 28 U.S.C. § 1333(1) because this case involves a dispute over a maritime contract. Plaintiffs further hereby designate this case as being within the Court's admiralty jurisdiction pursuant to Fed. R. Civ. P. 9(h).

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendant is a resident in this district as defined in the statute.

3. This Court is authorized to grant declaratory relief as requested by Plaintiffs herein pursuant to 28 U.S.C. § 2201.

PARTIES

4. Plaintiff Shepler’s Inc. d/b/a Shepler’s Mackinac Island Ferry Service is a Michigan Domestic Profit Corporation with its principal place of business located at 556 E Central Ave, Mackinaw City, MI 49701.

5. Plaintiff Mackinac Island Ferry Company d/b/a Arnold Transit Company is a Michigan Domestic Profit Corporation with its principal place of business located at 587 N. State St., St. Ignace, MI 49781.

6. Defendant City of Mackinac Island is a Michigan municipality located in Mackinac County, Michigan.

STATEMENT OF FACTS

7. The City of Mackinac Island (the “City”) is located on Mackinac Island, an island located wholly within Lake Huron, a navigable waterway of the United States. The City encompasses the entire island.

8. Mackinac Island is a historically significant tourist destination with approximately 1.5 million people visiting the island each year from around the world. The 2020 census listed that 583 residents live in the City.

9. The City's nearest land-based cities are St. Ignace, located in Mackinac County, Michigan, in Michigan's Upper Peninsula, and Mackinaw City, located in both Cheboygan and Emet Counties, Michigan, in Michigan's Lower Peninsula.

10. The Michigan Legislature founded the City of Mackinac Island in 1899. Under Chapter XVI, the City's founding charter provided that:

The council of said city may regulate and license ferries from such city or any place of landing therein to the opposite shore, or from one part of the city to another; and may require the payment of such reasonable sum for such license as to the council shall deem proper and may impose such reasonable terms and restrictions in relation to the keeping and management of such ferries, and the time, manner, and rates of carriage and transportation of persons and property as may be proper, and provide for the revocation of any such licenses and for the punishment, by proper fines and penalties, of the violation of any ordinance prohibiting unlicensed ferries. and regulating those established and licensed.

11. The City operates its decision-making through a mayor and a city council (the "City Council"). The mayor presides over the City Council meetings, which consist of regular meetings and certain special meetings.

12. On June 20, 2012, the City Council approved Ordinance Number 465, which became effective July 10, 2012 (the "Ordinance"). The Ordinance regulates ferry boat operations to and from the City, and thus the entirety of Mackinac Island. In pertinent part, it states that "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 from the city."

13. Under Section 9, related to ferry boat rates, the Ordinance provides that:

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.

14. Under Section 14, related to fees charged by the City to franchisees, the Ordinance provides that:

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 City in consideration of the granting of such franchise[.]

15. Plaintiff Shepler’s Inc. d/b/a Shepler’s Mackinac Island Ferry Service (“Shepler’s”) is a family-based company that has been operating ferry services to and from Mackinac Island for approximately eighty years. In doing so, Shepler’s has worked closely with the City Council to ensure that it meets the transportation needs for Mackinac Island, including the specific needs for residents, commuting workers, and tourists. Shepler’s operates ferry services between Mackinac Island and St. Ignace, and between Mackinac Island and Mackinaw City.

16. Shepler's also owns property in both St. Ignace and Mackinaw City. With this property, Shepler's has developed parking lots, which it uses to operate a business for parking services.

17. On or about June 27, 2012, Shepler's entered into a contract with the City for the purpose of establishing a "nonexclusive ferryboat franchise authorizing [Shepler's] to operate a public ferryboat service to and from the City of Mackinac Island[.]" ("Shepler's Contract"). (Attached hereto as **Exhibit 1** is the Contract between the City and Shepler's.)

18. The Shepler's Contract has a twenty-five-year term, from July 1, 2012 to June 30, 2027.

19. In consideration of Shepler's right to operate its ferry boat services, Shepler's pays the City a seasonal monthly franchise fee.

20. The Shepler's Contract provides that Shepler's shall "file its schedule of services and rates for the next season," and, through a prescribed "MEMORANDUM OF UNDERSTANDING," the contract provides that: "All lines determine their own schedules and rates. However, the boat lines will file their schedules and rates with the City."

21. Under Section 9, the Shepler's Contract provides that:

In the event that no competition is found to exist in ferry boat service to and from the City, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

22. The Shepler's Contract constitutes a federal maritime contract because the principal objective of that contract is maritime commerce, specifically to transport persons and property, from all over the world, over a navigable waterway of the United States.

23. In 2022, Hoffmann Family of Companies (the "Hoffmann Family") purchased Shepler's, creating a partnership between the Shepler family and the Hoffmann family. The Shepler family remains critically involved in the operations of the company.

24. Plaintiff Mackinac Island Ferry Company d/b/a Arnold Transit Company ("MIFC") is the culmination of several companies with approximately 140 years of experience with ferry services to and from Mackinac Island. MIFC also operates ferry services between Mackinac Island and St. Ignace, and between Mackinac Island and Mackinaw City.

25. MIFC also owns property in both St. Ignace and Mackinaw City. With this property, MIFC operates a business for parking services.

26. On or about October 18, 2023, MIFC entered into a contract with the City for the purpose of establishing a "nonexclusive ferryboat franchise authorizing [Arnold Transit] to operate a public ferryboat service to and from the City of Mackinac Island[.]" ("MIFC Contract"). (Attached hereto as **Exhibit 2** is the Contract between the City and MIFC.)

27. Although entered into years later, the terms of MIFC Contract are otherwise identical to the Shepler’s Contract, including the same expiration date of June 30, 2027.

28. Because of their similarities, both the Shepler’s Contract and the MIFC Contract are commonly referred to as the “Franchise Agreement,” identifying the contract between the City and the respective franchisee.

29. In consideration of MIFC’s right to operate its ferry boat services, MIFC pays the City a seasonal monthly franchise fee.

30. The MIFC Contract provides that MIFC shall “file its schedule of services and rates for the next season,” and, through a prescribed “MEMORANDUM OF UNDERSTANDING,” the contract provides that: “All lines determine their own schedules and rates. However, the boat lines will file their schedules and rates with the City.”

31. Under Section 9, the MIFC Contract provides that:

In the event that no competition is found to exist in ferry boat service to and from the City, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

32. The MIFC Contract constitutes a federal maritime contract because the principal objective of that contract is maritime commerce, specifically to transport persons and property, from all over the world, over a navigable waterway of the United States.

33. The first several months of MIFC's performance under the MIFC Contract were tumultuous. Passengers lodged numerous complaints with the City Council related to MIFC's services, and the need to address MIFC's lackluster operations became a continuous problem for the City. During this same period, Shepler's operated a first-class ferry service without any of these same problems.

34. In 2024, to remedy the ongoing concerns, the City initiated communications with representatives from the Hoffmann Family about a potential purchase of MIFC. The City encouraged the Hoffmann Family to invest in MIFC, thus providing Mackinac Island with two ferry companies that are capable of first-class ferry service.

35. During the Hoffmann Family's due diligence for a potential purchase of MIFC, it was discovered that MIFC would require a substantial capital investment because of its aging fleet and outdated operations.

36. Despite these concerns, on or about June 28, 2024, the Hoffmann Family purchased MIFC, recognizing that MIFC provided a long-term business opportunity.

37. Shortly after its purchase, the Hoffmann Family discovered that MIFC's assets were in a worse condition than was originally known. The Hoffmann Family found that MIFC's ferry fleet required significant repairs, many of which raised critical safety concerns. During the first several months

of ownership, the Hoffmann Family invested approximately \$6 million in MIFC, the majority of which went to repair and modernize the fleet.

38. The necessary repairs disrupted MIFC's ferry services in 2024. To help remedy the problem, the Hoffmann Family worked closely with the City Council, including utilizing Shepler's fleet to help ensure that the island had adequate ferry services during MIFC's rehabilitation.

39. In the fall of 2024, as required under the Franchise Agreement, both Shepler's and MIFC submitted their proposed rates for ferry services to the City Council for the 2025 season.

40. Both Shepler's and MIFC proposed a slight increase in their ticket rates for the 2025 season. To explain the increase, representatives for Shepler's and MIFC notified the City that, in addition to the substantial capital investments that need to be recouped over time, both Shepler's and MIFC were experiencing a significant increase in expenses, including a \$500,000 increase in fuel prices, an increase in local taxes of \$50,000, a \$1,900,000 increase in payroll, and the approximately \$420,000 in lost ticket value that Shepler's and MIFC, in conjunction with the City, gives away for purposes of promotion.

41. In addition to a slight increase in ferry rates, Shepler's and MIFC's submission also included certain ancillary costs, allowing customers to choose between different services based on the customer's specific needs. For example, Shepler's instituted significant technology improvements for its ferry services

that incentives mobile technology over traditional paper tickets. In turn, while customers can use traditional tickets, doing so comes with a slight cost.

42. In their continued discussions with the City, Shepler's and MIFC emphasized that their priority is to draw as many passengers as possible to Mackinac Island through safe and efficient ferry services. They explained that they generate revenue through a high volume of tourists to the island, which is a shared interest with other business on Mackinac Island. Shepler's and MIFC explained their shared interest in the viability of Mackinac Island's tourist industry.

43. On or about September 11, 2024, the City Council passed a resolution that rejected Shepler's and MIFC's proposed rate increase for ferry boat services and their proposal for additional ancillary costs. The resolution states that the "recent purchase of all the ferry boat companies by one company presents the City with a monopoly situation, a situation the City has never faced before." The resolution states that the City is "freezing the rates that were in place for the 2024 season," with certain listed exceptions

44. Plaintiffs dispute that the Franchise Agreement provides the City with unilateral authority to declare a "monopoly," or specifically the existence of "no competition," for purposes of regulating the rates for ferry services under that Franchise Agreement.

45. Plaintiffs also dispute that the Franchise Agreement provides the City with authority to reject their proposed ancillary costs.

46. On or about September 11, 2024, the City also formally resolved that “parking rates must be brought to the City Council by January 8, 2025.” These parking rates reference the rates that Shepler’s and MIFC charge for parking on their respective lots in either St. Ignace or Mackinaw City.

47. During the winter of 2024-2025, representatives from the Hoffmann Family, on behalf of Shepler’s and MIFC, sought to work with the City Council, including an explanation regarding why a ferry rate increase for 2025, with some additional ancillary costs, is important because of increased expenses. On January 8, 2025, the City stated that, while “the Council appreciate the hard work that Hoffmann has put in to providing ferry services to Mackinac Island,” the City “does not have an understanding [of the] full costs as that is not shared with the City.” The City’s mayor unilaterally declared that “the City is dealing with a monopoly[.]”

48. On or about February 4, 2025, in the interest of continued cooperation with the City Council, counsel for Plaintiffs shared their proposed parking rates for 2025 for the parking lots located on Mackinaw Island and St. Ignace. In doing so, however, Plaintiffs’ counsel also stated that “the City has no right under the Francise Agreements [to approve] the schedule and parking rates[.]”

49. On February 19, 2025, the City Council unanimously passed a motion that (a) “rejected” both Shepler’s and MIFC’s proposed parking rates; (b) demanded that they both “remove all reference to the unapproved parking rates from their websites, other distributions, and advertisements; and (c) demanded that they provide the City with information regarding their parking rates from 2023 and 2024, including information on lot locations and capacities.

50. The following week, on February 26, 2025, the City unanimously passed another motion related to parking, which restated its prior motion, and gave Shepler’s and MIFC’s until March 3, 2025 to comply. During this meeting, counsel for the City stated that City’s legal position is, at least in part, the “Franchise Agreement” provides the City with its authority to make these demands.

51. Plaintiffs dispute that the Franchise Agreement provides the City with any authority, whether direct or implied, to regulate Plaintiffs’ parking businesses in either Mackinaw City or St. Ignace.

COUNT I
(Declaratory Judgment Under 28 U.S.C § 2201)

52. The preceding paragraphs are hereby realleged and incorporated by reference as if fully set forth herein.

53. Pursuant to 28 U.S.C. § 2201, an “actual controversy” exists between Plaintiffs and Defendant regarding the “rights and other legal relations” related to the Franchise Agreement.

54. Under Section 9, the Franchise Agreement provides that:

In the event that no competition is found to exist in ferry boat service to and from the City, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

55. Citing the Franchise Agreement, Defendant has unilaterally declared that a monopoly exists for ferry services to and from Mackinac Island and thus Defendant can establish its own fares for these services.

56. Plaintiffs dispute that the Franchise Agreement empowers Defendant to unilaterally “find” the existence of a “no competition” for purposes of establishing fares.

57. Citing the Franchise Agreement, Defendant has taken the position that it can regulate Plaintiff’s proposed ancillary costs related to its ferry services.

58. Plaintiffs dispute that the Franchise Agreement empowers Defendant to regulate ancillary costs related to their ferry services that are not fares for the same.

59. Citing the Franchise Agreement, Defendant has also unilaterally declared that it can regulate the Plaintiffs’ parking businesses in Mackinaw

City and St. Ignace, including requesting that Plaintiffs cease advertising and compelling the production of financial documents.

60. Plaintiffs dispute that the Franchise Agreement empowers Defendant to regulate Plaintiffs' parking businesses in Mackinaw City and St. Ignace, including any power to demand that they cease advertising or compel their production of financial documents.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For the Honorable Court to enter a declaratory judgment declaring that the "no competition is found to exist" clause under Section 9 of the subject contracts does not permit Defendant to unilaterally declare the existence of a monopoly for purposes of regulating schedules and fares for ferry services.

2. For the Honorable Court to enter a declaratory judgment declaring that the "schedules and fares" clause under Section 9 of the subject contracts does not include ancillary costs that Plaintiffs may choose to charge customers that are not traditional schedules or fares related to ferry services.

3. For the Honorable Court to enter a declaratory judgment declaring that the "schedules and fares" clause under Section 9 of the subject contracts is specifically limited to schedules and fares for the operation of Plaintiff's ferry business and not for Plaintiffs other businesses.

4. For pre- and post-judgment interest;

5. For all expenses, and costs and disbursements, as allowed by law;
6. Such other and further relief the Honorable Court deems just and equitable.

ECKLAND & BLANDO LLP

Dated: March 3, 2025

S/ ROBERT T. DUBE, JR.
Vince C. Reuter (#MN390874)
(Admission Pending)
Robert T. Dube, Jr. (#MN38988)
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10 South Fifth Street
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Counsel for Plaintiffs

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FRANCHISE

CURRENT

THE CITY OF MACKINAC ISLAND ORDAINS:

Section 1. A nonexclusive ferryboat franchise authorizing the Franchisee to operate a public ferryboat service to and from the City of Mackinac Island is hereby granted to Shepler's Mackinac Island Ferry Service (hereinafter referred to as "Franchisee") by the City of Mackinac Island ("City") upon acceptance by the Franchisee of the terms and conditions stated herein.

Section 2. The term of this Franchise shall be from July 1, 2012 to June 30, 2027, provided however, that for a thirty (30) day period commencing on June 1, 2017, the Franchisee shall have the option to terminate this Franchise and to enter into a new Franchise, the terms and condition of which shall be the same as this Franchise except the expiration date of the new Franchise shall be June 30, 2032. Said option shall be exercised by the Franchisee providing written notice of the exercise of the option sent to the City Clerk by certified U.S. mail, return receipt requested.

Section 3. Not later than November 15 of each year, the Franchisee shall file its schedule of services and rates for the next season with the City Clerk. The Franchisee shall operate in accordance with its schedule of services on file with the City Council ("Council"), although it may deviate from that schedule for up to four (4) days at a time without notice to the Council to meet short term operational necessities. The Franchisee shall file a schedule of services with the Council annually and whenever a change is made which will last for more than four (4) days. However, nothing herein shall be interpreted as limiting the Franchisee from offering ferryboat services in addition to the services contained in its filed schedule of services, except as provided in Section 4 below.

Section 4. Franchisee shall provide ferry boat service to and from the City during the regular ferry boat season which is the period of time between April 21 of any calendar year and October 31 of the same calendar year during the term, and during any extended term, of this Franchise. Franchisee agrees that only the ferry boat company franchisee selected to provide service during the winter ferry boat season, which is the period of time between November 1 of any calendar year and April 20 of the following calendar year, shall provide ferry boat service during that winter ferry boat season.

Section 5. For ferry boat service during the winter ferry boat seasons between November 1, 2013 and April 20, 2018, and for each subsequent five year period after that period for so long as this Franchise is in effect, the City will seek proposals from all of the ferry boat company franchisees for providing ferry boat service during the winter ferry boat season in exchange for a \$100,000 per year credit from the City against the franchise fees owed by the company selected to provide the service during the winter ferry boat season. If no proposal is received by the City for adequate service during any winter ferry boat season, the City reserves the right to act in ways necessary or appropriate to ensure that service is provided, including but not limited to the right to modify all ferry boat service franchises. On the first day of July of every year, commencing on July 1, 2013, the \$100,000 per year credit shall be increased by the same percentage CPI increase provided in Section 8 of this Franchise for franchise fees.

Section 6.

- a. During the original term and any extended term of this Franchise, the charge for City residents for off season ferry boat service shall be Five Dollars (\$5.00) per person one way, with any resident or seasonal pass previously purchased.

- b. During the period of July 1, 2012 through October 31, 2012, the Franchisee shall not increase its rates, fares and charges on file with the Council as of June 1, 2012.

Section 7. The Clerk is directed to issue a certificate evidencing the existence of this franchise, which certificate must be publicly displayed on all of the Franchisee's ferryboats providing ferryboat service.

Section 8.

- a. During the term of this franchise, the Franchisee agrees to pay to the City of Mackinac Island in consideration of the granting of this 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 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 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 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 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 9. In the event that no competition is found to exist in ferry boat service to and from the City, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

Section 10. This franchise may not be sold, transferred or assigned unless such transaction is first approved by the Council after receipt of a written application therefor, containing the same information as to the transferee as would be required of an original applicant.

Section 11. This franchise is subject to all applicable provisions of the Charter of the City of Mackinac Island and ordinances thereof, particularly Ordinance No. 465, being the Ferry Boat Code, as well as the laws and Constitution of the State of Michigan, and shall, whenever possible, be construed as consistent with them.

Section 12. The franchisee shall comply with the agreements made by it in its Application for this franchise.

Section 13. This franchise shall not 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 of Mackinac Island shall be a party or affected therein or thereby.

Section 14. Should any section, clause or provision of this franchise be declared to be invalid by a court of record, the same shall not affect the validity of the franchise as a whole or any part thereof, other than the part so declared invalid.

Section 15. This franchise shall be of no effect unless and until the Franchisee accepts the franchise and agrees to abide by all terms and conditions thereof.

Section 16. Franchisee and the City agree to abide by the terms of the June 2, 2012 Memorandum of Understanding, the terms of which are set forth below, to the extent that those terms do not conflict with the terms of this Franchise. In the case of conflict, the terms of this Franchise shall govern.

Section 17. This franchise shall become a binding and enforceable contract, upon the signing of both parties. The Mayor of the City of Mackinac Island is hereby authorized and directed to sign this franchise on behalf of the City.

MEMORANDUM OF UNDERSTANDING

- 1) 15 year franchise with the understanding that after five years, there is a right to enter into a new 15 year franchise.
- 2) All lines determine their own schedules and rates. However, the boat lines will file their schedules and rates with the City. There is a commitment by not less than two of the lines to maintain not more than their present maximum rate for the summer season of 2012.
- 3) \$600,000 annual franchise fee with an annual CPI Adjustment to be split equally among all operating boat lines.
- 4) \$100,000 subsidy to boat line operating ice to ice in exchange for their providing exclusive passenger service in the off-season. Off-season service will be placed up for bid annually with the guarantee of the \$100,000 subsidy. In the event there are no bidders for

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winter service, the City reserves its right to act in ways necessary or appropriate to ensure that off-season services are offered. The charge for local residents for off-season service will be \$5.00 per person one way, with any resident or seasonal pass previously purchased.

- 5) Year round freight services may be offered by any franchisee.
- 6) On July 1, the 7% franchise fee ends along with the current franchises. New franchises will be issued immediately containing the provisions contained in this memorandum. The \$600,000 will be pro-rated this season and paid in full beginning in the summer season of 2013.
- 7) Plante Moran study will not go forward.
- 8) Action on any proposed legislation will be suspended until at least June 12, 2012. If the City Council adopts the content of this memorandum, the legislation will be permanently postponed or tabled.
- 9) The Mayor will ask the City Council to act on the proposed new agreement during the week of June 4, 2012.
- 10) All signatories agree that they will fully support the contents of this memorandum and urge the Public and the Council to do likewise.
- 11) In the event that no competition is found to exist, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

Approved and adopted as Ordinance No. 467, at the regular City Council meeting held June 27, 2012.
Posted in Community Hall, Post Office, First National Bank and Central Savings Bank - All Mackinac Island

Karen S. Lennard
City Clerk

This franchise agreement entered into by the aforesaid parties this 27th day of June, 2012.

By: Margaret A. Dorel
Title: Mayor, City of Mackinac Island

Witnesses:
Meredith Bagley
Wendy J. Wambinski

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THE FRANCHISEE HEREBY ACCEPTS THIS FRANCHISE AND EXPRESSLY AGREES TO ABIDE BY ALL THE TERMS AND CONDITIONS CONTAINED HEREIN.

Christopher B. Shepler
By: Christopher B. Shepler
Title: Vice President

Witnesses: Geoff Hoekesem?
X [Signature]
[Signature]
Steve Mott



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original in Ordinance file

CERTIFICATION OF ORDINANCE PUBLICATION/POSTING

RE: Ordinance Number: No. 617

Date Approved: October 18, 2023

Date Effective: October 18, 2023

Ordinance Title: Amendment and Restatement of Franchise - Mackinac Island Ferry Company


~~I certify that I have caused a copy of the foregoing ordinance (which I have compared to this original) to be published in the _____, (if applicable), a newspaper of general circulation within the City limits, on _____.~~

OR

I certify that I have caused the foregoing ordinance to be posted in the following five (5) public places within the City limits:

- 1. First National Bank of St. Ignace**
- 2. Mackinac Island Post Office**
- 3. Outside of City Hall**
- 4. Community Hall**
- 5. Central Savings Bank**

Dated: October 18, 2023


Danielle Leach, City Clerk

AMENDMENT AND RESTATEMENT OF FRANCHISE

THE CITY OF MACKINAC ISLAND ORDAINS:

Section 1. A nonexclusive ferryboat franchise authorizing the Franchisee to operate a public ferryboat service to and from the City of Mackinac Island is hereby granted to Mackinac Island Ferry Company, hereafter MIFC, (hereinafter referred to as “Franchisee”) by the City of Mackinac Island (“City”) upon acceptance by the Franchisee of the terms and conditions stated herein.

Section 2. The term of this Franchise shall be from July 1, 2012 to June 30, 2027, provided however, that for a thirty (30) day period commencing on June 1, 2017, the Franchisee shall have the option to terminate this Franchise and to enter into a new Franchise, the terms and condition of which shall be the same as this Franchise except the expiration date of the new Franchise shall be June 30, 2032. Said option shall be exercised by the Franchisee providing written notice of the exercise of the option sent to the City Clerk by certified U.S. mail, return receipt requested. For the Franchise of the Franchisee who has the winter service contract for the winter ferry boat season between November 1, 2027 and April 20, 2028, that Franchisee’s Franchise term shall continue through April 20, 2028.

Section 3. Not later than November 15 of each year, the Franchisee shall file its schedule of services and rates for the next season with the City Clerk, The Franchisee shall operate in accordance with its schedule of services on file with the City Council (“Council”), although it may deviate from that schedule for up to four (4) days at a time without notice to the Council to meet short term operational necessities. The Franchisee shall file a schedule of services with the Council annually and whenever a change is made which will last for more than four (4) days. However, nothing herein shall be interpreted as limiting the Franchisee from

offering ferryboat services in addition to the services contained in its filed schedule of services, except as provided in Section 4 below.

Section 4. Franchisee shall provide ferry boat service to and from the City during the regular ferry boat season which is the period of time between April 21 of any calendar year and October 31 of the same calendar year during the term, and during any extended term, of this Franchise. Franchisee agrees that only the ferry boat company franchisee selected to provide service during the winter ferry boat season, which is the period of time between November 1 of any calendar year and April 20 of the following calendar year, shall provide ferry boat service during that winter ferry boat season.

Section 5. For ferry boat service during the winter ferry boat seasons between November 1, 2013 and April 20, 2018, and for each subsequent five year period after that period for so long as this Franchise is in effect, the City will seek proposals from all of the ferry boat company franchisees for providing ferry boat service during the winter ferry boat season in exchange for a \$100,000 per year credit from the City against the franchise fees owed by the company selected to provide the service during the winter ferry boat season. If no proposal is received by the City for adequate service during any winter ferry boat season, the City reserves the right to act in ways necessary or appropriate to ensure that service is provided, including but not limited to the right to modify all ferry boat service franchises. On the first day of July of every year, commencing on July 1, 2013, the \$100,000 per year credit shall be increased by the same percentage CPI increase provided in Section 8 of this Franchise for franchise fees. Provided however, the City and all currently existing Franchisees agree that for ferry boat service during the winter ferry boat seasons between November 1, 2023 and April 20, 2028, the terms of the Winter Service Agreement, attached hereto as Exhibit A and incorporated by

reference, have been negotiated and agreed to and any provision in that Winter Service Agreement that is contrary to this Franchise Agreement shall be deemed to amend this Franchise Agreement.

Section 6.

- a. During the original term and any extended term of this Franchise, the charge for City residents for off season ferry boat service shall be Five Dollars (\$5.00) per person one way, with any resident or seasonal pass previously purchased.
- b. During the period of July 1, 2012 through October 31, 2012, the Franchisee shall not increase its rates, fares and charges on file with the Council as of June 1, 2012.

Section 7. The Clerk is directed to issue a certificate evidencing the existence of this franchise, which certificate must be publicly displayed on all of the Franchisee's ferryboats providing ferryboat service.

Section 8.

- a. During the term of this franchise, the Franchisee agrees to pay to the City of Mackinac Island in consideration of the granting of this 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 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 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 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 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.

- (3) As of the date of the Winter Service Agreement (Exhibit A), MDOT, through the MTF under Act 51 is providing 50% (\$100,000) of the current consideration (\$200,000.00) being paid to the Franchise company selected to provide the service during the winter ferry boat season between November 1, 2023 and April 20, 2024, which is reimbursed to the City. If, in any year of the remaining years of the Winter Service Agreement attached hereto, the City or MITA does not receive the full 50% reimbursement of the then-current consideration, paid to the Franchise company selected to provide the service during the winter ferry boat season under that Winter Service Agreement, from MDOT, through MTF funding, the difference of what is not received through that funding (up to 50% of the then-current consideration) will be made up by an increase to the Franchise Fee, paid by the Franchise holders equally, in an amount equal to the funding not reimbursed through MDOT and MTF funding.
- 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 9. In the event that no competition is found to exist in ferry boat service to and from the City, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

Section 10. This franchise may not be sold, transferred or assigned unless such transaction is first approved by the Council after receipt of a written application therefor, containing the same information as to the transferee as would be required of an original applicant.

Section 11. This franchise is subject to all applicable provisions of the Charter of the City of Mackinac Island and ordinances thereof, particularly Ordinance No. 465, being the Ferry Boat Code, as well as the laws and Constitution of the State of Michigan, and shall, whenever possible, be construed as consistent with them.

Section 12. The franchisee shall comply with the agreements made by it in its Application for this franchise.

Section 13. This franchise shall not 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 of Mackinac Island shall be a party or affected therein or thereby.

Section 14. Should any section, clause or provision of this franchise be declared to be invalid by a court of record, the same shall not affect the validity of the franchise as a whole or any part thereof, other than the part so declared invalid.

Section 15. This franchise shall be of no effect unless and until the Franchisee accepts the franchise and agrees to abide by all terms and conditions thereof.

Section 16. Franchisee and the City agree to abide by the terms of the June 2, 2012 Memorandum of Understanding, the terms of which are set forth below, to the extent that those

terms do not conflict with the terms of this Franchise. In the case of conflict, the terms of this Franchise shall govern.

Section 17. This franchise shall become a binding and enforceable contract, upon the signing of both parties. The Mayor of the City of Mackinac Island is hereby authorized and directed to sign this franchise on behalf of the City.

MEMORANDUM OF UNDERSTANDING

- 1) 15 year franchise with the understanding that after five years, there is a right to enter into a new 15 year franchise.
- 2) All lines determine their own schedules and rates. However, the boat lines will file their schedules and rates with the City. There is a commitment by not less than two of the lines to maintain not more than their present maximum rate for the summer season of 2012.
- 3) \$600,000 annual franchise fee with an annual CPI Adjustment to be split equally among all operating boat lines.
- 4) \$100,000 subsidy to boat line operating ice to ice in exchange for their providing exclusive passenger service in the off-season. Off-season service will be placed up for bid annually with the guarantee of the \$100,000 subsidy. In the event there are no bidders for winter service, the City reserves its right to act in ways necessary or appropriate to ensure that off-season services are offered. The charge for local residents for off-season service will be \$5.00 per person one way, with any resident or seasonal pass previously purchased.
- 5) Year round freight services may be offered by any franchisee.
- 6) On July 1, the 7% franchise fee ends along with the current franchises. New franchises will be issued immediately containing the provisions contained in this memorandum. The \$600,000 will be pro-rated this season and paid in full beginning in the summer season of 2013.
- 7) Plante Moran study will not go forward.
- 8) Action on any proposed legislation will be suspended until at least June 12, 2012. If the City Council adopts the content of this memorandum, the legislation will be permanently postponed or tabled.
- 9) The Mayor will ask the City Council to act on the proposed new agreement during the week of June 4, 2012.

Section VII, Itemb.

- 10) All signatories agree that they will fully support the contents of this memorandum and urge the Public and the Council to do likewise.
- 11) In the event that no competition is found to exist, the City has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law.

Approved and adopted as Ordinance No. 617, at the regular City Council meeting held 10.18.23.
 Posted in ~~FRS~~ See attached cover sheet

Danielle Leach
 City Clerk

This franchise agreement entered into by the aforesaid parties this 18 day of October, 2023.

Margaret Doud

By: Margaret Doud

Title: Mayor, City of Mackinac Island

Witnesses:

Danielle Leach

Danielle Leach

THE FRANCHISEE HEREBY ACCEPTS THIS FRANCHISE AND EXPRESSLY AGREES TO ABIDE BY ALL THE TERMS AND CONDITIONS CONTAINED HEREIN.

Jerry Fetty

By: Jerry Fetty

Title: CEO, Mackinac Island Ferry Company

Witnesses:

James Murray
James Murray

Section VII, Itemb.

SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry Service, and Mackinac Island Ferry Company d/b/a Arnold Transit Company

Case No. 2:25-cv-36 Hon.

v. City of Mackinac Island

TO: City of Mackinac Island ADDRESS: c/o Danielle Leach 7358 Market Street P.O. Box 455 Mackinac Island, MI 49757

A lawsuit has been filed against you.

PLAINTIFF OR PLAINTIFF'S ATTORNEY NAME AND ADDRESS Robert T. Dube, Jr., Esq. (#MN401597) Eckland & Blando LLP 800 Lumber Exchange Building 10 South Fifth Street Minneapolis, MN 55402

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff, an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure within 21 days after service of this summons on you (not counting the day you received it). If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You must also file your answer or motion with the Court.

CLERK OF COURT

The Court has offices in the following locations:

- 399 Federal Building, 110 Michigan St., NW, Grand Rapids, MI 49503
P.O. Box 698, 330 Federal Building, Marquette, MI 49855
107 Federal Building, 410 W. Michigan Ave., Kalamazoo, MI 49007
113 Federal Building, 315 W. Allegan, Lansing, MI 48933

March 03, 2025

By: Deputy Clerk

Date

PROOF OF SERVICE

This summons for City of Mackinac Island was received by me on (date).

I personally served the summons on the individual at (place where served) on (date).

I left the summons at the individual's residence or usual place of abode with (name), a person of suitable age and discretion who resides there, on (date), and mailed a copy to the individual's last known address.

I served the summons on (name of individual), who is designated by law to accept service of process on behalf of (name of organization) on (date).

I returned the summons unexecuted because

Other (specify)

My fees are \$ for travel and \$ for services, for a total of \$

I declare under the penalty of perjury that this information is true.

Date:

Server's signature

Additional information regarding attempted service, etc.:

Server's printed name and title

Server's address