

CITY OF MACKINAC ISLAND

AGENDA

SPECIAL CITY COUNCIL MEETING - FERRY BOAT MATTERS

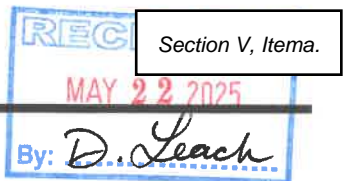
Tuesday, May 27, 2025 at 4:00 PM

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. New Business**
 - a. Request for approval to enter in to closed session to discuss ferry boat matters & ongoing litigation
 - b. Ferries' TRO and PI regarding new Ferry Ordinance
 - c. Motions to Dismiss
- VI. Miscellaneous / General Council Discussion / Additional Agenda Items**
- VII. Adjournment**

City Clerk

* Special mtng - May 27th @ 4:00pm



From: Erin Evashevski <erinevashevskilaw@gmail.com>
Sent: Thursday, May 22, 2025 8:46 AM
To: Jason; Anneke Myers; Richard Chambers; Tom; Steve Moskwa; City Clerk
Subject: Fwd: Courtesy Notice of Ferry Fare Increase
Attachments: Shepler's Rates Fees and Schedules for the 2025 Season 11.12.pdf; ATCO 2025 Rates and Schedule 1111.pdf

All- see email below from Hoffmann's new attorney. Mike and I are working on this and will be in touch.

Please send to Lindsey- I do not have her email yet.

----- Forwarded message -----

From: Aaron, Richard <RAaron@dykema.com>
Date: Wed, May 21, 2025 at 6:00 PM
Subject: Courtesy Notice of Ferry Fare Increase
To: mdoud@lighthouse.net <mdoud@lighthouse.net>
CC: Mike Cavanaugh <mcavanaugh@fraserlawfirm.com>, Erin Evashevski <erinevashevskilaw@gmail.com>, saylor@millercanfield.com <saylor@millercanfield.com>, Scott@millercanfield.com <Scott@millercanfield.com>

Dear Mayor Doud:

Sheplers and Arnold Transport will be proceeding with the previously noticed fare increase for non-residents effective May 22, per the operative franchise agreements. Please see the attached schedules.

The fare increase will not apply to residents of the Island. It represents an approximately 5 percent increase, and it is the first fare increase since 2022. This is significantly less than inflation, and a small percentage of the increases seen in other Island-related businesses. Island hotel rates, for instance, have skyrocketed during the same time.

The new fare increase is necessary for Sheplers and Arnold to remain viable businesses and avoid confiscation of property by means of unreasonably low fares. After Arnold was purchased (at the Island's request), significant repairs were required to the fleet to keep the service up and running.

Richard J. Aaron

DyKEMA

Richard J. Aaron
Member

Director-Energy Industry Group
RAaron@dykema.com

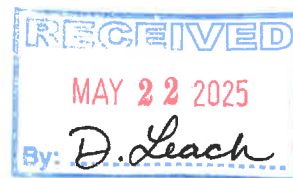
517-374-9198
Direct
517-374-9100 Main
855-230-2517 Fax

517-819-2758
Mobile

Capitol View
201 Townsend Street, Suite
900
Lansing, Michigan 48933
www.dykema.com



Shepler's Mackinac Island Ferry
Mackinaw City & St. Ignace
P.O. Box 250
Mackinaw City, MI 49701
Phone: 231-436-5023 | 800-828-6157
Fax: 231-436-7521



November 12, 2024

City of Mackinac Island
Attn: Mayor Doud and City Council Members
P.O. Box 455
Mackinac Island, MI 49757

Dear Mayor Doud and City Council Members,

Attached is Shepler's submission of Rates, Fees, and Schedules for the 2025 ferry season.
This submission is outlined by:

- Ferry Fare Schedule
- Standard Group Fare Schedule
- 2025 Ferry Schedule for Mackinaw City and St. Ignace

Thank you all for your time and please let me know if you need any additional information.

Best Regards,

Jason Wiley
Director of Operations



**HOFFMANN FAMILY
OF COMPANIES**

ELEVATE YOUR EXPERIENCE



Hoffmann
MARINE



Updated 10/

Section V, Itema.

Shepler's Mackinac Island Ferry
2025 FARE SCHEDULE
PRICES SUBJECT TO CHANGE WITHOUT NOTICE

Ticket Office Rates

| | |
|-------------------------------|--------------------|
| Adult - Round Trip | \$38.00 per person |
| One Way | \$27.00 per person |
| Child - Round Trip (age 5-12) | \$26.00 per person |
| One Way | \$19.00 per person |

Online Rates

| | |
|-------------------------------|--------------------|
| Adult - Round Trip | \$38.00 per person |
| Child - Round Trip (age 5-12) | \$26.00 per person |

Online Add-on

| | |
|-------------------------------------|--------|
| Adult Carriage Tour | \$ TBD |
| Child Carriage Tour | \$ TBD |
| Adult Fort / Fort Mackinac (Island) | \$ TBD |
| Child Fort / Fort Mackinac (Island) | \$ TBD |

| | |
|--|-------|
| Online only Grand Hotel Adult Lunch (age 13 +) | \$TBD |
| Online only Grand Hotel Child Lunch (age 6-12) | \$TBD |
| Infant (age 0-5 with adult purchase) | Free |

Military Rates Requires ID

| | |
|-------------------------------|--------------------|
| Adult - Round Trip | \$26.00 per person |
| Child - Round Trip (age 5-12) | \$18.00 per person |

Bikes*

| | |
|--|---------------------|
| Bikes - All Single Bicycles - Round Trip | \$21.00 per bicycle |
| Passenger bike attachment | \$21.00 each |
| Tandem Bicycle | \$42.00 each |

*Based on no increase with city and state fees

Strollers / Wagons Free

Private Luggage Carts (4ft x 6ft) \$40.00

Kayak (round-trip) \$40.00

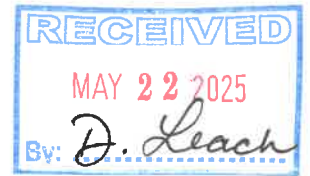
Gift Cards - \$25 minimum; expires 5 years after purchase date; will need to choose email or mail option; may be used on tickets, cruises, and parking. Redeem at the ticket office or online.

COMMUTERS

Section V, Itema.

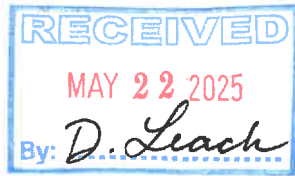
Must be island employee, own a business / doing business or resident.

| | |
|--|----------|
| Season Pass (unlimited trips April 21 - Oct. 31) | \$840.00 |
| 20 One Ways | \$275.00 |
| 40 One Ways | \$505.00 |
| Island Employee Ticket (Round Trip - ONLY sold off Island) | \$25.00 |
| Island Resident Adult Season Pass | \$265.00 |
| Island Resident Child Season Pass (age 5-17) | \$185.00 |
| Island Resident Infant Season Pass (under 5) | FREE |
| Adult Third Party Vendor Tickets | \$33.00 |
| Child Third Party Vendor Tickets | \$21.00 |



Commuter Bike Policy

All pass holders must have a current Mackinac Island bike license on their bike or buy a Shepler's bike tag. (1st trip without a bike license is no longer free.)



Updated 10/16/24

Shepler's Mackinac Island Ferry

2025 STANDARD GROUP FARES

Tour Groups:

Overnight: \$29/adult & \$20/child (age 5-12)

Day: \$28/adult & \$19/child (ages 5-12)

School Groups (through 12th Grade):

\$19/person

College School Groups:

Overnight: \$29/adult & \$20/child (age 5-12)

Day: \$28/adult & \$19/child (ages 5-12)

Scout/Camp/Church Youth Groups (more youth than adults)

\$20/person

Weddings/Conventions/Reunions

POA: \$28/adult & \$17/child (ages 5-12)

Master Bill: \$29/adult & \$20/child (ages 5-12)

MACKINAW CITY DEPARTURESDAILY DEPARTURES IN BLACK. ADDITIONAL DEPARTURES AS NOTED IN COLOR.
SCHEDULES SUBJECT TO CHANGE WITHOUT NOTICE.**April 21 through April 24****LEAVE MACKINAW CITY****LEAVE MACKINAC ISLAND**

| | | | | | |
|---------|----------|---------|---------|----------|---------|
| 7:30 AM | 10:30 AM | 2:30 PM | 8:00 AM | 11:00 AM | 3:00 PM |
| 9:00 AM | 12:30 PM | 4:30 PM | 9:30 AM | 1:00 PM | 5:00 PM |

DAILY DEPARTURES IN BLACK

April 25 through May 22**LEAVE MACKINAW CITY****LEAVE MACKINAC ISLAND**

| | | | | | |
|----------|----------|---------|----------|------------|---------|
| 7:30 AM | 10:30 AM | 3:30 PM | 8:00 AM | 12:00 NOON | 7:00 PM |
| 8:30 AM | 11:00 AM | 4:30 PM | 9:00 AM | 1:00 PM | 8:00 PM |
| 9:00 AM | 11:30 AM | 5:30 PM | 9:30 AM | 2:00 PM | |
| 9:30 AM | 12:30 PM | 6:30 PM | 10:00 AM | 3:00 PM | |
| 10:00 AM | 1:30 PM | 7:30 PM | 10:30 AM | 4:00 PM | |
| | 2:30 PM | | 11:00 AM | 5:00 PM | |
| | | | 11:30 AM | 6:00 PM | |

DAILY DEPARTURES IN BLACK | MIGHTY MAC DEPARTURES
SATURDAYS & SUNDAYS ONLY | DAILY MAY 9 - MAY 22 ONLY**May 23 through September 1****LEAVE MACKINAW CITY****LEAVE MACKINAC ISLAND**

| | | | | | |
|----------|------------|---------|----------|------------|----------|
| 8:30 AM | 10:45 AM | 3:30 PM | 7:00 AM | 11:30 AM | 4:00 PM |
| 7:30 AM | 11:00 AM | 4:00 PM | 8:00 AM | 11:45 AM | 4:30 PM |
| 8:30 AM | 11:15 AM | 4:30 PM | 9:00 AM | 12:00 NOON | 5:00 PM |
| 9:00 AM | 11:30 AM | 5:00 PM | 9:30 AM | 12:15 PM | 5:30 PM |
| 9:15 AM | 11:45 AM | 5:30 PM | 10:00 AM | 1:00 PM | 6:30 PM |
| 9:30 AM | 12:00 NOON | 6:00 PM | 10:30 AM | 1:30 PM | 7:00 PM |
| 9:45 AM | 12:30 PM | 6:30 PM | 10:45 AM | 2:00 PM | 7:30 PM |
| 10:00 AM | 1:00 PM | 7:00 PM | 11:00 AM | 2:30 PM | 8:00 PM |
| 10:15 AM | 1:30 PM | 7:30 PM | 11:15 AM | 3:00 PM | 8:30 PM |
| 10:30 AM | 2:00 PM | 8:00 PM | 11:30 AM | 3:30 PM | 9:00 PM |
| | 2:30 PM | 9:30 PM | | | 10:00 PM |
| | 3:00 PM | | | | |

DAILY DEPARTURES IN BLACK | MIGHTY MAC DEPARTURES (LABOR DAY ONLY)
DAILY JUNE 27 - AUGUST 10, AUGUST 30 & 31 | DAILY JUNE 13 - AUGUST 10**September 2 through October 5****LEAVE MACKINAW CITY****LEAVE MACKINAC ISLAND**

| | | | | | |
|---------|------------|---------|----------|------------|---------|
| 7:00 AM | 10:00 AM | 2:30 PM | 7:30 AM | 11:00 AM | 4:00 PM |
| 7:30 AM | 10:30 AM | 3:30 PM | 8:00 AM | 11:30 AM | 5:00 PM |
| 8:00 AM | 11:00 AM | 4:30 PM | 8:30 AM | 12:00 NOON | 6:00 PM |
| 8:30 AM | 11:30 AM | 5:30 PM | 9:00 AM | 12:30 PM | 7:00 PM |
| 9:00 AM | 12:00 NOON | 6:30 PM | 9:30 AM | 1:00 PM | 8:00 PM |
| 9:30 AM | 12:30 PM | 7:30 PM | 10:00 AM | 2:00 PM | |
| | 1:30 PM | | 10:30 AM | 3:00 PM | |

DAILY DEPARTURES IN BLACK | MIGHTY MAC DEPARTURES
SEPTEMBER 6 ONLY | FRIDAYS AND SATURDAYS ONLY**October 6 through October 26****LEAVE MACKINAW CITY****LEAVE MACKINAC ISLAND**

| | | | | | |
|---------|----------|---------|----------|------------|---------|
| 7:30 AM | 10:00 AM | 2:30 PM | 8:00 AM | 11:00 AM | 4:00 PM |
| 8:00 AM | 10:30 AM | 3:30 PM | 8:30 AM | 11:30 AM | 5:00 PM |
| 8:30 AM | 11:00 AM | 4:30 PM | 9:00 AM | 12:00 NOON | 6:00 PM |
| 9:00 AM | 11:30 AM | 5:30 PM | 9:30 AM | 1:00 PM | 7:00 PM |
| | 12:30 PM | 6:30 PM | 10:00 AM | 2:00 PM | |
| | 1:30 PM | | 10:30 AM | 3:00 PM | |

DAILY DEPARTURES IN BLACK | MIGHTY MAC DEPARTURES
OCTOBER 25 ONLY | FRIDAYS AND SATURDAYS ONLY | SUNDAYS & SUNDAYS ONLY**October 27 through October 31****LEAVE MACKINAW CITY****LEAVE MACKINAC ISLAND**

| | | | | | |
|---------|----------|---------|---------|----------|---------|
| 7:30 AM | 10:30 AM | 2:30 PM | 8:00 AM | 11:00 AM | 3:00 PM |
| 9:00 AM | 12:30 PM | 4:30 PM | 9:30 AM | 1:00 PM | 5:00 PM |

DAILY DEPARTURES IN BLACK

2025**ST. IGNACE DEPARTURES**DAILY DEPARTURES IN BLACK. ADDITIONAL DEPARTURES AS NOTED IN COLOR.
SCHEDULES SUBJECT TO CHANGE WITHOUT NOTICE.**April 21 through April 24****LEAVE ST. IGNACE****LEAVE MACKINAC ISLAND**

| | | | | | |
|---------|----------|---------|---------|----------|---------|
| 7:30 AM | 10:30 AM | 2:30 PM | 8:00 AM | 11:00 AM | 3:00 PM |
| 9:00 AM | 12:30 PM | 4:30 PM | 9:30 AM | 1:00 PM | 5:00 PM |

DAILY DEPARTURES IN BLACK

April 25 through May 22**LEAVE ST. IGNACE****LEAVE MACKINAC ISLAND**

| | | | | | |
|---------|----------|---------|----------|------------|---------|
| 7:30 AM | 10:00 AM | 2:30 PM | 8:00 AM | 11:00 AM | 3:00 PM |
| 8:30 AM | 10:30 AM | 3:30 PM | 9:00 AM | 11:30 AM | 4:00 PM |
| 9:00 AM | 11:00 AM | 4:30 PM | 9:30 AM | 12:00 NOON | 5:00 PM |
| | 11:30 AM | 5:30 PM | 10:00 AM | 1:00 PM | 6:00 PM |
| | 12:30 PM | 6:30 PM | 10:30 AM | 2:00 PM | 7:00 PM |
| | 1:30 PM | 7:30 PM | | | 8:00 PM |

DAILY DEPARTURES IN BLACK | MIGHTY MAC DEPARTURES
MAY 10-11 & MAY 17-18 ONLY | DAILY MAY 9-22 ONLY**May 23 through September 1****LEAVE ST. IGNACE****LEAVE MACKINAC ISLAND**

| | | | | | |
|---------|------------|---------|------------|----------|----------|
| 6:30 AM | 11:30 AM | 4:30 PM | 7:00 AM | 12:30 PM | 5:00 PM |
| 7:30 AM | 12:00 NOON | 5:00 PM | 8:00 AM | 1:00 PM | 5:30 PM |
| 8:30 AM | 12:30 PM | 5:30 PM | 9:00 AM | 1:30 PM | 6:00 PM |
| | 1:00 PM | 6:00 PM | 9:30 AM | 2:00 PM | 6:30 PM |
| | 1:30 PM | 6:30 PM | 10:00 AM | 2:30 PM | 7:00 PM |
| | 2:00 PM | 7:00 PM | 10:30 AM | 3:00 PM | 7:30 PM |
| | 2:30 PM | 7:30 PM | 11:00 AM | 3:30 PM | 8:00 PM |
| | 3:00 PM | 8:30 PM | 11:30 AM | 4:00 PM | 8:30 PM |
| | 3:30 PM | 9:30 PM | 12:00 NOON | 4:30 PM | 10:00 PM |
| | 4:00 PM | | | | |

DAILY DEPARTURES IN BLACK | MIGHTY MAC DEPARTURES (LABOR DAY ONLY)
DAILY JUNE 27 - AUGUST 31 | DAILY JUNE 13 - AUGUST 16**September 2 through October 26****LEAVE ST. IGNACE****LEAVE MACKINAC ISLAND**

| | | | | | |
|---------|----------|---------|----------|------------|---------|
| 7:00 AM | 9:30 AM | 1:30 PM | 7:30 AM | 11:00 AM | 4:00 PM |
| 7:30 AM | 10:00 AM | 2:30 PM | 8:00 AM | 11:30 AM | 5:00 PM |
| 8:00 AM | 10:30 AM | 3:30 PM | 8:30 AM | 12:00 NOON | 6:00 PM |
| 8:30 AM | 11:00 AM | 4:30 PM | 9:00 AM | 1:00 PM | 7:00 PM |
| 9:00 AM | 11:30 AM | 5:30 PM | 10:00 AM | 2:00 PM | 8:00 PM |
| | 12:30 PM | 6:30 PM | 10:30 AM | 3:00 PM | |
| | | 7:30 PM | | | |

DAILY DEPARTURES IN BLACK | MIGHTY MAC DEPARTURES | SEPTEMBER 6 & OCTOBER 25 ONLY
FRIDAYS & SATURDAYS ONLY | SUNDAYS & SUNDAYS ONLY**October 27 through October 31****LEAVE ST. IGNACE****LEAVE MACKINAC ISLAND**

| | | | | | |
|---------|----------|---------|---------|----------|---------|
| 7:30 AM | 10:30 AM | 2:30 PM | 8:00 AM | 11:00 AM | 3:00 PM |
| 9:00 AM | 12:30 PM | 4:30 PM | 9:30 AM | 1:00 PM | 5:00 PM |

DAILY DEPARTURES IN BLACK

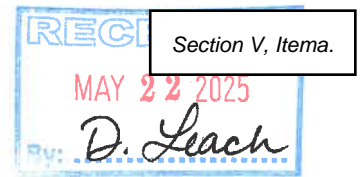
For schedule updates, please visit sheplersferry.com**Featuring Mighty Mac Departures!**

A narrated 25 minute journey under the Mackinac Bridge provides a unique vantage point to capture rare photos -- at no extra charge!



Scan Here For Tickets!

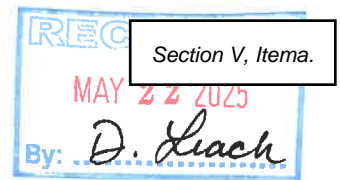
2025 Rates and Schedule submitted by:



ARNOLD TRANSIT COMPANY



HF | Hoffmann
MARINE



Arnold Transit Company
2025 FARE SCHEDULE
PRICES SUBJECT TO CHANGE WITHOUT NOTICE

TICKET OFFICE RATES

Adult

| | |
|-----------------|------|
| Round Trip..... | \$36 |
| One-Way..... | \$25 |

Child (age 5-12)

| | |
|-----------------|------|
| Round Trip..... | \$24 |
| One-Way..... | \$17 |

CLASSIC FERRY

| | |
|-----------------------|------|
| Adult Round Trip..... | \$25 |
| Child Round Trip..... | \$19 |

Child 4 & Under Round Trip..... Free

MILITARY RATES (Requires ID)

| | |
|------------|------|
| Adult..... | \$24 |
| Child..... | \$16 |

ONLINE RATES

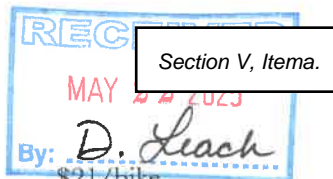
| | |
|--------------------|------|
| Adult..... | \$36 |
| Child..... | \$24 |
| Classic Adult..... | \$25 |
| Classic Child..... | \$19 |

Priority Boarding (Fastpass)

| | |
|------------|------|
| ADULT..... | \$51 |
| CHILD..... | \$39 |

ONLINE ADD-ONS

| | |
|--------------------------------------|-------|
| Carriage Tour Adult..... | \$TBD |
| Carriage Tour Child..... | \$TBD |
| Butterfly House Adult..... | \$TBD |
| Butterfly House Child..... | \$TBD |
| Fort Mackinac Adult..... | \$TBD |
| Fort Mackinac Child..... | \$TBD |
| Grand Hotel Admission All Ages..... | \$TBD |
| Grand Hotel Lunch Adult (18+)..... | \$TBD |
| Grand Hotel Lunch Youth (10-17)..... | \$TBD |
| Grand Hotel Lunch Youth (6- 9)..... | \$TBD |
| Grand Hotel Lunch (0-5)..... | Free |



BIKES*

| | |
|----------------------|-----------|
| Bikes..... | \$21/bike |
| Tagalong/Burley..... | \$21 each |
| Tandem Bike..... | \$42 each |

*Based on no increase with city and state fees

| | |
|----------------------------|------|
| Kayaks Round Trip..... | \$40 |
| Private Luggage Carts..... | \$40 |
| Stollers/Wagons..... | FREE |

Commuter and Resident

Summer Season Pass (4/21 to 10/31)\$840
Can use 11/1/24 to 4/20/25 with winter surcharge

| | |
|--|-------|
| Island Resident Pass Adult (4/21 to 4/20)..... | \$265 |
| Island Resident Pass Child (age 5-17)..... | \$185 |
| Island Resident Infant (under 5)..... | FREE |

| | |
|---|-------|
| 40 Ride Commuter Book – Winter Nov-Apr..... | \$560 |
| 20 Ride Commuter Book – Winter Nov-Apr..... | \$300 |
| 40 Ride Commuter Book – Summer Apr-Nov..... | \$425 |
| 20 Ride Commuter Book – Summer Apr-Nov..... | \$235 |

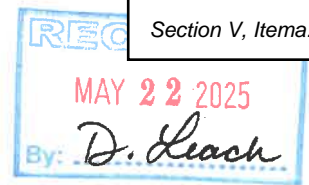
Island Employee (Round Trip- Only sold off Island).....\$25

COMMUTER BIKE POLICY

All pass holders must have a current Mackinac Island bike license on their bike or buy an Arnold Transit Co. bike tag. (1st trip without a bike license is no longer free.)

THIRD PARTY VENDOR TICKETS

| | |
|---------------------------------|------|
| Adult (Third Party Ticket)..... | \$31 |
| Child (Third Party Ticket)..... | \$19 |



GROUP FARES

Tour Groups:

Overnight: \$27/ adult & \$18/child (age 5-12)

Day: \$26/adult & \$17/child (ages 5-12)

School Groups (through 12th Grade): (would include chaperones)

\$17/person

College School Groups:

Overnight: \$27/adult & \$18/child 9ages 5-12)

Day: \$26/adult & \$17/child (ages 5-12)

Scout/Camp/Church Youth Groups (more youth than adults in group): (would include chaperones)

\$18/person

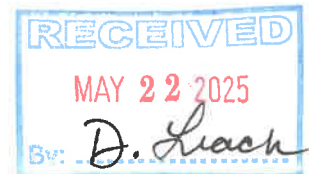
Weddings/Conventions/Reunions:

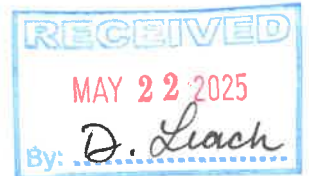
POA: \$26/adult & \$15/child (ages 5-12)

Master Bill: \$27/adult & \$18/child (age 5-12)

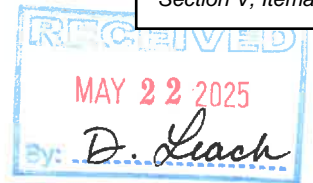
| ST. IGNACE SCHEDULE | | | |
|-----------------------------|--------------------------|---------------|--|
| APRIL 21TH THRU APRIL 24TH | | | |
| Depart Main Dock | | Depart Island | |
| 7:30am | | 8:00am | |
| 8:30am | | 9:00am | |
| 10:00am | | 10:30am | |
| 12:00pm | | 12:30pm | |
| 2:00pm | | 2:30pm | |
| 4:30pm | | 5:00pm | |
| APRIL 25TH THRU MAY 22ND | | | |
| 7:30am | | 8:00am | |
| 8:30am | | 9:00am | |
| *9:00am | | *9:30am | |
| 9:30am | | 10:00am | |
| *10:00am | Saturday and Sunday only | *10:30am | |
| 10:30am | Starting May 10th | 11:00am | |
| *11:00am | | *11:30am | |
| 11:30am | | 12:00pm | |
| 12:30pm | | 1:15pm | |
| 1:45pm | | 2:15pm | |
| 3:00pm | | 3:30pm | |
| 4:00pm | | 4:30pm | |
| 5:00pm | | 5:30pm | |
| 6:00pm | | 6:30pm | |
| 7:00pm | Daily May 9th-22nd | 7:30pm | |
| 8:00pm | Daily May 9th-22nd | 8:30pm | |
| MAY 23RD THRU SEPTEMBER 1ST | | | |
| 7:30am | | 8:00am | |
| 8:30am | | 9:00am | |
| 9:00am | | 9:30am | |
| 9:30am | | 10:00am | |
| 10:00am | | 10:30am | |
| 10:30am | | 11:00am | |
| 11:00am | | 11:30am | |
| 11:30am | | 12:00pm | |
| 12:00pm | | 12:30pm | |
| 12:30pm | | 1:00pm | |
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| 1:30pm | | 2:00pm | |
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| 4:30pm | | 5:00pm | |
| 5:00pm | | 5:30pm | |
| 5:30pm | | 6:00pm | |
| 6:00pm | | 6:30pm | |
| 6:30pm | | 7:00pm | |
| 7:00pm | | 7:30pm | |
| 8:00pm | | 8:30pm | |
| 9:00pm | | 9:30pm | |
| 10:00pm | Daily June 13 - Aug 16 | 10:30pm | |

| SEPTEMBER 2ND THRU OCTOBER 26TH | | | |
|---------------------------------|--------------------------|----------|--|
| 7:30am | | 8:00am | |
| 8:30am | | 9:00am | |
| *9:00am | Saturday and Sunday only | *9:30am | |
| 9:30am | | 10:00am | |
| *10:00am | Saturday and Sunday only | *10:30am | |
| 10:30am | | 11:00am | |
| *11:00am | Saturday and Sunday only | *11:30am | |
| 11:30am | | 12:00pm | |
| 12:30pm | | 1:15pm | |
| 1:45pm | | 2:15pm | |
| 3:00pm | | 3:30pm | |
| 4:00pm | | 4:30pm | |
| 5:00pm | | 5:30pm | |
| 6:00pm | | 6:30pm | |
| 7:00pm | | 7:30pm | |
| 8:00pm | Fri & Sat Only | 8:30pm | |
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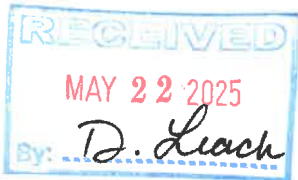




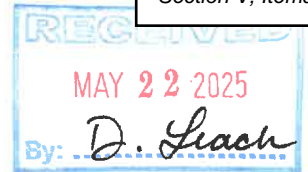
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| MACKINAW CITY CLASSIC | | | |
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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

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

Plaintiffs/Counter-Defendants,

-against-

City of Mackinac Island,

Defendant/Counterclaim- Plaintiff.

Case No.: 25-cv-00036

Hon. Robert J. Jonker

Mag. Maarten Vermaat

**EXPEDITED CONSIDERATION
REQUESTED**

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND A
PRELIMINARY INJUNCTION ENJOINING DEFENDANT FROM ENACTING
UNLAWFUL ORDINANCE**

Plaintiffs Shepler's, Inc. d/b/a Shepler's Mackinac Island Ferry Service ("Shepler's") and Mackinac Island Ferry Company d/b/a Arnold Transit Company ("MIFC") (together, "Plaintiffs" or the "Ferry Companies") hereby respectfully request that this Court enter a Temporary Restraining Order ("TRO") and a Preliminary Injunction enjoining Defendant City of Mackinac Island (the "City") from enacting Ordinance 628, which otherwise has an upcoming effective date of May 28, 2025 (the "2025 Ordinance").

Pursuant to W.D. Mich. LCivR. 7.1(d), Counsel for the parties conferred on May 23, 2025, and Defendant does not concur.

As set forth in the accompanying materials, the Ferry Companies respectfully submit that the 2025 Ordinance is unlawful and all relevant factors support entry of a TRO and a Preliminary Injunction, which would maintain the status quo.

WHEREFORE, the Plaintiffs-Ferry Companies respectfully request that this Court enter

a Temporary Restraining Order and a Preliminary Injunction enjoining the enactment, effectiveness, and/or enforcement of Ordinance No. 628 because Plaintiffs are likely to succeed on the merits, Plaintiffs will suffer irreparable harm if the 2025 Ordinance goes into effect and/or is enforced, no one will be harmed by the requested injunction, and the public interest would be served by granting injunctive relief, which maintains the status quo.

Dated: May 23, 2025

Respectfully submitted,

/s/ Mark J. Magyar

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*Attorneys for Plaintiffs/Counter-Defendants
Shepler's Inc. and Mackinac Island Ferry
Company*

**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,

Plaintiffs/Counter-Defendants,

-against-

City of Mackinac Island,

Defendant/Counterclaim- Plaintiff.

Case No.: 25-cv-00036

Hon. Robert J. Jonker

Mag. Maarten Vermaat

**EXPEDITED CONSIDERATION
REQUESTED**

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING
ORDER AND A PRELIMINARY INJUNCTION ENJOINING DEFENDANT FROM
ENACTING UNLAWFUL ORDINANCE**

INTRODUCTION

Plaintiffs Shepler's, Inc. d/b/a Shepler's Mackinac Island Ferry Service ("Shepler's") and Mackinac Island Ferry Company d/b/a Arnold Transit Company ("MIFC") (together, "Plaintiffs" or the "Ferry Companies") hereby respectfully request that this Court enter a Temporary Restraining Order ("TRO") and a Preliminary Injunction enjoining Defendant City of Mackinac Island (the "City") from enacting Ordinance 628, which otherwise has an upcoming effective date of May 28, 2025 (the "2025 Ordinance"). The Ferry Companies fully incorporate herein their concurrently filed Motion to Dismiss the City's Counterclaim under Fed. R. Civ. P. 12(b)(6). (ECF No. 18, 19.) For reasons stated in that Motion and as set forth in the accompanying materials, the Ferry Companies respectfully submit that the 2025 Ordinance is unlawful and all relevant factors support entry of a TRO and a Preliminary Injunction, which would maintain the status quo, including because:

1. Plaintiffs have a strong likelihood of success on the merits. The 2025 Ordinance is

a breach of the Ferry Parties' contract with the City, and did not purport to repeal and conflicts with the existing 2012 Ordinance, which Plaintiffs believe remains the operative Ordinance. There cannot and should not be two conflicting ordinances in effect at the same time. Nor does it appear that the City followed the required procedures under the controlling Charter for effecting the 2025 Ordinance, including that the Ferry Companies have not been able to locate any publication of the 2025 Ordinance and are not aware that it was posted as required under the Charter.

2. The 2025 Ordinance invalidly purports to regulate the Ferry Companies' rates in ways that are contrary to and in breach of the parties' existing Franchise Agreement that remains in effect until June 30, 2027. Those contracts cannot be unilaterally changed by the City so long as the Franchise Agreement continues in effect. The Ferry Companies are entitled to the benefit of the bargain they negotiated; the City cannot unilaterally change that bargain through ordinance making.

3. There is a clear and obvious risk of harm to the Ferry Companies, the people of Mackinac Island, and the State of Michigan. The City has effectively announced that it intends to use the 2025 Ordinance to unilaterally impose restrictions on the Ferry Companies, require them to pay additional non-contractual fees, and institute unconstitutional confiscatory rates. Such measures could very well cause the Ferry Companies to have no choice but to cease operations.

4. The 2025 Ordinance invalidly purports to regulate non-ferry services outside Mackinac Island that have never been regulated by the City before and over which the City has no authority to regulate – especially Plaintiffs' separate parking businesses, which are not even located within the City's jurisdiction. The City lacks authority under the Charter and the

Franchise Agreement to regulate these non-ferry services. The City at least implicitly recognizes that the 2025 Ordinance overreaches in this regard, as the City is behind brand new legislation that was introduced on May 14, 2025, under Senate Bill 304, that would allow the City to regulate never-before regulated businesses.

5. The 2025 Ordinance invalidly purports to implement a new \$150,000 “annual regulation fee” beyond what the Ferry Companies’ contractually agreed fees. This is not only contrary to and in breach of the parties’ existing Franchise Agreement that remains in effect until June 30, 2027, but is also unconstitutional pursuant to *Bolt v. City of Lansing*, 459 Mich. 152, 161-162 (1998), because the City has done nothing to establish, in any empirical or otherwise identified way, that the fee is reasonably connected to any regulatory purpose, making it an unconstitutional revenue-generating tax upon the Ferry Companies.

As set forth herein, these defects of the 2025 Ordinance, if permitted to take effect contrary to law, will cause irreparable harm to the Ferry Companies and the public in a matter that is contrary to the public’s interest. In contrast, staying the effectiveness of the 2025 Ordinance will not harm anyone and will maintain the status quo. The Ferry Companies have operated under their current contracts for more than a decade.

STATEMENT OF FACTS

Shepler’s has been operating ferry services to and from Mackinac Island for approximately eighty years. (ECF 1, PageID.4.) Throughout that time, 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. (*Id.*) Shepler’s also owns property in both St. Ignace and Mackinaw City. (ECF 1, PageID.5.) With this property, Shepler’s has developed parking lots, which it uses to operate a business for parking services. (*Id.*) Plaintiff Mackinac Island Ferry Company d/b/a Arnold Transit Company

(“MIFC” or “Arnold”) is the culmination of several companies with approximately 140 years of experience with ferry services to and from Mackinac Island. (ECF 1, PageID.6.)

In 2012, the City and the Ferry Companies resolved a rate dispute (including proposed legislation that, if passed, would have removed the City’s ostensible regulatory authority)¹ with the adoption of a Ferry Boat Ordinance and the simultaneous entry of 15-year Franchise Agreement along with Memoranda of Understanding between the City and the Ferry Companies, which remain in effect until June 30, 2027, as set forth below.

I. The 2012 Ferry Boat Ordinance.

On June 20, 2012, the City Council approved Ordinance Number 465, which became effective July 10, 2012 (the “Ordinance,” copy attached at **Exhibit 1**). The Ordinance regulates ferry boat operations to and from the City. 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.” (ECF 1, PageID.3.) The City admitted in its Answer to Plaintiffs’ Complaint that this Ordinance is currently effective. (ECF No. 7, PageID.41 (in answer to paragraph 12, the “City admits that the Ordinance regulates, among other things, ferry service to and from the City, as stated in Sec. 66-462 of the Ordinance.”).)

II. The Non-Exclusive Franchise Agreement for the Ferry Companies.

In connection with the Ordinance, on June 27, 2012, Shepler’s entered into a Franchise Agreement 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

¹ See SB 1150 of 2012 (<https://www.legislature.mi.gov/documents/2011-2012/billintroduced/Senate/pdf/2012-SIB-1150.pdf>).

See also SB 1151 of 2012 (<https://www.legislature.mi.gov/documents/2011-2012/billintroduced/Senate/pdf/2012-SIB-1151.pdf>).

Island[.]” (ECF 1-1; ECF 7-3.) The parties also executed a Memorandum of Understanding on June 2, 2012, including that all ferry “lines determine their own schedule and rates,” which they must file with the City. (MOU, **Exhibit 2**.) Ferry rates have not changed since 2022 despite continuously rising operating costs since that time.

Shepler’s entered into an Amendment and Restatement of Franchise Agreement with the City dated November 13, 2023, which expires June 30, 2027. (ECF 7, PageID.77-78; ECF 7-4.) MIFC entered into an Amendment and Restatement of Franchise Agreement with the City dated October 18, 2023, which expires June 30, 2027. (ECF 7, PageID.78; ECF 7-4.) The Franchise Agreement are materially identical and shall therefore be referred to hereinafter singularly as the Franchise Agreement.

III. Hoffmann Family of Companies Acquires Shepler’s.

In 2022, Hoffmann Family of Companies (“Hoffmann”), by Hoffmann Sheplers Ferry Service, LLC, purchased Shepler’s. (See ECF 7, PageID.75; see also Declaration of David Hoffmann, ¶ 3, **Exhibit 3**; Declaration of Chris Shepler, ¶ 2, **Exhibit 4**.)

IV. The City Requests That Hoffmann Also Purchase MIFC.

The Ferry Companies’ operation of both ferries is only the result of the City’s actions. After Hoffmann was operating Shepler’s, the City requested that Hoffmann also purchase and operate the other ferry service, MIFC. (ECF 1, PageID.8-9 (Complaint ¶¶ 33-38; Ex. 3, ¶ 8; Ex. 4, ¶ 9.) Specifically, as part of the transition of Shepler’s to Hoffmann, Chris Shepler arranged for David Hoffmann to visit Mackinac Island on May 23 and 24, 2022. (Ex. 3.) Mr. Shepler arranged for Mr. Hoffmann to tour the St. Ignace and Mackinac Island facilities and to meet several people on the Island. (*Id.*) He wanted to introduce Mr. Hoffmann to some of the key actors on the Island with respect to ferry services, including, but not limited to, Mayor Margaret

Doud, Brad Chambers, owner of Mackinac Island Carriage Tours, and Tim Hygh, the CEO for the Mackinac Island Convention and Visitors Bureau and the Mackinac Island Tourism Bureau, together now branded as Mackinac Island Tourism. (*Id.*)

Mr. Hoffmann and Mr. Shepler met with Mayor Doud and Messrs. Chambers and Hygh at the Mayor's Windemere Hotel on May 23, 2022, around 4:30 or 5:00pm. (*Id.*) At their May 23, 2022, meeting, Mayor Doud complimented the operation of Shepler's and said that it was doing a great job and was well-regarded on and around the Island. (*Id.*) During this May 23, 2022, meeting, Mayor Doud made the remark to the effect of, 'it sure would be nice if Hoffmann bought Star Line, too.' (*Id.*) Star Line was the operating name of MIFC. (*Id.*) Mayor Doud and the others continued, explaining that Star Line was poorly run and had received a lot of complaints, and was in overall poor financial condition with ferries that were in poor physical condition. (*Id.*) Most people with knowledge of the situation already knew that Star Line was in dire straits. (*Id.*) Mayor Doud expressed in no uncertain terms that she would be pleased if Hoffmann Family of Companies purchased Star Line and Messrs. Everyone in the meeting had the same theme, i.e., 'when is Hoffmann going to buy MIFC?' (Ex. 4.) Everyone, including the Mayor, Messrs. Chambers and Hygh, City Council, and many others on the Island, knew that MIFC was in great peril of being able to continue to operate. (*Id.*) It was a constant topic of discussion, and that discussion usually also included the prospect of Hoffmann purchasing MIFC. (*Id.*)

In the summer of 2024, for at least two full months through July and August 2024, Mr. Shepler was tasked with reporting to the City every week on the state of MIFC. (Ex. 4.) He had regular calls with the Mayor to discuss what he was going to talk about at the City Council meetings so that there would be no surprises for her. (*Id.*) It was a very bleak picture for MIFC.

The common sentiment was disbelief over how bad Jerry Fetty, the former executive of MIFC, had run MIFC into the ground. (*Id.*) MIFC was in such bad condition that there was concern that customers could get hurt. (*Id.*)

Ultimately, Hoffmann came through on the purchase of MIFC and Mr. Shepler acted as MIFC's President. (Ex. 4.) In or about June 2024, Hoffmann purchased all or a controlling majority of the stock of MIFC (f/k/a Star Line). (ECF 7, PageID.75.) MIFC was in such bad shape that Hoffmann completely shut the company down before rebranding and reopening it. (Ex. 4.) This resulted in Shepler's having to run 100% of customers to the Island while going through this transition. (*Id.*) Hoffmann made immediate infusion of millions of dollars of capital, about \$6 million, to MIFC, to restore it to proper working and operating order. (*Id.*; ECF 1, PageID.8-9 (Complaint ¶¶ 33-38).) Hoffmann only purchased MIFC because it believed, based on what Mayor Doud and Messrs. Chambers and Hygh said to David Hoffmann and Chris Shepler on May 23, 2022 and subsequent continued meetings and discussions with them and Mr. Shepler and the council, that the City of Mackinac Island, by its mayor and council, desired this outcome, and that Hoffmann could turn it into a profitable business venture over time. (Ex. 3.)

V. The Ferry Companies' Notice of Rate Increases, Which The City Purported to Reject.

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, which included a \$2 rate increase and various charges for ancillary services (which increase does not apply to residents of the Island). (ECF 1, PageID.9.) To explain the increase (the first increase since 2022), 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. (*Id.*) To be clear, the Ferry Companies did not request that the City approve these new rates. Under the Franchise Agreement, the Ferry Companies were simply informing the City what the new rates would be.

Even though the City had no ability to "approve" or "reject" the Ferry Companies' new rates, on or about September 11, 2024, the City Council passed a resolution that purported to reject Shepler's and MIFC's proposed rate increase for ferry boat services and their statement/schedule for additional ancillary costs. (ECF 1, PageID.10.) 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." (*Id.* (emphasis added)) The resolution continued to "freez[e] the rates that were in place for the 2024 season," with certain listed exceptions. (*Id.*)

Prior to Hoffmann's purchase of MIFC, at no time did the City disclose or indicate to Mr. Hoffmann, Mr. Shepler, or, to their knowledge, anyone else at the Ferry Companies, that the City believed that, by Hoffmann purchasing MIFC, it would give the City the ability to set ferry prices or impact the Ferry Companies' ability to set prices per the standard contractual notice provision of the existing Franchise Agreement. (Exs. 3, 4.) Hoffmann only learned of the City's position in the fall of 2024, after the acquisition of MIFC, when the City Council passed the above-referenced resolution rejecting the rates that the Ferry Companies submitted per the Franchise Agreement for the 2025 season and freezing base rates, ultimately leading to this litigation. (Ex. 3.) If Hoffmann had known that the City would take the opportunity to declare a monopoly after the purchase, deviate from the existing Franchise Agreement, assert regulatory

authority over not just ferry rates but also parking (including on property that is not on the Island) and all other fees it considers related to ferry services, like priority boarding, luggage fees, and others, and freeze base fare rates since 2022 at a level that does not permit a return on our investments, let alone any profit, Hoffmann would not have purchased MIFC. (Ex. 3.)

VI. The City's 2025 Ordinance, To Be Effective May 28, 2025 If Not Enjoined.

But it must have been obvious to the City that under Franchise Agreement and the Ordinance it lacked the authority to reject the Ferry Companies' new rates and charges (and, most fundamentally, completely lacked the ability to oversee any non-rate aspect of the Ferry Companies' charges and activities at all), because on April 30, 2025, the City adopted a new Ordinance governing Ferry Boats, Ordinance No. 628 (the "2025 Ordinance"). (ECF No. 19-1, attached as **Exhibit 5**.) This occurred after the Ferry Companies filed their initial Complaint in this matter on March 3, 2025, and after the City filed its Counterclaim on April 3. The 2025 Ordinance is the enactment that Plaintiffs now ask this Court to enjoin from taking effect, and/or to enjoin its enforcement.

The 2025 Ordinance purports to give the City exactly the powers it lacked under the Franchise Agreement. (Ex. 5.) In pertinent part, the 2025 Ordinance requires that a ferry boat operator that is granted a franchise to operate ferry service "shall submit in writing to the Council its 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 Service Rates are just and reasonable for the services provided." (Ex. 5, § 22(b). Following the production of certain voluminous information also outlined in the 2025 Ordinance, "[t]he 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." (Id. § 22(f).) Significantly,

the 2025 Ordinance defines “Service Rates” to include activities it cannot regulate under the Franchise Agreement or the Charter, such as “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 [sic], transportation of property, luggage, and parking fees.” (*Id.* § 2.)

In sum, the 2025 Ordinance: (1) grants the City broader authority to regulate the Ferries’ rates than permitted under the still-effective Franchise Agreements; (2) grants the City authority that it does not possess to regulate non-ferry services owned by Plaintiffs, such as parking and others; (3) invalidly implements an “annual regulation fee”, which is both a breach of the Franchise Agreements and an unconstitutional revenue-generating tax; and (4) requires the Ferry Companies to provide an overly broad and invasive amount of confidential operating and financial information to the City each year, not only from the Ferry Companies themselves, but potentially from affiliates of the Ferry Companies that might play a tenuous role in the Ferry Companies’ operations.

Yet, after adoption of the 2025 Ordinance, it is not even altogether clear what “ordinance” of the City controls ferry boat operations. The 2025 Ordinance does not repeal the 2012 Ordinance, and does not appear to have been published or posted. The 2025 Ordinance states that it repeals and replaces the “previous Ferry Boats Ordinance, No. 445,”² but the 2025 Ordinance does not mention Ordinance No. 465, which became effective July 10, 2012, and which had repealed and replaced the previous Ferry Boats Ordinance, No. 454. (*See* Ex. 1.)

The City bases its alleged right to adopt the 2025 Ordinance and otherwise disregard the Franchise Agreement based upon Section 9 of the Franchise Agreement, as amended and restated, which provides: “[i]n the event that no competition is found to exist in ferry boat

² Ferry Boats Ordinance No. 445 was effective April 8, 2010 (copy attached, **Exhibit 6**).

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.” (ECF 7, PageID.78.)³ As discussed below, however, the City cannot unilaterally vary the terms of the Franchise Agreement. And, of course, even now the Ferry Companies do not control all transportation to and from Mackinac Island, and the Ferry Companies’ operation of their ferries under the Hoffmann umbrella is only the product of the City’s own invitation.

VII. The City’s Proposed Legislation.

Along with the 2025 Ordinance, on May 14, 2025, SB 304 was introduced. (SB 304, **Exhibit 7.**) It is sponsored by the state senator who represents Mackinac Island. It regards the general powers of the City of Mackinac Island. The 13th item on page 4 revises “all aspects of the ferry service” including baggage fees, early or priority boarding fees, fees and charges for *parking* and all other fees.” (emphasis added). This further evinces the City’s knowledge that it does not currently possess the authority under the Charter or the Franchise Agreements to regulate in the ways it now desires and purports to do under the 2025 Ordinance, and it is therefore seeking legislation to give it such authority.

STANDARD OF REVIEW

When evaluating whether to grant a motion for a temporary restraining order, courts in the Sixth Circuit consider the following four factors: “(1) whether the plaintiff has established a substantial likelihood or probability of success on the merits; (2) whether there is a threat of irreparable harm to the plaintiff; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by granting injunctive relief.”

³ See also legal opinion dated January 7, 2025, provided to the City, available <https://mccmeetingspublic.blob.core.usgovcloudapi.net/mackinacmi-meet-a1f9dcd7ddaa4390946f8a13da99bd33/ITEM-Attachment-001-abbf7ff07af24eaf849259a32ac5c921.pdf>.

Babler v. Futhey, 618 F.3d 514, 519-20 (6th Cir. 2010). “The likelihood of success on the merits is typically the most important factor of a preliminary injunction analysis[.]” *Higuchi Int’l Corp. v. Autoliv ASP, Inc.*, 103 F.4th 400, 409 (6th Cir. 2024); *Kentucky v. Biden*, 57 F.4th 545, 550 (6th Cir. 2023) (“The first factor is the most important”), citing *Roberts v. Neace*, 958 F.3d 409, 416 (6th Cir. 2020). “But even though the district court must make an initial determination related to the moving party’s likelihood of success, the purpose of a preliminary injunction ‘is simply to preserve the status quo.’” *TowerCo 2013, LLC v. Berlin Twp. Bd. of Trs.*, 110 F.4th 870, 880 (6th Cir. 2024), quoting *US v. Edward Rose & Sons*, 384 F.3d 258, 261 (6th Cir. 2004).

ARGUMENT

I. An Injunction Maintains the Status Quo.

The City and the Ferry Companies have been setting rates and fees pursuant to the Franchise Agreement (without regard to Section 9) and the 2012 Ordinance, No. 465, since 2012, which was a negotiated resolution of their then rate-dispute. The Franchise Agreement remains in place for a term ending in more than two years, June 30, 2027. The City proposed and adopted the 2025 Ordinance only after this litigation commenced. The status quo would be maintained by entering the requested injunction enjoining the implementation of the 2025 Ordinance. *See TowerCo 2013, LLC*, 110 F.4th at 880, quoting *Edward Rose & Sons*, 384 F.3d at 261.

II. The Ferry Companies Are Likely To Succeed On The Merits.

The City has no more authority to regulate the Ferry Companies than what the State provided to the City under the Charter and to which the City agreed under the Franchise Agreement. The City alleges that it “is one of only a very small and select handful of municipalities in the state whose authority to enact ordinances and to carry on its affairs is primarily derived from a special legislative act rather than some other more general statutory provision, such as the Home Rule Cities Act, M.C.L. § 117.1a *et seq.*” (ECF 7, PageID.74.)

According to the City, “the Legislature realized long ago how special the City of Mackinac Island is, and wisely chose to provide the City with specific grants of power to enable the City to adequately handle its particular transportation needs and to otherwise function in its unique environment.” (*Id.*) The Ferry Companies acknowledge that significant decision-making authority was delegated to the City, but the City still must abide by its contracts and comply with the law.

The Legislature created the City of Mackinac Island in 1899 under the charter of the City of Mackinac Island, 1899 LA 437 (the “Charter”). As a result of being created in this manner, the City is considered a “special charter city.” *See* OAG 1981-1982, No 5,936, fn 1 & 6 (July 24, 1981). While the City may meet the definition of fourth class city with its small population of approximately 500 people, Mackinac Island has never expressly reincorporated as under the Home Rule City Act.⁴ According to the Michigan Municipal League, the City is the only “special charter” city remaining in Michigan.⁵ As a special charter city, the City is governed by the Charter.

The Charter is comprised of 31 chapters, which span over 100 pages of text. Within the Charter, two provisions specifically discuss the regulation of ferries by the City Council of Mackinac Island. The first reference appears in Chapter IX, which lists the general powers of the City Council. Paragraph 13 of Section 1 of Chapter IX states that the City Council has the authority:

⁴ *See* Municipal Report, Organization of City and Village Government in Michigan (“Municipal Report”), *available at* <https://mml.org/wp-content/uploads/2024/10/MR-Org-of-City-Village-Govt-in-MI-Oct-2024.pdf>; House Legislative Analysis of SB 1204, May 5, 2010, *available at* <http://www.legislature.mi.gov/documents/2009-2010/billanalysis/House/htm/2009-HLA-1204-3.htm>.

⁵ *See* Municipal Report, p 2.

To establish or authorize, license and regulate ferries to and from the city, or any place therein, or from one part of the city to another, and to regulate and prescribe from time to time the charges and prices for the transportation of persons and property thereon[.]

The second reference to ferries in the Charter is in Chapter XVI, entitled “Ferries.” This section provides 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 seem proper and may impose such reasonable terms and restrictions in relation to 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.

Under the Code of Ordinances for the Cit of Mackinac Island, Chapter VII, Section 6:

“Within one week after the passage of any ordinance the same shall be published in some newspaper printed in the county and circulated within the city, or posted in five public places in the city, and the clerk shall immediately after such publication of posting enter upon the record of ordinances, in a blank space to be left for such purpose under the recorded ordinance, a certificate stating in what newspaper and of what date such publication was made or when and of what date such posting was made, and sign the same officially, and such certificate shall be prima facie evidence that legal publication or posting of such ordinance has been made.”

A. The Proposed 2025 Ordinance is Void.

The Ferry Companies have not been able to locate any publication of the 2025 Ordinance and are not aware of its posting. To the extent the City did not comply with the Code of Ordinances for the City of Mackinac Island, Chapter VII, Section 6, the Ferry Companies are likely to succeed on the merits because the 2025 Ordinance cannot take effect.

More fundamentally, the 2025 Ordinance does not purport to repeal or replace the 2012 Ordinance, No. 465, which is referenced in, and incorporated into, the parties’ contracts. The adoption of a new ordinance, without repealing the operative one, creates inconsistencies and

subjects the Ferry Companies to different requirements that cannot be reconciled with the 2012 Ordinance. (*Compare* Exs. 1 and 5.) To the extent the City contends that the 2025 Ordinance repealed the 2012 Ordinance, No. 465, which took effect on July 10, 2012 when the parties also were entering the Franchise Agreement, the 2025 Ordinance expressly did not do so, as it only purported to repeal and replace an earlier ordinance, the 2010 Ferry Boats Ordinance, No. 445. Thus, the 2025 Ordinance is no basis to upset the 2012 Ordinance upon which the Ferry Companies have relied and acted under pursuant to the Franchise Agreement.

B. The 2025 Ordinance Constitutes the City's Breach of the Franchise Agreement.

The City has attempted to justify its efforts to further regulate and breach its contractual obligations to the Ferry Companies by claiming the Ferry Companies are a monopoly:

The City has determined under its authority to “license and regulate ferries to and from the city, . . . and to regulate and prescribe . . . the charges and prices for the transportation of persons and property thereon,” which was delegated exclusively to the City through the Michigan Legislature’s adoption of the City’s Charter, that the common ownership and control by Hoffmann Marine of Shepler’s and MIFC/Arnold has eliminated competition in ferry boat service to and from the City *and created a monopoly* in the provision of such ferry boat services. The City therefore “has the right to assert its jurisdiction over schedules and fares to the extent permitted by present law,” pursuant to Section 9 of the MIFC/Arnold Amendment and Restatement of Franchise Agreement and the City’s Charter and Ordinances.

(ECF 7, PageID.49 (emphasis added).) There are several fatal flaws with the City’s rationale.

First, there is nothing in the record to confirm how and even whether the City has made a determination about whether the Ferry Companies represent a monopoly. As the City itself notes, there are myriad other ways to get to the City, and both of the contracts with the City are, on their face, non-exclusive. Moreover, there is not, and could not, be any contention that the Ferry Companies have somehow breached their contracts with the City. They are living up to their end of the bargain. This includes the implementation of a \$2 fare increase for non-residents that was

announced the city last fall. The increase represents an approximately 5 percent increase in fares, and is the first increase since 2022. When compared to other City businesses, and particularly the hotels where prices have skyrocketed, this is an eminently reasonable increase that is far less than the rate of inflation.

Even if the City were allowed to change the express terms of the Franchise Agreement through subsequent action (which it is not), the consolidation of ferry services does not, in itself, lead to the conclusion that the Ferry Companies are exercising monopoly economic power over transportation to and from Mackinac Island (which they are not). “Monopoly” is a term that arises under the antitrust laws, and identification of a “monopoly” requires a sophisticated analysis beyond just a quick look at what business entities are presently operating a specific service in an identified geographic area. Factors such as the substitutability of other products or services, barriers to entry into or expansion in the market, the possibility of other competitors, and other factors must be considered in identifying what the relevant antitrust market is, and a participant’s market power therein.⁶

⁶ The City fails to allege the “market” the Ferry Companies are accused of monopolizing. The relevant market is tethered to the purported monopoly or coordinated conduct; without a defined market, “there is no way to measure [the defendant's] ability to lessen or destroy competition.” *Spectrum Sports Inc. v. McQuillan*, 506 U.S. 447, 455 (1993). The City must “identity the relevant product and geographic markets so the district court can assess what the area of competition is, and whether the alleged unlawful acts have anticompetitive effects in that market.” *Total Benefits Plan. Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 437 (6th Cir. 2008). In general, the relevant market includes services that are “reasonably interchangeable with, as well as identical to, defendant's” services. *American Council of Certified Podiatric Physicians & Surgeons v. American Bd. of Podiatric Surgery, Inc.*, 185 F.3d 606, 622 (6th Cir.1999); *see also White and White, Inc. v. Am. Hosp. Supply Corp.*, 723 F.2d 495, 500 (6th Cir. 1983) (the “reasonable interchangeability” standard looks to “whether the substitute products or services can perform the same function, and/or [] consumer response (cross-elasticity); that is, consumer sensitivity to price levels at which they elect substitutes for the defendant’s product or service”).

Here, the City appears to allege that Counterclaim Defendants simultaneously hold monopoly power over two ill-defined and otherwise improper antitrust markets. (ECF No. Counterclaim ¶ 69.) First, if the relevant service market constitutes “ferry service to and from Mackinac Island,” as the City sometimes pleads, the Counterclaim contradicts itself by simultaneously admitting that travel to and from Mackinac Island is possible by aircraft and

The City, of course, has never presented any such analysis, and even its pleadings in this matter admit facts that could be damning to a conclusion of “monopoly” power by the Ferry Companies, as discussed below. The City has admitted, for example, that would-be ferry passengers can also travel to Mackinac Island by airplane and private boat, but has never quantified the significance of that. The City has also never identified any barriers to entry that would keep other competitors from entering the market for ferry services, and the Franchise Agreement is expressly non-exclusive. Nor has the City ever asserted that present dock capacity or an inability to build new docks or for a potential competitor to purchase ferries poses any sort of barrier to entry. Moreover, the City has not identified any anticompetitive conduct by the Ferry Companies to exclude competition by others in the market for ferry transportation, which it would be required to do to support any claim of “monopolization” under the antitrust laws.

A reading of the unambiguous terms of the Franchise Agreement plainly demonstrates that the City is attempting to insert *new* language into the Franchise Agreement that simply does not exist. Shepler’s and MIFC have not breached the Franchise Agreement whatsoever. The language of the Franchise Agreement is unambiguous and must be enforced according to its plain terms. *Rory v. Cont’l Ins. Co.*, 473 Mich. 457, 703 N.W.2d 23, 28 (Mich. 2005). Per Article 3, the Ferry Companies are required only to “file [their] schedule[s] of services and rates for the next season with the City Clerk” no later than November 15 of each year. After not having raised ferry rates in the several years since Hoffmann acquired Shepler’s, in late 2024 the Ferry Companies notified the City that they intended to raise ferry rates by \$2. (ECF No. 7,

private boat, while still asserting that the Ferry Companies are the only service providers in the market. (ECF No. 7, Counterclaim ¶ 69.) Second, to the extent the City argues that the relevant service market is parking in Mackinaw City or St. Ignace over which the Ferry Companies allegedly exercise complete control, and which is somehow “necessary” to transit on the Ferry Companies’ ferries, that assertion is threadbare and belies common sense. (ECF No. 7, Counterclaim ¶ 65.)

Counterclaim ¶ 32.) The City declined to “approve” the new rates, *id.* ¶ 41, even though it had no ability to control them. Nothing in the Franchise Agreement gives the City the right to approve or reject the files rates. The only exception to the Ferry Companies’ ability to determine their rates is Section 9, which allows the City “the right to assert its jurisdiction over schedules and fares to the extent permitted by present law” if “no competition is found to exist in ferry boat service[.]” (*Id.*)

But the Franchise Agreement does not speak to the circumstances under which “no competition is found to exist,” or by what means that is to be determined. (*See id.*) The City apparently claims the unilateral right to assert such lack of competition, but that power is nowhere to be found in the Franchise Agreement. To the contrary, if one looks to antitrust law to determine circumstances in which “no competition” exists,⁷ factors such as the availability of substitute products or services (here, for example, airplane and private boat), and the possibility of new entrants entering the market relatively easily, must be considered, as discussed in Plaintiffs’ pending Motion to Dismiss the City’s Counterclaim.

Second, if the City wants more competition, it can always issue another license. The Ferry Companies’ contracts are non-exclusive.

Third, it was the City that asked Hoffmann to purchase MIFC because it was in dire straits and its fleet was breaking down. (Exs. 3, 4.) The City actively supported and caused the current situation. It is settled contract law that a party to a contract cannot induce a breach or cause the condition that permits it to declare rights to the detriment of the other contracting party. *See Kerber v. Wayne Cty. Emples. Ret. Sys.*, 2021 U.S. App. LEXIS 22912, at *15-16 (6th Cir.

⁷ It is fair to interpret Section 9 of the Franchise Agreement under the antitrust laws. The City itself repeatedly uses the word “monopoly” to describe its justification for invoking Section 9, including in the City Council’s resolution last fall to freeze rates and in the City’s Answer to Plaintiffs’ Complaint, and has brought antitrust counterclaims against the Ferry Companies.

Aug. 2, 2021) (A party “cannot avoid liability on [a] contract for the failure of a condition precedent where [it] caused the failure of the condition.”), quoting *Harbor Park Mkt., Inc. v. Gronda*, 277 Mich. App. 126, 743 N.W.2d 585, 588 (Mich. Ct. App. 2007). The City benefited from Hoffmann’s purchase of MIFC for the greater good of having such a necessary ferry service that, under its then-ownership, was swiftly going under, only to then immediately seize upon that common ownership to invoke a provision of the Franchise Agreement aimed at monopolies. Hoffmann never would have purchased MIFC had it known of the City’s intentions. (Ex. 4.)

Fourth, even if the Ferry Companies were exercising monopoly economic power over transportation to and from Mackinac Island (which they are not), the Ferry Companies have the right to a rate that permits them to make a return on their investment and generate a profit, whereas the City’s limitation and “freeze” is confiscatory as a matter of law in causing the Ferry Companies to lose money, threatening their very viability. See *Michigan Consol. Gas Co. v. Michigan Public Service Com.*, 389 Mich. 624, 638 (Mich. 1973); *In re Ind. Mich. Power Co.*, 329 Mich. App. 397, (Mich. Ct. App. 2019) (“‘A public utility has a right to a just and reasonable rate of return on its investment,’ and such utilities ‘are protected from being limited to rates that are confiscatory.’”), quoting *Ass’n of Businesses Advocating Tariff Equity v. Pub. Serv. Comm.*, 208 Mich App 248, 269 (1994); *Verizon N., Inc. v. Mich. PSC*, 260 Mich. App. 432, (Mich. Ct. App. 2004) (“a rate order is unconstitutional if it establishes a rate that is so low that it is confiscatory”).

Thus, the Ferry Companies are likely to succeed on the merits because the City’s reliance on Section 9 of the Franchise Agreement to unilaterally declare a nonexistent monopoly for the

sake of freezing rates to a confiscatory degree is both unconstitutional and a breach of the Franchise Agreement.

B. Parking And Other Services Are Not Covered by the Charter or Franchise Agreement.

The City's attempt to expressly regulate – for the first time and without any legal authority – the fees the Ferry Companies charge for parking at the lots it operates outside of the City and dock ownership is also doomed to failure, and poses yet another reason that the Ferry Companies are likely to succeed on the merits. In paragraph 39 of its Counterclaim, the City alleges that it “is empowered under the Amendment and Restatement of Franchise Agreements, and its Charter and Ordinances, to regulate the rates and charges of Shepler's and MIFC/Arnold for ferry boat service to Mackinac Island, *including without limitation their charges for parking in the company-owned lots* which is necessary to access the ferries, and other rates and charges in connection with transportation by ferry.” (ECF 7, PageID.78 (emphasis added).) The City gave itself this “right” only in the 2025 Ordinance. (Ex. 5 § 2 (definition of “Service Rate” to include “charges for any service related to the Ferry Boat Service, including but not limited to transportation of passenger [sic], transportation of property, luggage, and parking fees.”).)

Neither the Charter nor the Franchise Agreement contain any language that gives the City the right to regulate fees charged for parking or for ancillary services, such as priority boarding or luggage fees. Section 3 of the Franchise Agreement only requires the Ferry Companies to file their “schedule of services” for ferry service and rates; Section 9 of the Franchise Agreement allows the City to regulate only “schedules and fares” if “no competition” is found to exist. (*Id.* §§ 3, 9.) The Ferry Companies cannot be held to have breached the Franchise Agreement by

setting prices for these ancillary services when the Franchise Agreement does not mention any rights or duties related thereto whatsoever.⁸

Nothing in the Charter or any other source gives the City the authority to regulate parking or ownership of the ferry docks. This is especially true where, as here, the parking lots the City purports to regulate are not even located in the City, but rather in Mackinaw City and St. Ignace, which are self-governing jurisdictions with their own municipal powers and governmental interests. The City can no more attempt to regulate commercial activity in Mackinaw City or St. Ignace than could, for example, the City of Detroit can regulate commerce in Ann Arbor. *See City of Riverview v. Sibley Limestone*, 270 Mich. App. 627, 716 N.W.2d 615 (Mich. Ct. App. 2006) (holding that city did not have the authority to adopt ordinance regulating quarry operator's blasting operations outside the city's boundaries; ordinance at issue was facially invalid to the extent it attempted to regulate blasting operations outside city). Although the City argues that parking at the Ferry Companies' lots is somehow inextricably linked with use of the ferries, such that a passenger must avail himself of the use of the Ferry Companies' lots to utilize the ferries, and no one would use the parking lots but for that purpose, (ECF No. 7, Counterclaim ¶¶ 55, 46-47), the City has never demonstrated this, and it belies common sense and is patently false. Ferry passengers can arrive at the docks in St. Ignace by foot, bicycle, ride sharing service, or private car; parking customers can use the parking lots to park their vehicles for any purpose at all. Any necessary tie between the parking lots and ferry service simply has not been demonstrated.

⁸ Indeed, although the City claims that "parking in the lots owned by the ferry companies [is] necessary to access the ferries," common sense demonstrates this is simply not true – passengers can travel to the docks by walking, by bicycle, by being dropped off by private car, and a variety of other methods. The Counterclaim does not allege anywhere that passengers on the ferries are *required* to purchase parking in Shepler's and MIFC's lots. Moreover, if regulation of parking were so essential to ferry service, one would expect the City to have attempted to address it in the Franchise Agreement, which it did not do.

Moreover, there are already competing parking lots in place that advertise Mackinac ferry parking. The Counterclaim admits that it is “conceivable” that a competitor could develop additional parking lots to serve ferry passenger, although it alleges that developing such lots would be “expensive, time-consuming, and uncertain.” (*Id.* ¶ 47.) In fact, this has already happened. The City’s allegation that there are “no competing public or privately-owned parking lots” other than those operated by the Ferry Companies is objectively incorrect. As but one example, at least one other property owner operates a competing lot right next to MIFC’s docks in Mackinaw City. *See* www.ferryboatparking.com (website advertising competing parking lot in Mackinaw City). Moreover, the City has never alleged that the Ferry Companies have ever taken any action to frustrate the development of competing parking alternatives.

As to the docks, although the Counterclaim alleges, for example, that the Ferry Companies “own or have exclusive access to the docks” in the City, Mackinaw City, and St. Ignace, the City has never alleged that the Ferry Companies have ever restricted their use by any competitor or potential competitor that sought access to the docks for its own use. And again, as to both dock access and control of parking, the Counterclaim notably never alleges that there were competitors or potential competitors ready to step in and provide ferry service to and from Mackinac Island but for the alleged anticompetitive conduct of the Ferry Companies.

For all of these reasons, the Ferry Companies are likely to succeed on the merits because the City’s attempt to regulate parking, priority, baggage, and other services that are not ferry rates is unauthorized by the Charter and not to be found in the Franchise Agreement.

C. The “Annual Regulation Fee.”

Another reason that the Ferry Companies are likely to succeed on the merits is because the 2025 Ordinance invalidly purports to implement a \$150,000 “Annual Regulatory

Fee” beyond the fees the Ferry Companies are already paying under the existing Franchise Agreement. This is not only contrary to and in breach of the parties’ Franchise Agreement, but is also unconstitutional pursuant to *Bolt v. City of Lansing*, 459 Mich. 152, 161-162 (1998). The new “regulatory fee” is not reasonably connected in any empirical or otherwise identified way to any regulatory purposes but instead improperly serves as a means primarily of producing revenue for the City and is therefore unlawful. In addition, any such fee must be reasonable on a fair and equitable basis and be used solely to pay the cost of a service to the vessel or water craft pursuant to 33 USCS § 5; *see also Moscheo v. Polk County*, 2009 Tenn. App. LEXIS 602, at *8-9 (Tenn. Ct. App. (Knoxville) Sept. 2, 2009). The provision of the 2025 Ordinance purporting to implement the annual regulatory fee must be enjoined as unconstitutional and a breach of the Franchise Agreement.

As set forth above, there are multiple independent reasons that the Ferry Companies are likely to succeed on the merits. As this is the “most important” factor of the injunction analysis, coupled with the fact that the requested injunction would maintain the status quo (as has existed since 2012 under the Franchise Agreement), which is the purpose of injunctions, this motion should be granted an injunction entered.

II. The Ferry Companies Will Suffer Irreparable Harm.

The harm to be suffered by the Ferry Companies if the 2025 Ordinance takes effect and enforced against them to breach the City’s contract would be immediate and irreparable. Allowing the New Ordinance to take effect jeopardizes the economy of the City and the surrounding area by jeopardizing the continued viability of, and ultimately the provision by the Ferry Companies, of ferry service to and from Mackinac Island. Simply put, the City’s regulatory fees, ability to unilaterally set fares and terms in violation of their own contract, and other, threatened draconian measures not involving ferry service would very likely shut down the

businesses. The regulatory aspect of this case, including the City's invalid attempt to regulate non-ferry parking services of the Plaintiffs and to generate revenue for the City under the guise of an unconstitutional "regulation" fee make it paramount that such invalid authority not be permitted or exerted. Another disturbing aspect of the 2025 Ordinance lies in Section 22 ("Regulatory Powers"), which requires:

A Ferry Boat Company has the obligation to demonstrate that the proposed Service 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 services, 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. In the event any subsidiary, or commonly owned company, provides services related to Ferry Boat Service, including but not limited to parking, employment, or shuttles, that company's documentation and information shall be provided to the Council in accordance to this Section 22. 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.

Accordingly, under Section 22, the Ferry Companies will be forced to divulge to the City a wide gamut of information that is not called for or required in the parties' contracts – not only information that might arguably bear a reasonable relation to an inquiry into the Ferry Companies' proposed rates, such as revenues by Service Class, quantity of services provided, and basic information about costs, but also a host of other information that is not tied to any regulation of rates whatsoever, such as information about the Ferry Companies' complete corporate financial performance, return on equity, tax information, and other types of information. To compound the problems inherent in this approach, Section 22 leaves itself open to an argument (although a fallacious one) that this type of information would be required not

only of the Ferry Companies themselves, but also of other members of the Hoffmann corporate family that are related only in the most tenuous manner to the Ferries.⁹

Not only could this requirement be tremendously burdensome for the Ferries and/or their corporate affiliates to satisfy, but divulging some of this information to the City risks the exposure of the Ferry Companies' and their affiliates' most sensitive corporate information to the public and competitors, through either FOIA requests or the doctrine of "inevitable disclosure," which cannot easily be controlled. Once that type of information has been revealed, the harm to the Ferry Companies and/or their affiliates might not be remediable through the simple payment of damages.

Further, the Ferry Companies cannot go back and recover additional fares for services provided at unreasonably low rates. Even a public utility has a right to a just and reasonable rate of return on its investment. Where the revenue produced by an existing rate structure is less than a reasonable or just amount, a public utility has a constitutional right to rate relief. A public utility has, "as a corollary to that substantive right, a right to immediate rate relief where compelling circumstances indicate that such relief is necessary." *Consumers Power Co v PSC*, 415 Mich 134, 145; 327 NW2d 875 (1982). Indeed, every day that rate relief is denied is justice denied. In *Consumers Power*, the circuit court granted equitable relief to let rates go into effect subject to refund and the Supreme Court affirmed that action.

III. No One Will Be Harmed By The Requested Injunction.

The relief that the Ferry Companies request only maintains the status quo of the parties' relationship since 2012 (which remains contractually effective for two more years) and prevents potential confusion and chaos regarding competing ordinances. As set forth above, maintaining

⁹ Because of services provided at the parent corporate level that are at times provided to the Ferries themselves (e.g., finance, legal).

the status quo is a core purpose of preliminary injunctions. Here, it is only the City trying to change the terms of the deal it negotiated. The public will not be harmed by maintaining the status quo, nor does the modest, overdue and necessary rate increase harm the public or the City. Again, the Ferry Companies are only permitted to raise their rates on a set schedule and subject to set terms, and they have exercised this discretion fairly and in the best interests of the parties and the public throughout the length of the contract. Requiring the parties to continue operating under a rubric they agreed to follow through 2027 will harm no one.

IV. The Public Interest Supports The Requested Injunction.

The public has a keen interest in this dispute in ways that manifestly support the requested injunction. Operation of the ferries is the lifeblood of tourism and business on the Island. The City concedes that, in addition to the approximately 583 residents who live on Mackinac Island year round, Mackinac Island attracts upwards of 1.5 million passengers per year. (ECF 7, PageID.79.) Making it more difficult for the ferries to operate, and possibly causing them to shut down by changing agreed upon contract terms, would negatively impact the entire state.

CONCLUSION

The Plaintiffs-Ferry Companies respectfully request that this Court enter a Temporary Restraining Order and Preliminary Injunction enjoining the enactment, effectiveness, and enforcement of Ordinance No. 628 because Plaintiffs are likely to succeed on the merits, Plaintiffs will suffer irreparable harm if the 2025 Ordinance goes into effect and/or is enforced, no one will be harmed by the requested injunction, and the public interest would be served by granting injunctive relief, which maintains the status quo.

Dated: May 23, 2025

Respectfully submitted,

/s/ Mark J. Magyar

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*Attorneys for Plaintiffs/Counter-Defendants
Shepler's Inc. and Mackinac Island Ferry
Company*

EXHIBIT 1

**FERRY BOATS ORDINANCE
CITY OF MACKINAC ISLAND, MICHIGAN
Ord. No. 465 Eff. July 10, 2012**

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. 454, 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:

City means the City of Mackinac Island.

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 Ordinance to provide ferry boat service.

Regular ferry boat season means the period of time between April 21 of any calendar year and October 31 of the same calendar year.

Winter ferry boat season means the period of time between November 1 of any calendar year and April 20 of the following calendar year.

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

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.

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; and
- (4) Provide for the furnishing of ferry service without unjust discrimination, undue preferences or advantages.
- (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 ordinance shall be guilty of a civil infraction and liable for a fine not to exceed \$500. 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 City may pursue revocation of the franchise of the violating person or ferry boat company as provided in Section 15.
- (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 may file a civil suit seeking injunctive relief pursuant to Section 5.

Section 5. Injunctive Relief.

A violation of any provision of this ordinance 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.

Section 6. Majority concurrence required.

Any approval, denial or waiver by the council pursuant to this ordinance shall require the concurrence of a majority of all the elected aldermen.

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.

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 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.

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.

(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. Such ferry boat company shall also file with the council a true copy of its tariffs on file with this commission. The 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 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 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 City.

(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.

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 City Council and shall include such information as requested by the City 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 schedule of ferry boat services proposed to be operated including arrival and departure times to and from the City.

(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 ordinance.

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 City 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 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. ____ 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 15. Revocation.

A franchise granted pursuant to this ordinance may be revoked by the City council in the event a franchisee defaults in its performance of the terms and provisions of this ordinance. Such revocation shall not be effective until the franchisee has been advised of the violation and, except for a violation of Section 7(a) or 7(b) of this Ordinance, given a period of ten (10) calendar days to cure the default, and if the default is not cured within that ten (10) day period, provided with a hearing before the City council. The

ten (10) day period to cure does not apply to violations of Section 7(a) or Section 7(b) of this Ordinance. The City 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.

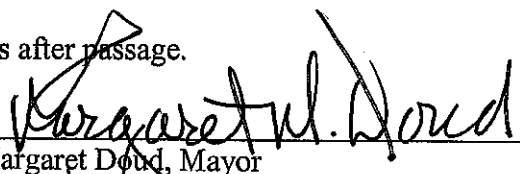
Section 19. Severability.

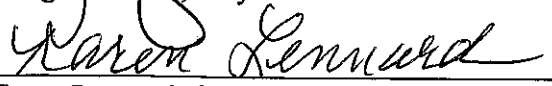
Should any section, clause, or provision of this ordinance be declared to be invalid by a court of record, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared invalid.

Section 20. Effective Date.

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

Date:


Margaret Doud, Mayor


Karen Lennard, Clerk

Adopted: 6/20/2012

Effective: 7/10/2012

EXHIBIT 2

June 2, 2012

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.

- 10) All signatories agree that they will fully support the contents of this memorandum and urge the Public and the Council to do likewise.




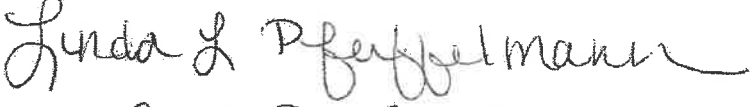

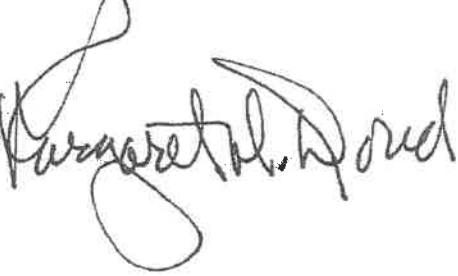
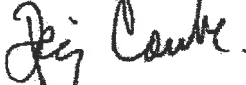




















EXHIBIT 3

**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,

Plaintiffs/Counter-Defendants,

-against-

City of Mackinac Island,

Defendant/Counterclaim- Plaintiff.

Case No.: 25-cv-00036

Hon. Robert J. Jonker

Mag. Maarten Vermaat

DECLARATION OF DAVID HOFFMANN

I, David Hoffmann, pursuant to 28 U.S.C. § 1746, hereby declare and state as follows:

1. I am the founder and chairman of Hoffmann Family of Companies ("Hoffmann"). I lead a family-owned network of enterprises that employs over 16,000 people worldwide. This network includes more than 200 distinct brands and properties spanning 30 countries.

2. I consider myself to be a self-made entrepreneur. I grew up working the milk delivery route with my father, beginning the days at 3:30 or 4 a.m. I had no hot running water until my sophomore year in high school. I married my high school sweetheart, Jerri. We've been married more than 50 years and we have 13

grandchildren. Hoffmann is a family business that does not have shareholders or quarterly reports or quarterly financials to report to Wall Street.

3. In 2022, Hoffmann purchased Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry Service ("Shepler's"). "Hoffmann Marine" is not an organized entity, but it is a trade name used by the Hoffmann Family of Companies to encompass its separately-owned and organized maritime businesses, including Shepler's.

4. From the outset, our goal was to maintain the culture of Mackinac Island and that is what Hoffmann bought into. We did not want to see things change. The first thing Hoffmann looks at when deciding whether to purchase a company is the people. It was important to Hoffmann to keep Chris Shepler, the former CEO of Shepler's who sold the company to Hoffmann, on the team as President. We, as a company, were thrilled and impressed with the management of Shepler's and all the employees when we purchased it. We had no desire to change anything.

5. I visited Mackinac Island on May 23 and 24, 2022, to tour the St. Ignace and Mackinac Island facilities and to meet several people on the Island. Chris Shepler arranged the visit. Mr. Shepler indeed remained with Shepler's as its President after the sale and he wanted to introduce me to some of the key actors on the Island with respect to ferry services, including, but not limited to, Mayor Margaret Doud, Brad Chambers, owner of Mackinac Island Carriage Tours, and Tim Hygh, the CEO for the Mackinac Island Convention and Visitors Bureau and the

Mackinac Island Tourism Bureau, together now branded as Mackinac Island Tourism.

6. The focus of this declaration is my meeting with Mayor Doud and Messrs. Chambers and Hygh at the Mayor's Windemere Hotel on May 23, 2022, around 4:30 or 5:00pm. Chris Shepler was present at the meeting as well. I recall that we met just off the lobby area of the hotel.

7. At our May 23, 2022, meeting, Mayor Doud complimented our operation of Shepler's. She said that we were doing a great job and that Shepler's was well-regarded on and around the Island.

8. During my May 23, 2022, meeting with Mayor Doud, she made a remark to me to the effect of, 'it sure would be nice if you bought Star Line, too.' Star Line was the operating name of Mackinac Island Ferry Company or MIFC, another ferry company providing service to and from the Island. Mayor Doud continued, explaining that Star Line was poorly run and had received a lot of complaints, and was in overall poor financial condition with ferries that were in poor physical condition. She expressed to me in no uncertain terms that she would be pleased if Hoffmann Family of Companies purchased Star Line, which is what I understood.

9. Prior to my meeting with Mayor Doud and Messrs. Chambers and Hygh, I had not considered and had no inclination to purchase MIFC. It was not a particularly attractive investment and it was obvious that it would require significant

capital infusion at the outset, which I understood was one of the reasons that Mayor Doud desired for Hoffmann Family of Companies to purchase MIFC.

10. I understand that Chris Shepler had further meetings with Mayor Doud and city council members regarding this potential purchase, which ultimately culminated with Hoffmann Family of Companies purchasing MIFC.

11. I only purchased MIFC because I believed based on what Mayor Doud and Messrs. Chambers and Hygh said to me on May 23, 2022 and subsequent reports from Mr. Shepler as to his continued meetings and discussions with them and the council through the summer of 2024, that the City of Mackinac Island, by its mayor and city council, desired this outcome, and that we could turn it into a profitable business venture over time.

12. At no time did the City disclose or indicate to me, or to my knowledge anyone else at the ferry companies, that the City believed that, by Hoffmann Family Companies purchasing MIFC, it would give the City the ability to set ferry prices or impact the ferry companies' ability to set prices per the standard contractual notice provision of the existing franchise agreements. I only learned of the City's position in the fall of 2024, after the acquisition of MIFC, when the City Council passed a resolution rejecting the rates that the ferry companies submitted per the franchise agreements for the 2025 season and freezing base rates, ultimately leading to this litigation.

13. If I had known that the City would take the opportunity to declare a monopoly after the purchase, deviate from the existing franchise agreements, assert regulatory authority over not just ferry rates but also parking (including on property that is not on the Island) and all other fees it considers related to ferry services, like priority boarding, luggage fees, and others, and freeze base fare rates since 2022 at a level that does not permit a return on our investments, let alone any profit, I would not have approved the purchase of MIFC.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed this 23rd day of May 2025.

/s/ David Hoffmann
David Hoffman

A handwritten signature in black ink, appearing to read 'David Hoffmann', written over a horizontal line.

EXHIBIT 4

**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,

Plaintiffs/Counter-Defendants,

-against-

City of Mackinac Island,

Defendant/Counterclaim- Plaintiff.

Case No.: 25-cv-00036

Hon. Robert J. Jonker

Mag. Maarten Vermaat

DECLARATION OF CHRIS SHEPLER

I, Chris Shepler, pursuant to 28 U.S.C. § 1746, hereby declare and state as follows:

1. I am the President of Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry Service ("Shepler's").

2. In 2022, I sold Shepler's to the Hoffmann Family of Companies ("Hoffmann"). I made the decision to sell with the unanimous support of my brother, sister, and parents.

3. I have taken some criticism for my decision to sell Shepler's to Hoffmann due to some peoples' views of Hoffmann as a typical private equity investment firm run by a billionaire who is an outsider to the community. But

contrary to this perception, I did my due diligence, including utilizing a mergers and acquisitions company, Greenwich Capital Group in Birmingham. Hoffmann was among forty (40) buyers interested in purchasing Shepler's. My conclusion was that Hoffmann's purchases of companies in general is, from a company mission standpoint, to maintain, build, improve and run the companies it acquires, not break them up or quickly sell them. This was very important to me.

4. As I told the Detroit Free Press when it inquired about the sale, the decision to sell to Hoffmann was about searching for the right fit, and there were other offers to purchase Shepler's for more money than Hoffmann offered. *See* <https://www.freep.com/story/money/business/michigan/2022/03/18/sheplers-ferry-mackinac-island-sold-hoffman-family-companies/7077585001/>.

5. Hoffmann planned, and has followed through with its plan, to keep Shepler's the same, including its employees and its name. My hope and belief was that one day Shepler's employees eventually would run the company, and that was part of the sale, including to keep the team in place because Hoffmann was impressed with how operations were run. I stayed on as President of Shepler's following the sale, and I considered it my job to make it a seamless transition.

6. As part of the transition, I arranged for David Hoffmann to visit Mackinac Island on May 23 and 24, 2022. I arranged for Mr. Hoffmann to tour the St. Ignace and Mackinac Island facilities and to meet several people on the Island. I wanted to introduce Mr. Hoffmann to some of the key actors on the Island with

respect to ferry services, including, but not limited to, Mayor Margaret Doud, Brad Chambers, owner of Mackinac Island Carriage Tours, and Tim Hygh, the CEO for the Mackinac Island Convention and Visitors Bureau and the Mackinac Island Tourism Bureau, together now branded as Mackinac Island Tourism.

7. Mr. Hoffmann and I met with Mayor Doud and Messrs. Chambers and Hygh at the Mayor's Windemere Hotel on May 23, 2022, around 4:30 or 5:00pm.

8. At our May 23, 2022, meeting, Mayor Doud complimented our operation of Shepler's. She said that we were doing a great job and that Shepler's was well-regarded on and around the Island.

9. During our May 23, 2022, meeting with Mayor Doud, she made a remark to us to the effect of, 'it sure would be nice if you bought Star Line, too.' Star Line was the operating name of Mackinac Island Ferry Company or MIFC, another ferry company providing service to and from the Island. Mayor Doud and the others continued, explaining that Star Line was poorly run and had received a lot of complaints, and was in overall poor financial condition with ferries that were in poor physical condition. Me and most others with knowledge of the situation already knew that Star Line was in dire straits. Mayor Doud expressed to us in no uncertain terms that she would be pleased if Hoffmann Family of Companies purchased Star Line, which is what I understood. Messrs. Chambers and Hygh were in full agreement with the Mayor. Everyone in the meeting had the same theme, i.e., 'when is Hoffmann going to buy MIFC?'

10. It is difficult to fully impress upon people without knowledge of the situation how bad it had gotten at MIFC before Hoffmann's purchased it. Everyone, including the Mayor, Messrs. Chambers and Hygh, City Council, and many others on the Island, knew that MIFC was in great peril of ceasing to operate. It was a constant topic of discussion, and that discussion usually also included the prospect of Hoffmann purchasing MIFC.

11. In the summer of 2024, for at least two full months through July and August 2024, I was tasked with reporting to the City every week on the state of MIFC. I had regular calls with the Mayor to discuss what I was going to talk about at the City Council meetings so that there would be no surprises for her. It was a very bleak picture for MIFC. The common sentiment was disbelief over how Jerry Fetty, the former executive of MIFC, had run MIFC into the ground. MIFC was in such bad condition that there was concern that customers could get injured when riding its ferries.

12. Ultimately, Hoffmann came through on the purchase of MIFC and I acted as MIFC's President for a short time. MIFC was in such bad shape that we completely shut the company down before rebranding and reopening it. This resulted in Shepler's having to run 100% of customers to the Island while going through this transition. Hoffmann made immediate infusion of millions of dollars of capital, about \$6 million, to MIFC, to restore it to proper working and operating order.

13. At no time did the City disclose or indicate to me, or to my knowledge anyone else at the ferry companies, that the City believed that, by the Hoffmann Family Companies purchasing MIFC, it would give the City the ability to set ferry prices or impact the ferry companies' ability to set prices per the standard contractual notice provision of the existing franchise agreements. I only learned of the City's position in the fall of 2024, after the acquisition of MIFC, when the City Council passed a resolution rejecting the rates that the ferry companies submitted per the franchise agreements for the 2025 season and freezing base rates.

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed this 23rd day of May 2025.

/s/ Chris Shepler
Chris Shepler

EXHIBIT 5

FERRY BOATS ORDINANCE
CITY OF MACKINAC ISLAND, MICHIGAN
Ord. No. 628 Eff. 5.28.2025

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, including all services related to said 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 Boats.

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.

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.

(d) 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 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 (as defined in 46 CFR 4.03-1) 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.

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.

(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) 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.

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 each Company an Annual Regulation Fee for the cost of regulation. Upon passage of this ordinance, the Council shall invoice the 2025 Annual Regulatory Fee of \$150,000.00 to each Ferry Boat Company to cover the estimated 2025 cost of regulation of Ferry Boat Companies. 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 June, July, and August of each year. The annual cost of regulation shall include all fees paid for 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 collected, the cost in excess of the Regulatory Fee shall be added to the current years 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 any and all 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. Said documentation shall be prepared by and certified by a certified public accountant.
- (b) A Ferry Boat Company shall submit in writing to the Council its 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 proposed 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. In the event any subsidiary, or commonly owned company, provides services related to Ferry Boat Service, including but not limited to parking, employment, or shuttles, that company's documentation and information shall be provided to the Council in accordance to this Section 22. 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 not adequate in the judgment of the Council.

(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 request reconsideration by the Council of the Council's determination of the Service Rates and Schedule of Services. With any request for reconsideration, a Ferry Boat Company shall include documentation that the current approved Service Rates do not cover operating and maintenance costs, and do not provide a fair rate of return on capital investment. The Ferry Boat Company shall also propose different 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: 4.30.2025

Effective: 5.28.2025

EXHIBIT 6

**FERRY BOATS ORDINANCE
CITY OF MACKINAC ISLAND, MICHIGAN
Ord. No. 445 Effective: April 8, 2010**

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. 244, is hereby repealed and replaced by this ordinance.

Section 2. Definitions.

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

Extended ferry boat season means the period of time between March 15 of any calendar year and January 15 of the following calendar year.

Ferry boat means any boat used to transport persons and/or property to and from the city.

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.

Regular ferry boat season means the period of time between April 30 of any calendar year and October 31 of the same calendar year.

To and from the city means to or from the city where the ferry boats depart, or are destined to points and places within the state, respectively.

Section 3. Declaration of purpose.

The purpose of this article 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; and
- (4) Provide for the furnishing of ferry service without unjust discrimination, undue preferences or

advantages.

Section 4. Penalties.

Any person violating any of the provisions of this article shall, upon conviction thereof, be guilty of a misdemeanor. Each day of violation of this article shall constitute a separate offence.

Section 5. 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.

Section 6. Schedule of services; additional services.

(a) The council may grant a franchise to operate a ferry boat service either during the regular ferry boat season or during the extended ferry boat season.

(b) A ferry boat company must operate in accordance with its schedule of services as is on file with the council. Provided, however:

(1) Nothing in this article should be interpreted as limiting any ferry boat company from offering ferry boat services in addition to the services contained in its filed schedule of services.

(2) Prior to the commencement of any regular ferry boat season the council may grant a ferry boat company permission to commence ferry boat service either before or after April 30 and permission to terminate service either before or after October 31.

(3) A ferry boat company providing services during the extended ferry boat season is not obligated to provide service on any day of the extended season when, in the judgment of ferry boat company, it would be unsafe to provide service because of the weather.

Section 7. 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 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.

Section 8. 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.

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

DIVISION 2. FRANCHISE

Section 9. Required.

- (a) No person shall operate a ferry boat service nor shall any person provide a ferry boat service or acquire ownership or control of a ferry boat company in the city without such person having first obtained a franchise therefore from the city.
- (b) 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 of the city harbor, without such person having first obtained a franchise therefore from the city.

Section 10. Application; contents; fees.

- (a) The application for a franchise to operate a ferry boat service shall be made in writing to the council and include:
- (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 of each ferry boat which will be used to provide a ferry boat service.
 - (4) A schedule of ferry boat services proposed to be operated including arrival and departure times to and from the city and the passenger capacity for each scheduled trip.
- (b) The application shall be accompanied by an application fee established by ordinance.
- (c) If a ferry boat service will be operated in such an irregular fashion so that a time schedule of services is not feasible, no such schedule of services need be filed with the application.

Section 11. Schedule of services; filing.

Any ferry boat company operating with a franchise issued under this division shall provide a copy of its schedule of services to the clerk of the city annually. If changes are made in that schedule which will

affect services for more than four days, the ferry boat company will provide notice of the change to the city clerk.

Section 12. Issuance; display; transfer.

- (a) Upon the approval of the filed schedule of services or waiver of the same by the council, and receipt of the application fee, the council shall issue a franchise as is required by this division.
- (b) 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.
- (c) 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 article 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.

Section 14. Fees; reporting; record.

- (a) During the term of any franchise granted pursuant to this division for the operation of ferry boat service during the regular ferry boat season, the person granted such franchise shall pay to the city in consideration of the granting of such franchise a monthly franchise fee in the amount of 2½% of the gross receipts from all charges for providing a ferry boat service.
- (b) During the term of any franchise granted pursuant to this division for the operation of ferry boat service during the extended ferry boat season, the person granted such franchise shall pay to the city in consideration of the granting of such franchise a monthly fee in the amount of 2% of the gross receipts from all charges for providing a ferry boat service.
- (c) The monthly franchise fee shall be due and payable on the last day of each month in which any ferry boat service is performed. Such franchise fee shall be paid monthly during the existence of the franchise on or before the 15th day of the month following the month for which the franchise fee is due and payable. 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 15th day, then payment may be made during regular business hours on the next following day on which the office is open for business.
- (d) Each payment of the monthly franchise fee shall be accompanied by a statement setting forth in detail the computation of the franchise fee, including the gross receipts for the period for which the payment is made and certified under oath by the franchisee or an officer thereof.
- (e) The city shall have the right to inspect at all reasonable times the customer records of any person granted a franchise under this division from which its franchise fee payments are computed and shall have the right of audit and recomputation of any and all franchise fees paid. 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. 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 16. 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 article or the enforcement thereof.

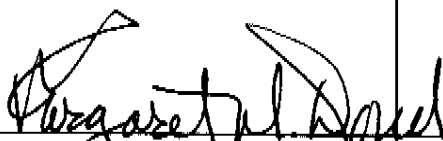
Section 17. Value.


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 18. Effective Date.

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

Date: March 24, 2010


Margaret M. Doud, Mayor


Karen S. Lennard, City Clerk

Adopted: 3/24/10

Effective: 4/8/10

EXHIBIT 7

SENATE BILL NO. 304

May 14, 2025, Introduced by Senators DAMOOSE, BELLINO, BUMSTEAD, SINGH, MCMORROW, BAYER and MCBROOM and referred to Committee on Regulatory Affairs.

A bill to amend 1899 LA 437, entitled

"An act to vacate the Township of Holmes and Village of Mackinac in Mackinac County, State of Michigan, and to Incorporate the City of Mackinac Island in said Mackinac County,"

by amending section 1 of chapter IX and section 1 of chapter XVI;
and to provide for a referendum.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER IX

2 GENERAL POWERS OF CITY CORPORATION

3 Section 1. Said City of Mackinac Island shall, in addition to
4 such other powers as are herein conferred, have the general powers

1 and authority in this chapter mentioned; and the council may pass
2 such ordinances in relation thereto and for the exercise of the
3 same, as they may deem proper, namely:

4 First, to restrain and prevent vice and immorality, gambling,
5 noise and disturbance, indecent or disorderly conduct or
6 assemblages, and to punish for the same; to prevent and quell
7 riots; to preserve peace and good order, and to protect the
8 property of the corporation, and of its inhabitants, and of any
9 association, public or private corporation or congregation therein,
10 and to punish for injuries thereto, or for unlawful interference
11 therewith;

12 Second, to apprehend and punish vagrants, truants, mendicants,
13 street beggars, drunkards and persons found drunk in any of the
14 public streets or places in the city, disorderly persons, and
15 persons conducting themselves in a disorderly manner in any of the
16 public streets or places in the city, and common prostitutes;

17 Third, to prevent injury or annoyance from anything dangerous,
18 offensive, or unhealthy; to prohibit and remove anything tending to
19 cause or promote disease; to prevent and abate nuisances, and to
20 punish those occasioning them, or neglecting or refusing to abate,
21 discontinue, or remove the same;

22 Fourth, to prohibit and suppress all disorderly houses and
23 places, houses of ill-fame, assignation houses, gambling houses,
24 and all places where persons resort for gaming or to play at games
25 of chance, and to punish the keepers thereof;

26 Fifth, to regulate or license the use of billiard tables, nine
27 or ten-pin alleys or tables, and ball alleys;

28 Sixth, to prohibit and suppress every species of gaming, and
29 to authorize the seizure and destruction of all instruments and

1 devices used for the purpose of gaming;

2 Seventh, to prohibit and prevent the selling or giving of any
3 spirituous, fermented or intoxicating liquors to any drunkard or
4 intemperate person, minor or apprentice, and to punish any person
5 so doing;

6 Eighth, to regulate, restrain or prohibit all sports,
7 exhibitions of natural or artificial curiosities, caravans,
8 circuses, menageries, theatrical exhibitions, shows, and all
9 exhibitions of whatever name or nature, for which money or other
10 reward is in any manner demanded or received; lectures on historic,
11 literary, or scientific subjects excepted;

12 Ninth, to prevent and punish violations of the Sabbath day,
13 and the disturbances of any religious meeting, congregation or
14 society, or other public meeting assembled for any lawful purpose;
15 and to require all places of business to be closed on the Sabbath
16 day;

17 Tenth, to license auctioneers, auctions and sales at auction;
18 to regulate or prohibit the sale of live or domestic animals at
19 auction in the streets or alleys, or upon any public grounds within
20 the city; to regulate or prohibit the sale of goods, wares,
21 property, or anything at auction, or by any manner of public
22 biddings or offers by the buyers or sellers after the manner of
23 auction sales, and to license the same, and to regulate the fees to
24 be paid by and to auctioneers; but no license shall be required in
25 case of sales required by law to be made at auction or public
26 vendue;

27 Eleventh, to license hawkers, peddlers, and pawnbrokers, and
28 hawking and peddling, and to regulate, license or prohibit the sale
29 or peddling of goods, wares, merchandise, refreshments, or any kind

1 of property or thing by persons going about from place to place in
2 the city for that purpose, or from any stand, cart, vehicle, or
3 other device in or upon the streets, highways, alleys, sidewalks,
4 or in or upon the wharves, docks, or from boats, open places or
5 spaces, public grounds or buildings in the city;

6 Twelfth, to license and regulate wharf boats, and to regulate
7 the use of tugs and other boats used in and about the harbor, and
8 within the jurisdiction of the city;

9 Thirteenth, to establish or authorize, license and regulate
10 ~~ferries~~**all aspects of ferry service** to and from the city, or any
11 place therein, or from one part of the city to another, and to
12 regulate and prescribe from time to time ~~the~~**all** charges and prices
13 for **or in connection with** the transportation of persons and
14 property, ~~thereon~~**by ferry, including, but not limited to, baggage**
15 **fees, early or priority boarding fees, fees and charges for parking**
16 **of vehicles by persons accessing the ferry service, whether within**
17 **the city or on the mainland, and all other fees and charges in**
18 **connection with the ferry service;**

19 Fourteenth, to regulate and license all taverns and houses of
20 public entertainment; all saloons, restaurants, and eating houses,
21 and to regulate and prescribe the location of saloons; but this
22 shall not be construed as authorizing the licensing of the sale of
23 intoxicating liquors;

24 Fifteenth, to license and regulate all vehicles of every kind,
25 used for the transportation of persons or property for hire, in the
26 city, and regulate or fix their stands on the streets and public
27 places, and at wharves, boat landings, railroad station grounds and
28 other places;

29 Sixteenth, to regulate and license all toll bridges within the

1 city, and to prescribe the rates and charges for passage over the
2 same;

3 **Seventeenth, ~~Seventeen,~~** to provide for and regulate the
4 inspection of meats, poultry, fish, butter, cheese, lard,
5 vegetables, flour, meat, and other provisions;

6 Eighteenth, to regulate the inspection, weighing and measuring
7 of brick, lumber, fire-wood, coal, hay, and any article of
8 merchandise;

9 Nineteenth, to provide for the inspection and sealing of
10 weights and measures, and to enforce the keeping and use of proper
11 weights and measures by vendors;

12 Twentieth, to regulate the construction, repair and use of
13 vaults, cisterns, areas, hydrants, pumps, sewers and gutters;

14 Twenty-first, to prohibit and prevent, in the streets, or
15 elsewhere in the city, indecent exposure of the person, the show,
16 sale, or exhibition for sale, of indecent or obscene pictures,
17 drawings, engravings, paintings, and books or pamphlets, and all
18 indecent or obscene exhibitions and shows of every kind;

19 Twenty-second, to regulate or prohibit bathing in the rivers,
20 ponds, streams and waters of the city;

21 Twenty-third, to provide for clearing the rivers, ponds,
22 canals and streams of the city and the races connected therewith of
23 all driftwood and noxious matter; to prohibit and prevent the
24 depositing therein of any filth or other matter tending to render
25 the waters thereof impure, unwholesome and offensive;

26 Twenty-fourth, to compel the owner or occupant of any grocery,
27 tallow chandler shop, soap or candy factory, butcher shop or stall,
28 slaughterhouse, stable, barn, privy, sewer, or other offensive,
29 nauseous or unwholesome place or house, to cleanse, remove or abate

1 the same whenever the council shall deem it necessary for the
2 health, comfort, or convenience of the inhabitants of the city;

3 Twenty-fifth, to regulate the keeping, selling, and using of
4 dynamite, gunpowder, firecrackers and fireworks, and other
5 explosive or combustible materials, and the exhibition of
6 fireworks, and the discharge of firearms, and to restrain the
7 making or lighting of fires in the streets and other open spaces in
8 the city;

9 Twenty-sixth, to direct and regulate the construction of
10 cellars, slips, barns, private drains, sinks, and privies;

11 Twenty-seventh, to prohibit, prevent and suppress mock
12 auctions, and every kind of fraudulent game, device, or practice,
13 and to punish all persons managing, using, practicing, or
14 attempting to manage, use or practice the same, and all persons
15 aiding in the management or practice thereof;

16 Twenty-eighth, to prohibit, prevent and suppress all lotteries
17 for the drawing or disposing of money or any other property
18 whatsoever, and to punish all persons maintaining, directing, or
19 managing the same, or aiding in the maintenance, directing, or
20 managing the same;

21 Twenty-ninth, to license and regulate solicitors for
22 passengers or for baggage to and from any hotel, tavern, public
23 house, boat or street railway station; and to provide the places
24 where they may be admitted to solicit or receive patronage; also
25 draymen, carmen, truckmen, porters, runners, drivers of cabs,
26 hackney coaches, omnibuses, carriages, sleighs, express vehicles,
27 and vehicles of every other description used and employed for hire,
28 and to fix and regulate the amounts and rates of their
29 compensation;

1 Thirtieth, to provide for the protection and care of paupers,
2 and to prohibit and prevent all persons from bringing to the city,
3 from any other place, any pauper, or other person likely to become
4 a charge upon the city, and to punish therefor;

5 Thirty-first, to provide for taking a census of the
6 inhabitants of the city, whenever the council shall see fit, and to
7 direct and regulate the same;

8 Thirty-second, to provide for the issuing of licenses to the
9 owners and keepers of dogs, and to compel the owners and keepers
10 thereof to pay for and obtain such licenses; and to regulate and
11 prevent the running at large of dogs; to require them to be muzzled
12 and to authorize the killing of all dogs not licensed, or running
13 at large in violation of any ordinance of the city;

14 Thirty-third, to prohibit and punish the use of toy pistols,
15 sling shots and other dangerous toys or implements within the city;

16 Thirty-fourth, to require any horses, mules, or other animals
17 attached to any vehicle or standing in any of the streets, lanes,
18 or alleys in the city to be securely fastened, hitched, watched or
19 held; and to regulate the placing and provide for the preservation
20 of hitching posts;

21 Thirty-fifth, to provide for and regulate the numbering of
22 buildings upon the streets and alleys, and to compel the owners or
23 occupants to affix numbers on the same; and to designate and change
24 the names of public streets, alleys and parks;

25 Thirty-sixth, to provide for, establish, regulate and preserve
26 public fountains and reservoirs within the city, and such troughs
27 and basins for watering animals as they may deem proper;

28 Thirty-seventh, to prevent or provide for the construction and
29 operation of street railways and to regulate the same and to

1 determine and designate the route and grade of any street railway
2 to be laid or constructed in said city;

3 Thirty-eighth, to establish and maintain a public library, and
4 to provide a suitable building therefor, and to aid in maintaining
5 such other public libraries as may be established within the city
6 by private beneficence as the council may deem to be for the public
7 good;

8 Thirty-ninth, the council may also license transient traders,
9 which shall be held to include all persons who may engage in the
10 business of selling goods or merchandise after the commencement of
11 the fiscal year, and the license fee in such cases may be
12 apportioned with relation to the part of the fiscal year which has
13 expired, but such traders, if they continue in the same business,
14 shall not be required to take out a second license after the
15 commencement of the next fiscal year: Provided, such goods or
16 merchandise have been assessed for taxes for said fiscal year;

17 Fortieth, the council shall further have authority to enact
18 all ordinances, and to make all such regulations, consistent with
19 the laws and constitution of the state as they may deem necessary
20 for the safety, order and good government of the city, and the
21 general welfare of the inhabitants thereof; but no exclusive
22 rights, privileges or permits shall be granted by the council to
23 any person or persons, or to any corporation, for any purpose
24 whatever.

25 CHAPTER XVI

26 FERRIES

27 Section 1. The council of said city may ~~regulate and license~~
28 **and regulate all aspects of** ferries from such city or any place of
29 landing therein, ~~to the opposite shore,~~ or from one part of the

1 city to another; and may require the payment of such reasonable sum
2 for such license as to the council shall seem proper and may impose
3 such reasonable terms and restrictions in relation to the keeping
4 and management of ~~such ferries,~~ **a ferry transportation service,** and
5 the time, manner, and rates of carriage and transportation of
6 persons and property as may be proper, **including, but not limited**
7 **to, baggage fees, early or priority boarding fees, fees and charges**
8 **for parking of vehicles by persons accessing the ferry service,**
9 **whether within the city or on the mainland, and all other fees and**
10 **charges in connection with the ferry service,** and provide for the
11 revocation of any such licenses and for the punishment, by proper
12 fines and penalties, of the violation of any ordinance prohibiting
13 unlicensed ferries, and regulating those established and licensed.

14 Enacting section 1. This amendatory act does not take effect
15 unless approved by a majority of the electors of the city of
16 Mackinac Island voting on the question. The question of the
17 approval of this amendatory act shall be submitted to the qualified
18 electors of the city at the next regular election to be held not
19 less than 60 days after the effective date of this amendatory act
20 or at a special election called for that purpose. The question
21 shall be submitted in substantially the following form:

22 Shall 1899 Local Act 437, entitled "An act to amend 1899 LA
23 437, entitled 'An act to vacate the Township of Holmes and Village
24 of Mackinac in Mackinac County, State of Michigan, and to
25 Incorporate the City of Mackinac Island in said Mackinac County,'
26 by amending section 1 of chapter IX and section 1 of chapter XVI;
27 and to provide for a referendum," be adopted?

28 Yes ()

29 No ()

1 (2) If a majority of the electors voting on the question, as
2 determined by the canvass of votes cast, vote in favor of the
3 adoption of this amendatory act, it takes effect 10 days following
4 the certification of the election results.

**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,

Plaintiffs/Counter-Defendants,

-against-

City of Mackinac Island,

Defendant/Counterclaim- Plaintiff.

Case No.: 2:25-cv-00036

Hon. Robert J. Jonker

Mag. Maarten Vermaat

**PLAINTIFFS/COUNTER-DEFENDANTS' MOTION TO DISMISS
DEFENDANT/COUNTER-PLAINTIFF'S COUNTERCLAIM**

Plaintiffs/Counter-Defendants Shepler's Inc. and Mackinac Island Ferry Company (the "Ferry Companies") move for an Order pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) dismissing with prejudice each and every Count of Defendant/Counter-Plaintiff the City of Mackinac Island's (the "City") Counterclaim in the above-captioned action (ECF No. 7), along with such other and further relief as the Court deems just and proper.

Pursuant to Local Rule 7.1(d), there was a teleconference between the Ferry Companies' undersigned attorney and counsel for the City on May 19, 2025, in which counsel explained the nature of this motion. No concurrence was reached.

WHEREFORE, the Ferry Companies respectfully request that this Court, (1) grant this motion in its entirety, (2) dismiss each and every Count of the City's Counterclaim with prejudice, (3) enter judgment for the Ferry Companies, and (4) grant such other and further relief as this Court deems just and proper.

Dated: May 19, 2025

Respectfully submitted,

/s/ Mark J. Magyar

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Company*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION TO DISMISS** was served on May 19, 2025, on all counsel of record via the ECF filing system.

/s/ Mark J. Magyar

Mark J. Magyar

**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,

Plaintiffs/Counter-Defendants,

-against-

City of Mackinac Island,

Defendant/Counterclaim- Plaintiff.

Case No.: 25-cv-00036

Hon. Robert J. Jonker

Mag. Maarten Vermaat

**COUNTERCLAIM-DEFENDANTS'
BRIEF IN SUPPORT OF THEIR
MOTION TO DISMISS COUNTERCLAIM**

Shepler's Inc. d/b/a Shepler's Mackinac Island Ferry Service ("Shepler's") and Mackinac Island Ferry Company d/b/a Arnold Transit Company ("MIFC," and together with Shepler's, the "Ferry Companies") submit this Memorandum of Law in support of their Motion to Dismiss the City of Mackinac Island's (the "City") Counterclaim, dated April 3, 2025 ("Counterclaim" or "Countercl."). *See* ECF No. 7.¹

PRELIMINARY STATEMENT

In their initial Complaint in this matter, ECF No. 1, the Ferry Companies seek a declaratory judgment that the City is attempting to ignore the express terms of, and meaningful silences in, the Ferry Companies' Franchise Agreement with the City to provide ferry service to and from Mackinac Island by purporting to regulate not only the fares the Ferry Companies charge for ferry transportation, but also the prices the Ferry Companies charge for ancillary services that are not addressed by the Franchise Agreement whatsoever. By filing its Counterclaim, the City now seeks to use the antitrust laws as a cudgel to obtain a ruling by this Court, *inter alia*, that the Ferry Companies have a "monopoly" over ferry services that somehow gives the City the right to regulate the Ferry Companies' commercial conduct beyond the four corners of the Franchise Agreement, while also holding a sword of unstated and unknowable "damages" over the Ferry Companies' heads.

But if the City intends to actually state actionable claims under the federal antitrust laws (rather than simply assert its own list of issues on which it seeks declaratory relief, as the Ferry Companies have done in their Complaint), this Counterclaim does not accomplish that goal. The Counterclaim is rife with shortcomings. Unlike most serious antitrust pleadings that support their theories with hundreds of paragraphs of allegations spread over dozens of pages, the

¹ The Counterclaim begins at Page 36 of ECF No. 7. All paragraph references herein are to the paragraphs stated in the Counterclaim.

Counterclaim attempts to assert its causes of action in only a few dozen largely conclusory descriptive paragraphs. This brevity – as well as the intentional vagueness of much of the City’s rhetoric – deprives the Counterclaim of the type of detail needed to sustain its causes of action, even at the pleading stage. The injury the City has allegedly suffered, which affects its standing to bring its claims at all, is insufficiently pleaded at best, and wholly speculative at worst. It is unclear whether the City only seeks declaratory relief, or whether it also seeks treble damages for imagined prior conduct – none of which is described with any clarity at all. The market(s) the Ferry Companies have allegedly monopolized are inadequately – and sometimes contradictorily – described, often ignoring common sense. Moreover, the City attempts to pin the Ferry Companies with an allegation of exercising monopoly power in violation of the antitrust laws without alleging any actual, actionable conduct on the part of the Ferry Companies to *exclude* competition against them in the market, as the antitrust laws require to support this type of antitrust claim. Finally, because the City’s substantive claims fail, the City lacks a basis to assert its claim for declaratory relief as well.

For all these reasons, every cause of action the City asserts in the Counterclaim must be dismissed.

STATEMENT OF RELEVANT FACTS

For purposes of this Motion only, Shepler’s and MIFC must assume the allegations in the Counterclaim to be correct and frame the discussion below on that basis. *Lambert v. Hartman*, 517 F.3d 433, 439 (6th Cir. 2008).

Shepler’s and MIFC operate ferry service to and from Mackinac Island and St. Ignace, Michigan, and to and from Mackinac Island and Mackinaw City, Michigan. In 2022, the Hoffmann Family of Companies (for relevant purposes here, identified in the Counterclaim as

“Hoffmann Marine”²) purchased Shepler’s. *Id.* ¶ 20. In 2024, Hoffmann Marine then purchased MIFC as well. *Id.* ¶ 21. Hoffmann Marine is thus the common owner of both Ferry Companies. *Id.* Although the ferry lines are still organized as independent companies, the Counterclaim repeatedly alleges that the two Ferry Companies operate a singular entity. “Hoffmann Marine owns all or a majority of the stock of both companies, and exercises complete control over both companies, including their boats, docks, parking lots, names, brands and pricing.” *Id.* ¶ 24. For example, both Shepler’s and MIFC report to Jenny Gezella, the President of Hoffmann Marine. *Id.* ¶ 26. Shepler’s CEO Chris Shepler “acts or has acted as the chief operating officer of both Ferry Companies.” *Id.* ¶ 30. Gezella and Shepler have “appeared together at [a] City Council meeting on behalf of Hoffmann Marine and both ferry companies” to discuss the Ferry Companies’ intended, identical new rates. *Id.* ¶ 32. In sum, “Shepler’s and MIFC, being under the common ownership and complete control of Hoffmann Marine, are not competitors as a matter of fact and law.” *Id.* ¶ 38. *As alleged in the Counterclaim*, the Ferry Companies operate as a singular, unified entity. The City pleads no facts that would support any contrary allegation.

Other than that simple set of allegations, though, the facts portrayed in the Counterclaim are notable for their self-contradiction and the important points they do *not* make. The Ferry Companies own or control the docks in the City, St. Ignace, and Mackinaw City that are used for ferry service. *Id.* ¶ 48. Although the Counterclaim alleges that the Ferry Companies “own or have exclusive access to the docks,” significantly, the Counterclaim never alleges that the Ferry Companies have ever restricted their use by any competitor or potential competitor that sought access to the docks for its own use. Nor does the Counterclaim ever allege that other docks

² For clarity, “Hoffmann Marine” is not an organized entity, but merely a trade name used by the Hoffmann Family of Companies to encompass its separately-owned and organized maritime businesses.

could not be built to serve another ferry operator. Likewise, the Counterclaim never alleges that the docks presently lack capacity to support a potential competitor's ferry traffic. The Ferry Companies also own parking lots in Mackinaw City and St. Ignace, at which passengers (or, significantly, the public at large) can park vehicles before or after having taken a ferry, or otherwise. *Id.* ¶ 44. Although the Counterclaim asserts that “[t]here are no competing public or privately-owned parking lots in or near Mackinaw City or St. Ignace that ferry passengers could use[,]”³ (*id.* ¶ 46), the Counterclaim admits that it is “conceivable” that a competitor could develop additional parking lots to serve ferry passenger, although it alleges that developing such lots would be “expensive, time-consuming, and uncertain.” *Id.* ¶ 47. As to both dock access and control of parking, the Counterclaim notably never alleges that there were competitors or potential competitors ready to step in and provide either ferry service and/or parking but for the alleged anticompetitive conduct of the Ferry Companies.

Of course, the ferries operated by Shepler's and MIFC are not the only means to travel to and from Mackinac Island. The Counterclaim admits that travel to and from Mackinac Island is also available by private plane, chartered aircraft, and private boat, although it fails to further describe the significance of these competing modes of transportation, including the number of travelers who utilize these options, and the relative cost compared to ferry transportation. *Id.* ¶ 43.

Both Shepler's and MIFC operate their ferry services pursuant to agreements with the City that expire in 2027. *Id.* ¶¶ 35-36 (Because these agreements are in significant part

³ Although not relevant for purposes of this Motion, that alleged fact is objectively wildly incorrect. As but one example, at least one other property owner operates a competing lot right next to MIFC's docks in Mackinaw City. *See ferryboatparking.com*.

identical, they are referred to herein collectively as the “Franchise Agreement”).⁴ Regardless of the City’s characterization in the Counterclaim of the Ferry Companies’ rights and duties expressed in the Franchise Agreement, their terms speak for themselves.⁵ Regardless of the City’s concocted antitrust-based theories now, the gravamen of this Action – both the Ferry Companies’ initial Complaint and the City’s Counterclaim – essentially revolves around the meaning of the Franchise Agreement. Section 4 requires that the relevant Ferry Company “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,” with the possibility of being awarded a franchise for the winter ferry boat season as well. *See* Franchise Agreement § 4. Per Section 3, a Ferry Company must “file [their] schedule[s] of services and rates for the next season with the City Clerk” no later than November 15 of each year. *Id.* § 3. But setting a schedule of services and fares is a *unilateral right* belonging to the Ferry Companies – nothing in the Franchise Agreement gives the City the right to approve or reject the filed rates. The only exception to the unilateral ability of the Ferry Companies to determine their rates lies in Section 9, which allows the City “the right to assert its jurisdiction over schedules and fares to the extent permitted by present law” if “no competition is found to exist in ferry boat service[.]” *Id.* § 9. Section 3. However, the Franchise Agreement does not highlight any test or procedure for determining when “no competition” exists.

⁴ The Counterclaim attaches each agreement separately at Exs. 2 and 4.

⁵ Because the two Ferry Companies’ agreements with the City are annexed to the Counterclaim, the Court may consider the meaning of their plain language in connection with this Motion. *Gavitt v. Born*, 835 F.3d 623, 640 (6th Cir. 2016) (citation and quotations omitted); *see also* Fed. R. Civ. P. 10(c).

To presage issues that arose later, it should be noted that the Franchise Agreement, by its clear terms, does not require the Ferry Companies to notify the City of any other prices or charges associated with services ancillary to ferry service whatsoever. For example, the Franchise Agreement does not address any fees the Ferry Companies might charge for luggage, priority boarding, or for parking at the lots they own in Mackinaw City and St. Ignace.

After not having raised ferry rates in the several years since Hoffmann Marine acquired Shepler's, in late 2024 the Ferry Companies notified the City that they intended to raise ferry rates by \$2.⁶ Countercl. ¶ 32. The City declined to “approve” the new rates (*id.* ¶ 41), even though it had no ability to control them.

Indeed, the City must have realized that the existing Franchise Agreement gave it no ability to control the Ferry Companies' rates, or other charges the Ferry Companies might adopt for ancillary services. On April 30, 2025 – after the Ferry Companies filed their initial Complaint in this matter on March 3, 2025, and after the City filed its Counterclaim on April 3, the City adopted a new ordinance (the “2025 Ordinance”) that purported to give the City exactly the powers it lacked under the Franchise Agreement.⁷ (A copy of the 2025 Ordinance is attached hereto as Ex. A)⁸ In pertinent part, the 2025 Ordinance requires that a ferry boat operator that is granted a franchise to operate ferry service “shall submit in writing to the Council its proposed

⁶ Although the Counterclaim describes this as the Ferry Companies “asking” the City to approve a \$2 rate increase, the Ferry Companies never stated that the City had the right to *approve* the Ferry Companies' rates. They simply notified the City of their new rates and met with the City Council to educate its members about the new pricing.

⁷ To be clear, Shepler's and MIFC believe the City lacked the power to enact the 2025 Ordinance and intend to challenge it on that basis in the future if necessary. The Ferry Companies also believe the 2025 Ordinance cannot alter the terms of the existing Franchise Agreement.

⁸ The Ferry Companies cite to the 2025 Ordinance not as new factual material outside the ambit of a motion to dismiss, but rather as purported law that can be freely referenced in that context. If necessary, however, the Ferry Companies request that the Court take judicial notice of the adoption and contents of the 2025 Ordinance.

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 Service Rates are just and reasonable for the services provided.” Ex. A, § 22(b). Following the production of certain voluminous information also outlined in the 2025 Ordinance, “[t]he 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.” *Id.* § 22(f). Significantly, the 2025 Ordinance defines “Service Rates” to include activities it cannot regulate under the Franchise Agreement, such as “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 [sic], transportation of property, luggage, and parking fees.” *Id.* § 2. The 2025 Ordinance is to take effect no later than May 28, 2025.

Although the Ferry Companies notified the City of their new intended rates for the 2025 season (Countercl. ¶ 32), the Counterclaim does not allege that the Ferry Companies ever actually implemented those revised rates (although, as discussed below, it would not support the City’s theories if they had).

The Counterclaim alleges five causes of action. Count I of the Counterclaim accuses Shepler’s and MIFC of collectively having and exercising monopoly power over either ferry service to Mackinac Island or, in the alternative, having a monopoly over parking necessary to use the ferries, in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2. Count II states an alternative theory (which cannot stand alongside Count I) that if Shepler’s and MIFC are in fact *independent* entities, their coordination on rates and terms of service violates Section 1 of the Sherman Act. Count III appears to state the same antitrust theories under the Michigan

Antitrust Reform Act, MCL 44.772 and MCL 445.773.⁹ Count IV alleges the Ferry Companies have breached the Franchise Agreement because “competition between the ferry companies has ceased as a matter of fact and law,” and Shepler’s and MIFC are obligated under the Franchise Agreement to cooperate with the City in its regulation of rates for ferry transportation, parking, and other fees and charges, which Shepler’s and MIFC allegedly have not done. Finally, Count V seeks declaratory relief from the Court as to a host of issues that run in tandem with the City’s substantive theories.

It is equally unclear whether the City is truly seeking any damages for its causes of action, or only the declaratory relief described in Count V. As to the City’s antitrust causes of action, although the City asserts it is entitled to treble damages and its attorneys’ fees, the City has not sued under, or even mentioned, Section 4 of the Clayton Act, 15 U.S.C. § 15, the statutory enactment that provides for such relief for a violation of the federal antitrust laws. More broadly, however, the Counterclaim asserts only one vague, summary paragraph regarding the damages the City has allegedly suffered to date as a result of the Ferry Companies’ actions: that it has been “injured in its business or property . . . [because] the City is a customer of the ferries, and the ferry companies’ supra-competitive rates and charges for ferry service, including but not limited to parking, increase the City’s costs and suppress the City’s revenues by discouraging travel to Mackinac Island.” Countercl. ¶ 59. The significance of this pithy,

⁹ The analysis of the City’s antitrust claims under the Michigan Antitrust Reform Act and the Sherman Act should be identical. “[B]ecause the Michigan Anti-Trust statute and the Sherman Anti-Trust Act mirror each other, [the court] appl[ies] the same analysis to both the federal and the state antitrust claims.” *Hobart-Mayfield, Inc. v. Nat’l Operating Comm. on Standards for Athletic Equip.*, 48 F.4th 656, 663 (6th Cir. 2022) (quoting *Am. Council of Certified Podiatric Physicians & Surgeons v. Am. Bd. of Podiatric Surgery, Inc.*, 323 F.3d 366, 368 (6th Cir. 2003)). Accordingly, “Michigan Antitrust Reform Act claims prevail or fail in tandem with [a claimant’s] Sherman Act claims.” *Id.*

unsupported assertion is discussed further below and is damning for several aspects of the City's theories.

ARGUMENT

“A motion to dismiss for failure to state a claim is a test of the plaintiff's cause of action as stated in the complaint, not a challenge to the plaintiff's factual allegations.” *Lambert v. Hartman*, 517 F.3d 433, 439 (6th Cir. 2008) (quotations and citation omitted). As such, all allegations in the Counterclaim must be accepted as true. *Id.* To satisfy the City's pleading requirement, those allegation “must do more than create speculation or suspicion of a legally cognizable cause of action; they must show *entitlement* to relief.” *Id.* (emphasis in the original). Accordingly, a complaint “must contain either direct or inferential allegations respecting all the material elements to sustain recovery under a viable legal theory.” *German Free State of Bavaria v. Toyobo Co., Ltd.*, 480 F. Supp. 2d 958, 963 (W.D. Mich. 2007) (citations omitted).

In this specific context, courts have long recognized that antitrust claims must clear a high hurdle to advance past the pleadings stage – more so than cases asserting different legal theories. “In the antitrust context, the Supreme Court is clear that ‘a district court must retain the power to insist on some specificity in pleading before allowing a potentially massive factual controversy to proceed.’” *ComSpec Int'l, Inc. v. Uniface B.V.*, 2021 WL 4169726, at *5 (E.D. Mich. Sept. 14, 2021) (dismissing Sherman Act section 2 monopolization claim for inadequate pleading) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558 (2007)). As the Sixth Circuit has explained, “[w]hile the pleading standard under the federal rules is very liberal ... ‘the price of entry [into the federal courts on a private antitrust claim], even to discovery, is for the plaintiff to allege a factual predicate concrete enough to warrant further proceedings, which may be costly and burdensome.’” *Foundation for Interior Design Educ. Research v. Savannah Coll.*

of Art & Design, 244 F.3d 521, 530 (6th Cir. 2001) (quoting *DM Research, Inc. v. College of Am. Pathologists*, 170 F.3d 53, 55 (1st Cir. 1999)).

Thus, in an antitrust action, a complaint “must comprehend a so-called prima facie case, and enough data must be pleaded so that each element of the alleged antitrust violation can be properly identified.” *Clark Memorials of Alabama Inc. v. SCI Alabama Funeral Servs. LLC*, 991 F. Supp. 2d 1151, 1156 (N.D. Ala. 2014) (quoting *Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev. Corp., S.A.*, 711 F.2d 989, 995 (11th Cir. 1983)).

I. COUNTS I, II, III, AND IV SHOULD BE DISMISSED FOR LACK OF STANDING.

In order to assert Counts I, II, III, and IV, the City must properly allege Article III standing. To support Counts I, II, and III, the City must also adequately allege that it has “antitrust standing,” a special doctrine applicable to antitrust claims. *NicSand, Inc. v. 3M Co.*, 507 F.3d 442, 449 (6th Cir. 2007). But here, the Counterclaim does not meet those burdens.¹⁰

A. The City Fails to Adequately Plead Article III Standing.

In the absence of constitutional standing on the part of the City, this Court has no subject matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377-78 (1994). Whether a claimant has Article III standing is a threshold jurisdictional issue governed by Federal Rule of Civil Procedure 12(b)(1). Fed. R. Civ. P. 12(b)(1); *Allstate Ins. Co. v. Glob. Med. Billing, Inc.*, 520 F. App'x 409, 410-11 (6th Cir. 2013) (citations omitted). Article III standing requires a plaintiff to “have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540 (2016).

¹⁰ Interestingly, the City never even pleads that it has standing to assert any of its causes of action whatsoever. The word “standing” simply never appears in the Counterclaim.

To satisfy the injury in fact element, a plaintiff must allege an injury that is both “concrete and particularized” and “actual or imminent.” *Id.* (citations and quotations omitted). “For an injury to be particularized, it must affect the plaintiff in a personal or individual way.” *Id.* (citations and quotations omitted). Concrete means “real and not abstract;” the alleged injury “must actually exist.” *Id.* at 340. The injury in fact requirement is the foremost of these three elements; claimants must have standing for each claim that they press and for each form of relief that they seek. *Jordan v. Beasley*, No. 24-5122, 2024 U.S. App. LEXIS 28498, at *3 (6th Cir. Nov. 7, 2024); *Waskul v. Washtenaw Cty. Cmty. Mental Health*, 900 F.3d 250, 253 (6th Cir. 2018).

Because the City invokes federal jurisdiction through its Counterclaims, it “bears the burden of establishing these elements.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130 (1992).

To start, the City does not have standing to sue to remedy the rights of its citizens, or to otherwise have the federal antitrust laws enforced in its jurisdiction – the so-called *parens patriae* power. State Attorneys General expressly have standing to bring claims on behalf of their state’s citizens, 15 U.S.C. § 15c, but nothing in the federal statutory scheme gives any other sub-state level actor the ability to do so. *Oakland Cnty. by Kuhn v City of Detroit*, 628 F. Supp. 610, 613 (E.D. Mich. 1986) (“Congress has established that only a state, acting through its attorney general, may sue as *parens patriae* of its citizens.”). Rather, the City must sufficiently plead its *own* harm that allegedly results from the Ferry Companies’ actions.

Although the requirements of Article III standing are often relatively easy to satisfy, here, however, the paucity and vagueness of the City’s sole allegation as to its own damages – one lone paragraph – deprives this Court of standing over Counts I, II, III, and IV. Because the

Counterclaim fails to adequately allege the City’s direct harm resulting from the Ferry Companies’ actions, no sufficient “injury in fact” has been pleaded that would be redressable through a decision in its favor on these theories. *Merck v. Walmart, Inc.*, 114 F.4th 762, 772-73 (6th Cir. 2024). In the only paragraph of the Counterclaim describing the extent to which it has been affected by the Ferry Companies’ alleged actions, the City asserts that it “is” injured by the Ferry Companies because it is a “customer” of the Ferry Companies, and “the [F]erry [C]ompanies’ supra-competitive rates and charges for ferry service, including but not limited to parking, increase the City’s costs[.]” Countercl. ¶ 59. But the Counterclaim does not describe what these additional costs have been, or even whether the City itself has had to pay any part of them or if it simply expects to in the future. The City’s assertion of having to pay increased “costs” is thus entirely summary and unspecific. Furthermore, the City cannot base an allegation of injury on the increased rates the Ferry Companies have sought to implement, as the Counterclaim admits they have yet been implemented (*id.* ¶ 56), and, even if fees were increased later, it is complete guesswork at this point as to what new rates or costs would be, the extent to which they would apply to the City, and what the City would have to pay as a result. Finally, to the extent the City’s alleged damages are based on the hypothetical and speculative “suppress[ion] of the City’s revenues by discouraging travel to Mackinac Island,” (*id.* ¶ 59), the Counterclaim fails to describe whatsoever how such an alleged diminution of revenue actually has injured the City (e.g., lost tax revenue or license fees), or would injure, the City itself if the Ferry Companies implemented them.

As a result, the City has not adequately alleged Article III standing, and the Court should dismiss Counts I, II, III, and IV.¹¹

B. The City Fails to Plead an Antitrust Injury.

Although lack of Article III standing calls for dismissal under Rule 12(b)(1), lack of statutory standing – here, “antitrust standing” – warrants dismissal under Rule 12(b)(6). *NicSand, Inc.*, 507 F.3d at 459. Establishing antitrust standing is “more onerous” than Article III standing. *Static Control Components, Inc. v. Lexmark Int’l, Inc.*, 697 F.3d 387, 402 (6th Cir. 2012). An antitrust claimant “must do more than make allegations of consequential harm resulting from a violation of the antitrust laws.” *NicSand, Inc.*, 507 F.3d at 449 (quotation omitted). The foremost requirement of antitrust standing is that a claimant need allege a cognizable “antitrust injury.” Even so, antitrust injury is a “necessary, but not always sufficient, condition of antitrust standing.” *Id.* at 450 (quotations and citations omitted).

To sufficiently plead an antitrust injury, a claimant must plausibly allege an “injury of the type that the antitrust laws were intended to prevent and that flows from that which makes defendants’ acts unlawful.” *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977). Specifically, a plaintiff “must allege, not only an injury to himself, but an injury to the market as well.” *Bassett v. Nat’l Collegiate Athletic Ass’n*, 528 F.3d 426, 434 (6th Cir. 2008) (quoting *Banks v. Nat’l Collegiate Athletic Ass’n*, 977 F.2d 1081, 1088 (7th Cir. 1992)). As this Court has explained, “the Sherman Act is focused on conduct ‘**which unfairly tends to destroy competition itself.**’” *Rivers Bend RV Resort & Campground, LLC v. Spectrum Mid-Am., LLC*,

¹¹ To the extent the City bases its allegation of harm on a diminution of revenue because of the Ferry Companies’ alleged acts, that allegation would also fail to satisfy the prong of the test that requires the City’s injury be “fairly traceable to the challenged conduct of the defendant.” A diminution in City revenue could result from many internal and external factors; it would be rank speculation to attempt to tie any development like that to a small increase in ferry rates or other charges.

2024 WL 4008707, at *5 (W.D. Mich. Aug. 15, 2024), *report and recommendation adopted*, No. 2:23-CV-107, 2024 WL 4007184 (W.D. Mich. Aug. 30, 2024) (quoting *Spectrum Sports, Inc., v. McQuillan*, 506 U.S. 447, 458 (1993)) (emphasis added).

In practice, in order to recover damages under the Sherman Act, the claimant must establish an antitrust injury such that (1) the alleged violation tends to reduce competition in some market, and (2) the claimant's injury would result from a decrease in that competition, rather than from some other consequence of the defendant's actions. *Conwood Co., LP v. United States Tobacco Co.*, 290 F.3d 768, 788 (6th Cir. 2002). The Sixth Circuit “has been reasonably aggressive in using the antitrust injury doctrine to bar recovery[.]” *Ky. Speedway, LLC v. Nat’l Ass’n of Stock Car Auto Racing, Inc.*, 588 F.3d 908, 920 (6th Cir. 2010) (quotations and citations omitted). Under this framework, naked assertions of antitrust injury, speculative injuries and conclusory allegations fail as a matter of law.¹² *NicSand, Inc. v. 3M Co.*, 507 F.3d 442, 451 (6th Cir. 2007) (quotations and citations omitted); *Hurley v. Nat’l Basketball Players Ass’n*, 2021 WL 6065783, at *7 (N.D. Ohio Dec. 22, 2021), *aff’d*, No. 22-3038, 2022 WL 17998878 (6th Cir. Dec. 30, 2022).

In construing a pleading for antitrust standing, courts analyze the following factors:

- (1) the causal connection between the antitrust violation and harm to the plaintiff and whether that harm was intended to be caused; (2) the nature of the plaintiff's alleged injury including the status of the plaintiff as consumer or competitor in the relevant market; (3) the directness or indirectness of the injury, and the related inquiry of whether the damages are speculative; (4) the potential for duplicative recovery or complex apportionment of damages; and (5) the existence of more direct victims of the alleged antitrust violation.

¹² Indeed, the Counterclaim does not even *summarily* allege “antitrust standing” or an “antitrust injury” as antitrust complaints typically do.

Indeck Energy Servs., Inc. v. Consumers Energy Co., 250 F.3d 972, 976 (6th Cir. 2000) (quoting *Southaven Land Co., Inc. v. Malone & Hyde, Inc.*, 715 F.2d 1079, 1085 (6th Cir.1983)).

The foregoing factors weigh heavily against a finding of antitrust standing on the part of the City for its antitrust causes of action. As discussed above, as to its own damages, the City offers only the most exceedingly sparse allegation harm to it to date resulting from Shepler's and MIFC's actions. *See* Countercl. ¶¶ 8-9, 17, 42, 59. Allegations of potential future injury if the Ferry Companies implement increased fares offer only rank speculation. Moreover, the City is not a competitor or would-be competitor of the Ferry Companies, which might imbue it with an increased interest in seeing the antitrust laws vigorously enforced. As with constitutional standing, the City also has no antitrust standing to sue on behalf of its residents and visitors for what amounts to prospective relief that would effectively enjoin commerce in three different municipalities.

But most significantly, the City has not pleaded any harm to competition that has resulted from the Ferry Companies' alleged actions. Again, what the Counterclaim does *not* allege is significant. As discussed below at Point II.C., *infra*, it does not violate Section 1 of the Sherman Act for the Ferry Companies to simply possess a dominant market share, or to raise fares or implement charges for ancillary services. What an entity with dominant market power cannot do is to use that market power to exclude competition or potential competition against it. But the Counterclaim does not plead that Hoffmann Marine somehow acted anticompetitively in acquiring both Shepler's and MIFC. It does not plead that the Ferry Companies have used any anticompetitive tactics to exclude competitors from the market, such as by locking up customers or essential suppliers with preferential terms or exclusive dealing arrangements. Indeed, a particularly damning shortcoming of the Counterclaim is its failure to allege the existence of a

competitor “willing and able to enter the relevant market, but for the exclusionary conduct” of the Ferry Companies, an allegation essential to the assertion of antitrust standing. *Sunbeam Television Corp. v. Nielsen Media Research, Inc.*, 711 F.3d 1264, 1273 (11th Cir. 2013). Again, the Counterclaim’s silence on this point is deafening.

Therefore, the City’s antitrust causes of action fail because it has not sufficiently alleged that it was injured by Counterclaim Defendants’ conduct, or that the Ferry Companies’ conduct in any way actually limited competition, the true focus of the antitrust laws.

Where, as here, “a complaint by its terms fails to establish” antitrust standing, a Court must dismiss it as a matter of law. *NicSand*, 507 F.3d at 450. For all these reasons, Counts I, II, III should be dismissed.

II. COUNTS I, II, AND III FAIL TO ADEQUATELY ALLEGE SIGNIFICANT ELEMENTS OF THE ANTITRUST CLAIMS THEY RAISE AND SHOULD BE DISMISSED.

Beyond the City’s failure to establish subject matter jurisdiction and antitrust standing, Counts I, II, and III should be dismissed because the City has not pleaded adequate facts that would support the antitrust theories expressed therein, and has insufficiently pleaded other important facts necessary to assert antitrust claims.

A. Elements of Sherman Act 1 and Sherman 2 Claims.

Before examining the shortcomings in the City’s pleading of its antitrust claims, it is important to understand the allegations required to state claims under Sections 1 and 2 of the Sherman Act. Count I (and Count III, to the extent it mirrors Count III) complains of “monopolization” by the Ferry Companies in violation of Sections 1 and 2 of the Sherman Act. 15 U.S.C. §§ 1, 2. A claim under § 1 of the Sherman Act (“Sherman Section 1”) requires some sort of coordinated activity between *two independent parties*. *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 771 (1984). To sustain a Section 1 claim, a claimant

must sufficiently allege: (1) the existence of a contract, combination, or conspiracy, *i.e.* some agreement, (2) that unreasonably restrains interstate trade or commerce, (3) in a relevant antitrust market. *See Hobart-Mayfield, Inc. v. Nat'l Operating Comm. on Standards for Athletic Equip.*, 48 F.4th 656, 663 (6th Cir. 2022).

By contrast, a claim for monopolization under § 2 of the Sherman Act (“Sherman Section 2”), which is used to challenge conduct by a single entity, requires proof of: (i) dominant market power, (ii) in a relevant antitrust market, and (iii) that the defendant willfully acquired, maintained, or abused through anti-competitive or exclusionary means. *Static Control Components, Inc.*, 697 F.3d at 402; *Gene Cope & Assocs., Inc. v. Aura Promotions, Ltd.*, 692 F. Supp. 724, 727 (E.D. Mich. 1988) (same). Because Sherman Section 2 prohibits only anticompetitive single-firm conduct “among the several States,” an effect on interstate commerce must also be demonstrated. *See* 15 U.S.C. § 2 (it is illegal to “monopolize, or attempt to monopolize, ... any part of the trade or commerce among the several States.”)

Count II (and Count III, to the extent it mirrors Count II) complains only of a violation of Sherman Section 1.

B. Counts I and II Should be Dismissed Because the City Fails to Plead that the Ferry Companies’ Conduct Affects Interstate Commerce.

As noted above, in order to adequately plead a claim under either Sherman Section 1 or 2, a claimant must allege, among other factors, that the defendant’s conduct affects interstate commerce. The Counterclaim, however, sorely lacks any such allegation. Strikingly, it does not even *summarily* allege that jurisdictional trigger, as antitrust complaints often do. The Counterclaim does not mention “interstate commerce” at all. But it also fails to plead any specific facts that could even lead to that conclusion, such as that tourists visit Mackinac Island from around the United States.

Other courts have addressed allegations of antitrust violations involving solely local activities – such as the intra-state ferry service and parking here – and have not hesitated to dismiss a complaint for failure to adequately allege an effect on interstate commerce. *Powell v. Shelton*, 386 F. Supp. 3d 842, 849 (W.D. Ky. 2019) (dismissing Section 1 claim arising from alleged bid-rigging in local real estate auction in local real estate auction; complaint contained “no allegations relating to the interstate features” of defendant’s business, and was “devoid of allegations relating the subject transaction to interstate commerce”); 54 Am. Jur. 2d Monopolies and Restraints of Trade § 316 (2025) (“[a]n antitrust complaint must set forth facts in support of the plaintiff’s claim, because a Federal District Court cannot assume jurisdiction of a claim on the basis of entirely conclusory allegations”).

For this reason, Count I and Count II, and those parts of Count V that mirror Count I and Count II, should be dismissed.¹³

C. Counts I and III Should be Dismissed Because the City Has Not Sufficiently Pleaded that the Ferry Companies Have Excluded Competition.

The Counterclaim attempts to hang its hat on the simple fact that the Ferry Companies are under common ownership and the only providers of ferry services to and from Mackinac Island, and/or that they control all or substantially all of the parking “necessary” for ferry passengers’ use. But **the simple fact of possessing dominant market power in a relevant market, even if the antitrust defendant increases prices, does not violate Section 2.** *Pacific Bell Telephone Co. v. Linkline Communications, Inc.*, 555 U.S. 438, 447-48 (2009). A plaintiff has no Section 2 claim where a defendant did not *obtain* dominant market power unlawfully or deploy its monopoly power to frustrate current or potential competition against it in order to

¹³ The Ferry Companies do not seek dismissal of Count III (the Michigan Antitrust Act cause of action) on this basis, because the City has likely met its burden of pleading that commerce *within Michigan* has been satisfied).

preserve its market dominance. *See Static Control Components, Inc.*, 697 F.3d at 402 (affirming dismissal of § 2 monopolization claims); *Gene Cope & Assocs.*, 692 F. Supp. at 727, 729 (“possession of monopoly power in itself is not illegal;” “[i]f unreasonable practices are not utilized, [a] monopoly is not violative of § 2”). At its core, “[s]imply possessing monopoly power *and* charging monopoly prices does not violate” Section 2.¹⁴ *Pacific Bell Telephone Co.*, 555 U.S. at 447-48.

Here, the Counterclaim does not anywhere even *attempt* to allege a sufficient Section 2 claim. The simple fact that Shepler’s and MIFC might have dominant market power in the market for transportation to and from Mackinac Island, even if it were to use that dominance to increase prices or charge fees that some might find unreasonably excessive, does not support a Section 2 claim. It is simply not illegal; an entity with dominant market power is free to price to whatever level the market will bear. What would be required to adequately plead a Sherman 2 claim – and what the Counterclaim here does *not* plead – would be concrete, nonspeculative allegations that the Ferry Companies somehow used their market power to exclude or limit competition against them, for example, by offering important customers such attractive terms that they would be unlikely to switch to a potential competitor, by entering into exclusive agreements with suppliers of an essential input that restrict those suppliers from dealing with potential rivals, by refusing to discuss with a potential rival access to ferry docks that the Ferry Companies allegedly own or control, or by purchasing all land in and around the docks so that no

¹⁴ The only federal or state antitrust statutes that provide a potential remedy for the simple fact of acquiring substantial market power in an appropriate antitrust market are Section 7 of the Clayton Act, 15 U.S.C. § 18, which prohibits acquisitions that “may substantially lessen competition,” and Section 5 of the FTC Act, 15 U.S.C. § 45, which is enforceable only by the Federal Trade Commission. Notably, however, the City has not sued under Section 7 of the Clayton Act and instead relies on theories for which no cause of action exists under these circumstances.

competitor could develop parking lots. Further, as discussed at Point § I. B., *supra*, in the context of antitrust standing, the City has also not identified any willing and able competitor that the Ferry Companies' alleged conduct prevented from entering the market. At best, the Counterclaim only alleges that the Ferry Companies increased or will increase prices, which simply is not the type of conduct that Section 2 contemplates. Nor does the Counterclaim ever state that Hoffmann Marine used illegal or anticompetitive tactics to acquire Shepler's and MIFC in the first instance. There are simply no allegations anywhere in the Counterclaim that supports the type of "exclusionary conduct" necessary for a Sherman 2 claim.

For these reasons, Counts I and III should be dismissed.

D. Count II Should Be Dismissed Because the Counterclaim Alleges the Ferry Companies are Under Common Ownership and Control.

Count II poses an alternative to the monopolization theory advanced in Count I. Count II (and thus Count III to the extent it mirrors Count II) alleges that if Shepler's and MIFC are *independent* entities, the coordination between them violates Section 1 of the Sherman Act.

The Court need look no farther than the City's allegations in the Counterclaim and the *Copperweld* doctrine to make quick work of this argument. As discussed above, the Counterclaim repeatedly alleges that Shepler's and MIFC are both commonly owned and controlled by the same corporate parent, Hoffmann Marine. *See* Countercl. ¶¶ 21-33. Nowhere does it allege that the Ferry Companies are, in fact, independent competitors of each other – just an allegation that the Ferry Companies have held themselves out as such. *Id.* ¶ 40. Just as a parent corporation and a subsidiary cannot be found to have formed a "contract, combination, or conspiracy" in violation of Section 1, so, too, commonly owned and controlled sibling companies cannot, as a matter of law, be found to have violated Section 1 of the Sherman Act. *Copperweld*, 467 U.S. at 771 (a conspiracy sufficient to meet the first element of a Section 1

claim cannot exist solely between a parent and its wholly owned subsidiary because they have “a complete unity of interest”). The *Copperweld* doctrine has subsequently been extended to coordination between subsidiary companies in the same corporate family tree. *Directory Sales Mgmt. Corp. v. Ohio Bell Tel. Co.*, 833 F.2d 606, 611 (6th Cir. 1987) (*Copperweld* barred a plaintiff from alleging a “contract, combination or conspiracy” among subsidiaries with the same parent company).

If the City’s allegations are correct that Hoffmann Marine, Shepler’s and MIFC are a “single economic unit serving a common interest” – and the City has not alleged any facts sufficient to support a contrary conclusion – they are incapable of forming the requisite contract, combination, or conspiracy as a matter of law to violate Section 1. *Guzowski v. Hartman*, 969 F.2d 211, 218 (6th Cir. 1992) (affirming order dismissing Section 1 claim under the *Copperweld* doctrine).

For this reason, Count II, and any part of Count III that is based on this same theory, should be dismissed.

E. Counts I, II, and III Should be Dismissed Because the City Has Inadequately and Contradictorily Pleaded a Relevant Service Market.

The City’s antitrust claims also fail because the Counterclaim fails to adequately allege the “market” the Ferry Companies are accused of monopolizing, or, for Count II (which alleges a violation only of Section 1 of the Sherman Act), the market in which the Ferry Companies are accused of coordinating conduct.¹⁵

Definition of the relevant antitrust market is the gating element for all Sherman Act claims. *Worldwide Basketball & Sport Tours, Inc. v. NCAA*, 388 F.3d 955, 962 (6th Cir. 2004) (“Failure to identify a relevant market is a proper ground for dismissing

¹⁵ See Point § II.D., *supra*, for more discussion concerning Count II.

a Sherman Act claim.”). The relevant market is tethered to the purported monopoly or coordinated conduct; without a defined market, “there is no way to measure [the defendant’s] ability to lessen or destroy competition.” *Spectrum Sports Inc. v. McQuillan*, 506 U.S. 447, 455 (1993). Plaintiffs must “identity the relevant product and geographic markets so the district court can assess what the area of competition is, and whether the alleged unlawful acts have anticompetitive effects in that market.” *Total Benefits Plan. Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 437 (6th Cir. 2008) (affirming dismissal of Sherman Act claim for failure to allege the relevant market) (internal quotations and citations omitted). In general, the relevant market includes services that are “reasonably interchangeable with, as well as identical to, defendant’s” services. *American Council of Certified Podiatric Physicians & Surgeons v. American Bd. of Podiatric Surgery, Inc.*, 185 F.3d 606, 622 (6th Cir.1999); *see also White and White, Inc. v. Am. Hosp. Supply Corp.*, 723 F.2d 495, 500 (6th Cir. 1983) (the “reasonable interchangeability” standard looks to “whether the substitute products or services can perform the same function, and/or [] consumer response (cross-elasticity); that is, consumer sensitivity to price levels at which they elect substitutes for the defendant’s product or service”).

The contours and competitive dynamics of the relevant market must be alleged with “some specificity,” not merely painted with conclusory statements. *ComSpec Int’l, Inc.*, 2021 WL 4169726, at *5. Courts routinely dismiss Sherman Act claims “on the basis of an insufficiently pled or totally unsupportable proposed market.” *Monument Builders of N. Am. v. Mich. Cemetery Ass’n (“Mich. Div. II”)*, 524 F.3d 726, 733 (6th Cir. 2008); *see also Smartrend Mfg. Grp. (Smg), Inc. v. Opti-Luxx, Inc.*, No. 1:21-CV-1009, 2023 WL 6304912, at *30 (W.D. Mich. Sept. 28, 2023) (Jarbou, C.J.) (dismissing a complaint consisting of “threadbare recitals”

which provided “no clues as to the geographic scope of the alleged market, the types of products on which the parties compete, or whether the parties are the only competitors in the market[.]”)

Here, the City appears to allege that Counterclaim Defendants simultaneously hold monopoly power over two ill-defined and otherwise improper antitrust markets. Countercl. ¶ 69.

First, if the relevant service market constitutes “ferry service to and from Mackinac Island,” as the City sometimes pleads, the Counterclaim contradicts itself by simultaneously admitting that travel to and from Mackinac Island is possible by aircraft and private boat, while still asserting that the Ferry Companies are the only service providers in the market. Countercl. ¶ 43. To the extent the City intends to exclude those means of transportation as available substitutes for ferry service, it fails to describe important details that would inform their status as substitutes, such as (but not limited to) the number of passengers who travel or could travel to and from Mackinac Island by these means, and the cost of these forms of transit compared to the cost of traveling by ferry. Without those details, the Ferry Companies, and the Court, cannot assess the extent to which competition from these other modes exists. The City’s attempt to exclude these alternatives might be correct, or it might be incorrect – it simply cannot be determined without more detail than the Counterclaim now offers. Such detail must be pleaded now, not developed later in discovery. *United Wholesale Mortg., LLC v. Am.’s Moneyline, Inc.*, No. 22-10228, 2025 WL 502743, at *6 (E.D. Mich. Feb. 14, 2025) (“a rule that courts should not grant dismissal for failure to define the relevant market, or should defer the issue until after discovery, would contravene a plaintiff’s basic obligation to plead facts plausibly supporting each element of the claims alleged”).

Second, to the extent the City argues that the relevant service market is parking in Mackinaw City or St. Ignace over which the Ferry Companies allegedly exercise complete

control, and which is somehow “necessary” to transit on the Ferry Companies’ ferries, that assertion is threadbare and belies common sense. Countercl. ¶ 65. The City contends that “parking in the lots owned by Shepler’s and MIFC is necessary to access the ferries,” but also admits that there is street parking in both Mackinaw City and St. Ignace, and that “it is conceivable that a competitor could develop additional remote parking lots and bus customers to the ferries,” as the Ferry Companies themselves do. *Id.* ¶¶ 46, 47, 55. But again, the Counterclaim does nothing to define the significance of these potential alternatives to parking in the Ferry Companies’ parking lots, the number of spaces that could be available, and the prices customers would have to pay. Also fundamentally, the Complaint never even mentions the extent to which intended ferry passengers could avail themselves of other means of transportation in Mackinaw City and St. Ignace, such as the obvious possibilities of walking to and from the docks, taking a taxi or rideshare car, getting dropped off or picked up at the docks by a family member, bicycle, or even other means. These are just some of the alternatives – and thus potential substitutes – to utilizing the Ferry Companies’ parking lots. But without more developed allegations concerning these matters, the Ferry Companies are left with no meaningful description of possible competition.¹⁶ Counts I, II, and III should be dismissed on this basis.

F. Count IV Should be Dismissed Because the Ferry Companies are Acting in Accord with the Franchise Agreement, and the City Has Not Sufficiently Pleaded the Elements of Breach of Contract.

Count IV complains that Shepler’s and MIFC have breached Article 9 of the Franchise Agreement by refusing to cooperate with the City in its regulation of rates for ferry transportation to and from Mackinac Island, “including rates for parking in the lots owned by the ferry companies that are necessary to access the ferries, and all other fees and charges imposed

¹⁶ The fact that alleged monopolization of parking lots occurs wholly outside of the City’s geographic ability to regulate is also significant.

by [the Ferry Companies] in connection with transportation by ferry,” because the City has the right to regulate as “competition has ceased between the ferry companies[.]” Countercl. ¶ 76. A reading of the unambiguous terms of the Franchise Agreement, however, plainly demonstrates that the City is attempting to insert *new* language into the Franchise Agreement that simply does not exist. Shepler’s and MIFC have not breached the Franchise Agreement whatsoever.

The language of the Franchise Agreement is unambiguous and must be enforced according to its plain terms. *Rory v. Cont’l Ins. Co.*, 473 Mich. 457, 703 N.W.2d 23, 28 (Mich. 2005). Per Article 3, the Ferry Companies are required only to “file [their] schedule[s] of services and rates for the next season with the City Clerk” no later than November 15 of each year. Franchise Agmt, Art. 3. Nothing in the Franchise Agreement gives the City the right to approve or reject the files rates. The only exception to the Ferry Companies’ ability to determine their rates is Section 9, which allows the City “the right to assert its jurisdiction over schedules and fares to the extent permitted by present law” if “no competition is found to exist in ferry boat service[.]” *Id.* § 9.

But the Franchise Agreement does not speak to the circumstances under which “no competition is found to exist,” or by what means that is to be determined. *See id.* The City apparently claims the unilateral right to assert such lack of competition, but that power is nowhere to be found in the Franchise Agreement. To the contrary, if one looks to antitrust law to determine circumstances in which “no competition” exists, factors such as the availability of substitute products or services (here, for example, airplane and private boat), and the possibility of new entrants entering the market relatively easily, must be considered, as discussed at Point § I. B., *supra*.

Additionally, the Franchise Agreement contains absolutely no language that gives the City the right to regulate fees charged for parking or for ancillary services, such as priority boarding or luggage fees. Section 3 of the Franchise Agreement only requires the Ferry Companies to file their “schedule of services” for ferry service and rates; Section 9 of the Franchise Agreement allows the City to regulate only “schedules and fares” if “no competition” is found to exist. *Id.* §§ 3, 9. The Ferry Companies cannot be held to have breached the Franchise Agreement by setting prices for these ancillary services when the Franchise Agreement does not mention any rights or duties related thereto whatsoever.¹⁷

The fact that the City apparently thought it necessary to enact the new 2025 Ordinance to regulate the Ferry Companies’ conduct about which it complains appears to confirm that the Ferry Companies’ reading of the Franchise Agreement is correct, and left the City with no alternatives when it became unhappy with the Ferry Companies’ intended rate increases.

Because of the unambiguous language of the Franchise Agreement, Count IV fails to state a claim, and should be dismissed.

Even if one disagrees that the Franchise Agreement is that clear, Count IV is inadequately pleaded. To sufficiently plead a breach of contract claim, the claimant must show (i) the existence of a contract, (ii) that the defendant breached the terms of the contract, and (iii) damages. *Hendricks v. DSW Shoe Warehouse, Inc.*, 444 F. Supp. 2d 775, 780 (W.D. Mich. 2006). “The party asserting a breach of contract has the burden of proving its damages with

¹⁷ Indeed, although the City claims that “parking in the lots owned by the ferry companies [is] necessary to access the ferries,” common sense demonstrates this is simply not true – passengers can travel to the docks by walking, by bicycle, by being dropped off by private car, and a variety of other methods. The Counterclaim does not allege anywhere that passengers on the ferries are *required* to purchase parking in Shepler’s and MIFC’s lots. Moreover, if regulation of parking were so essential to ferry service, one would expect the City to have attempted to address it in the Franchise Agreement, which it did not do.

reasonable certainty and may recover only those damages that are the direct, natural, and proximate result of the breach.” *Alan Custom Homes, Inc. v. Krol*, 667 N.W.2d 379, 383 (Mich. Ct. App. 2003). Dismissal of a contract claim is warranted where damages are ““dependent upon the chances of business *or other contingencies.*” *Hendricks*, 444 F. Supp. 2d at 780 (quoting *McEwen v. McKinnon*, 11 N.W. 828, 829 (Mich. 1882)). To that end, contract damages are limited to those which “arise naturally from the breach.” *Kewin v. Massachusetts Mutual Life Ins. Co.*, 409 Mich. 401, 295 N.W.2d 50, 53 (Mich. 1980).

As discussed above at Point §§ I.A.B., *supra*, the City has not sufficiently pleaded any already-accrued, actual harm or injury to itself for any prior breach of the Franchise Agreement, and has offered only a conclusory allegation that the Ferry Companies’ actions “increase the City’s costs” without explaining how or why, and whether those increased costs have already been suffered, or will only be suffered in the future. The City also only advances speculation that, due to the Ferry Companies’ alleged breach of the Franchise Agreement (to date, or going forward), the City will suffer some sort of undefined, derivative losses tied to a decrease in tourism. Allegations as paltry and unspecific as these do not fulfill the City’s pleading obligations.

For all these reasons, Count IV should be dismissed.

III. BECAUSE THE CITY’S SUBSTANTIVE CLAIMS FAIL, COUNT V SHOULD BE DISMISSED AS WELL.

In Count V, and in the following concluding paragraph that details the points on which the City asks the Court to enter a declaratory judgment, the City simply asks that the Court affirm its rights, and deny the Ferry Companies’ rights, all of which are related to the substance of each of the City’s causes of action described in Counts I through IV. Because the Court should dismiss all of Counts I through IV, the redundant Count V should also be dismissed, or at

least dismissed because nothing remains to support the Court's jurisdiction over Count V by itself.

Under 28 U.S.C. § 2201, the Court may declare the rights and other legal relations of interested parties if a live case or controversy to adjudicate exists. Where the underlying substantive claims fail, dismissal of a request for declaratory relief is appropriate. *See Int'l Ass'n of Machinists & Aerospace Workers v. Tenn. Valley Auth.*, 108 F.3d 658, 668 (6th Cir. 1997) ("A request for declaratory relief is barred to the same extent that the claim[s] for substantive relief on which it is based would be barred"); *Ebu v. U.S. Citizenship & Immigr. Servs.*, 134 F.4th 895, 903 (6th Cir. 2025) ([w]ithout any claims left providing [a claimant with] possible relief," its "declaratory judgment claim must also be dismissed").

Accordingly, because Counts I through IV should be dismissed, so, too, should the Court dismiss Count V as well.

CONCLUSION

To summarize, each and every one of the causes of action that the City asserts in the Counterclaim for the following reasons:

Count I: Lack of Article III standing; lack of antitrust standing; failure to plead an effect on interstate commerce; failure to allege anticompetitive conduct; failure to adequately plead a service market.

Count II: Lack of Article III standing; lack of antitrust standing; failure to plead an effect on interstate commerce; alleged common ownership precludes a finding of collusive conduct; failure to adequately plead a service market.

Count III: Lack of Article III standing; lack of antitrust standing; alleged common ownership precludes a finding of collusive conduct; failure to adequately plead a service market.

Count IV: Lack of Article III standing; no breach of contract; failure to adequately elements of a breach of contract.

Count V: Redundant of each of Counts I, II, III, and IV.

For the foregoing reasons, Counterclaim Defendants respectfully request that the Court

dismiss the Counterclaims in their entirety, with prejudice, along with such other and further relief the Court deems just and proper.

Dated: May 19, 2025

Respectfully submitted,

/s/ Mark J. Magyar

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WORD COUNT CERTIFICATION

I hereby certify that the word count for this memorandum of law complies with the word limits of W.D. Mich. LCivR. 7.2(b)(i). According to the word-processing system used to prepare this brief in support, the total word count for all printed text exclusive of the caption, tables and signature block is 9,331 words.

Dated: May 19, 2025

By: /s/ Mark J. Magyar

Mark J. Magyar

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **BRIEF IN SUPPORT** was served on May 19, 2025, on all counsel of record via the ECF filing system.

/s/ Mark J. Magyar

Mark J. Magyar

EXHIBIT A

FERRY BOATS ORDINANCE
CITY OF MACKINAC ISLAND, MICHIGAN
Ord. No. 628 Eff. 5.28.2025

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, including all services related to said 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 Boats.

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.

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.

(d) 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 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 (as defined in 46 CFR 4.03-1) 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.

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.
- (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) 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.

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 each Company an Annual Regulation Fee for the cost of regulation. Upon passage of this ordinance, the Council shall invoice the 2025 Annual Regulatory Fee of \$150,000.00 to each Ferry Boat Company to cover the estimated 2025 cost of regulation of Ferry Boat Companies. 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 June, July, and August of each year. The annual cost of regulation shall include all fees paid for 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 collected, the cost in excess of the Regulatory Fee shall be added to the current years 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 any and all 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. Said documentation shall be prepared by and certified by a certified public accountant.
- (b) A Ferry Boat Company shall submit in writing to the Council its 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 proposed 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. In the event any subsidiary, or commonly owned company, provides services related to Ferry Boat Service, including but not limited to parking, employment, or shuttles, that company's documentation and information shall be provided to the Council in accordance to this Section 22. 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 not adequate in the judgment of the Council.

(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 request reconsideration by the Council of the Council's determination of the Service Rates and Schedule of Services. With any request for reconsideration, a Ferry Boat Company shall include documentation that the current approved Service Rates do not cover operating and maintenance costs, and do not provide a fair rate of return on capital investment. The Ferry Boat Company shall also propose different 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: 4.30.2025

Effective: 5.28.2025