

**TITLE XI: BUSINESS REGULATIONS**

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## CHAPTER 110: GENERAL PROVISIONS

### Section

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#### ***Statutory reference:***

*Power of municipalities to regulate peddlers and itinerant merchants, see ILCS Ch. 65, Act 5, § 11-42-5*

### **SOLICITORS**

#### **§ 110.15 VILLAGE POLICY ON SOLICITING.**

It shall be the policy of the village that no person shall be entitled to solicit within the village for any reason except in compliance with this chapter.

(Ord. 884, passed 7-1-2013)

#### **§ 110.16 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**REGISTERED SOLICITOR.** Any person who has obtained a valid certificate of registration as hereinafter provided, and which certificate is in the possession of the solicitor on his or her person while engaged in soliciting.

**RESIDENCE.** Every separate living unit occupied for residential purposes by 1 or more persons, contained within any type of building or structure.

**SOLICITING.** The word “soliciting” shall mean and include any 1 or more of the following activities:

(1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatsoever, for any kind of consideration whatsoever;

(2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character;

(3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publications; or

(4) Seeking to obtain gifts or contributions of money, clothing or any other valuable thing for the support or benefit of any charitable or nonprofit association, organization or corporation.  
(Ord. 884, passed 7-1-2013; Am. Ord. 944, passed 6-1-2015)

#### **§ 110.17 PERMIT REQUIREMENT.**

(A) It shall be unlawful for any person, except those expressly exempted in this chapter, to engage in the business or activity of solicitation in the village without having first applied for, obtained, and maintained a valid solicitor’s permit as hereinafter provided. A permit shall not be issued to any person under 16 years of age.

(B) Each person issued a permit shall prominently display the solicitation permit issued hereunder on his or her person while so soliciting within the village.  
(Ord. 884, passed 7-1-2013) Penalty, see § 110.99

#### **§ 110.18 PERMIT APPLICATION.**

(A) Application for a solicitor’s permit shall be made in writing, notarized, on a form provided by and filed with the Village Clerk. Each applicant shall state the following information under oath:

(1) The applicant’s full name, all addresses of applicant’s residence during the past 2 years, the length of time of the applicant’s residence at each address, and the applicant’s business address if other than their current residence address;

(2) The applicant's place and date of birth, social security number, driver's license number and state of issuance or current state or federal identification card and physical description;

(3) The name and address of the business or other person or entity by whom the applicant is employed or whom the applicant represents, and the initial date of such employment or representation;

(4) Description sufficient for identification of the subject matter of the soliciting which the applicant will engage in;

(5) The dates for which the applicant seeks a solicitor's permit;

(6) Information, including the date(s), regarding any prior application or use of a solicitor's permit by the applicant in the village, and any revocation of a previously issued solicitor's permit by the village;

(7) Information regarding any conviction of any felony or misdemeanor involving dishonesty, theft, fraud, false statements, a threat to public safety, or a crime involving sex offenses or offenses involving bodily harm against persons under the laws of this state or any other state or federal law of the United States within 5 years of the date of the permit application; and

(8) Information as to whether a solicitation permit has been previously issued to the applicant by any other jurisdiction, and if so, whether the permit was ever revoked.

(B) Each application shall be accompanied by a nonrefundable fee of \$50 for the investigation and administration of the provisions of this chapter.

(C) The Village Administrator shall cause to be kept in his or her offices an accurate record of every application received and acted upon, together with all other information and data pertaining thereto, and copies of all solicitation permits issued under the provisions of this chapter. Applications for permits shall be numbered in consecutive order, as filed, and every permit issued and any renewal thereof shall be identified with the duplicate number of the application upon which it was issued.

(Ord. 884, passed 7-1-2013)

**§ 110.19 STANDARDS FOR PERMIT ISSUANCE.**

(A) Upon receipt of a completed application for a solicitor's permit, the Village Administrator, or an authorized agent, shall cause an investigation to be made as to the applicant's criminal record, if any, and compliance with all applicable laws and ordinances of the state and the village. Applicants shall cooperate with such investigation and furnish such additional information as may be reasonably requested by the Village Administrator or an authorized law enforcement agent in furtherance of the investigation.

(B) Within 5 business days of receiving an application, or within such extended time period as may be necessary, the Village Administrator, or an authorized agent, shall issue a solicitor's permit if a determination is made that:

(1) The material statements made in the application are true;

(2) The applicant has not been convicted of any felony or misdemeanor involving dishonesty, theft, fraud, false statements, a threat to public safety, or a crime involving sex offenses or offenses involving bodily harm against persons under the laws of this state or any other state or federal law of the United States, within 5 years of the date of the permit application;

(3) The applicant has not had a previously issued solicitor's permit revoked by the village or by any other municipality within 5 years of the date of the application; and

(4) The applicant has not been convicted of violating any provisions of this chapter within 5 years of the date of application.

(C) All permits issued hereunder shall indicate the date or dates on which such permit shall be valid, which may not exceed more than 3 continuous days per permit, and the hours when solicitation within the village is permitted in accordance with the provisions of this chapter. An expired permit may be renewed under the same terms and conditions as the original application and will be subject to the same fees.

(D) A permit is valid for the length of time specified in the application, but shall not exceed more than 5 continuous days. A separate permit shall be required for each additional solicitation event. The number of permits issued during a calendar year shall be limited to 12.  
(Ord. 884, passed 7-1-2013; Am. Ord. 944, passed 6-1-2015)

#### **§ 110.20 DENIAL OF PERMIT.**

If the Village Administrator, or an authorized agent, determines and finds that the applicant has not met one or more of the above conditions, the Village Administrator, or any authorized agents, shall deny issuance of the solicitor's permit and shall give written notification of such denial to the applicant. Such notice shall be delivered in person or by U.S. mail addressed to the residence address set forth in the permit application, stating the action taken and the reasons supporting such action.  
(Ord. 884, passed 7-1-2013)

#### **§ 110.21 REVOCATION OF PERMIT.**

(A) Any solicitor's permit issued hereunder may be revoked by the Village Administrator, or an authorized agent, if the holder of the solicitor's permit:

- (1) Violates any of the provisions of this chapter;
- (2) Has made a false statement or misrepresentation in the permit application;
- (3) Perpetrates a fraud or misrepresentation in the course of conducting solicitation activities;
- (4) Transfers any solicitor's permit to a person other than the person for whom the permit was issued;
- (5) Uses or allows the use of a solicitor's permit by any person other than the person to whom the permit was issued;
- (6) Conducts solicitation activities in an unlawful manner or in such manner as to create a public nuisance or in such a way as to constitute a danger to the health, safety or welfare of the public; or
- (7) Is convicted of any felony subsequent to the issuance of a solicitor's permit.

(B) Immediately upon such revocation, written notice thereof shall be given by the Village Administrator, or an authorized agent, to the permit holder, in person or by U.S. mail addressed to the residence address set forth in the permit application, stating the action taken and the reasons supporting such action. Immediately upon the delivery or mailing of such notice, the solicitor's permit shall become null and void.

(Ord. 884, passed 7-1-2013)

**§ 110.22 APPEAL OF PERMIT DENIAL OR REVOCATION.**

(A) Any person denied a solicitor's permit or whose solicitor's permit has been revoked may appeal by filing a written notice of appeal with the Village Mayor.

(B) Appeals must be taken in writing and must be filed with the Village Mayor within 10 business days after revocation or denial of the permit and shall contain a statement setting forth the grounds for the appeal. The appealing party shall submit whatever documentation they desire to have the Village Mayor consider with the written appeal.

(C) The written decision of the Village Mayor shall be made available to the appealing party not later than 10 business days after the Village Mayor receives the written appeal.

(D) The decision of the Village Mayor is final. No new application for a permit will be considered for 6 months after denial or revocation, unless the denial or revocation is without prejudice or is conditional and the conditions have been satisfied as determined by the Village Mayor.

(Ord. 884, passed 7-1-2013)

**§ 110.23 EXEMPTIONS.**

The following are exempt from the permitting requirements of § 110.17 of this chapter, namely:

(A) Persons engaged in the sales or deliveries of goods, wares, foodstuffs, merchandise or services on regularly established routes or sales or deliveries by other persons having an established list of customers to whom they make periodic deliveries;

(B) Persons seeking the signature of a village resident for a zoning or election petition;

(C) Persons engaged in solicitation at the invitation or request of the person contacted;

(D) Solicitation related to children's activities, including but not limited to, Girl Scouts, Boy Scouts and Youth Softball/Baseball or other school activities within the Maroa-Forsyth or Warrensburg school districts;

(E) Religious, charitable, political and other nonprofit organizations and their representatives; and

(F) Political candidates.

(Ord. 884, passed 7-1-2013; Am. Ord. 944, passed 6-1-2015)

**§ 110.24 INDIVIDUAL PRIVACY.**

(A) It is hereby declared to be the policy of the village that the occupants of any residence located within the village shall make the determination of whether any solicitor shall be, or shall not be, invited to their respective residences.

(B) Any person conducting solicitations who is not, pursuant to the provisions contained herein, invited onto the premises of any resident or who has obtained entrance to such premises and does not immediately and peacefully leave the same upon being so requested by the occupant of such premises, shall be deemed a trespasser.

(C) No person, whether registered or not under this chapter, shall solicit within the village on any premises if the same are posted against solicitation by means of a notice, prominently displayed, bearing the words "No Solicitors", "No Trespassing" or any other similar notice indicating in any manner that the occupants of such premises desire not to have their right of privacy disturbed, unless such occupant has specifically requested such solicitation.

(D) Any premises shall be deemed to be posted against solicitation if there is exhibited on or near the main entrance to the property, or on or near the main doors, a sign measuring at least three inches by four inches (3 x 4) bearing the applicable words with letters at least one-third inch (1/3") in height.



(E) It shall be the duty of each solicitor upon going onto any premises in the village upon which a residence is located to first examine the premises for the notice provided for in this chapter. If a notice is posted, then the solicitor, whether registered or not, shall immediately and peaceably depart. (Ord. 884, passed 7-1-2013)

**§ 110.25 OTHER REGULATIONS AND STANDARDS OF CONDUCT.**

(A) It is hereby declared unlawful and shall constitute an offense for any solicitor, whether registered under this chapter or not, to go in or upon any premises within the village for the purpose of soliciting at any time before 10:00 am. or after 6:00 p.m. On weekdays, or any time before 12:00 p.m. or after 4:00 p.m. on Saturday, or on any Sunday or state or national holiday.

(B) Each solicitor registered hereunder shall at all times while soliciting carry on his or her person the permit issued to him or her, and upon the request of any individual, present said permit.

(C) It shall be unlawful for any person to conduct solicitation on any public property, way or place in a manner that completely or substantially impedes the flow of pedestrian or vehicular traffic in, on or around such public property, way or place.

(D) Solicitors shall conduct themselves at all times in an orderly and lawful manner and shall not make, or cause to be made, any loud or obnoxious noise of such volume sufficient to disturb the peace of the residents of the village.

(E) It shall be unlawful for any solicitor to cheat, deceive, or misrepresent any product, service, or organization, whether individually or through an agent or employee, while acting as a solicitor, or to sell or barter any goods, merchandise or wares other than those specified in their permit application. (Ord. 884, passed 7-1-2013; Am. Ord. 944, passed 6-1-2015) Penalty, see § 110.99

**§ 110.26 SOLICITATION RESTRICTIONS ON VILLAGE ROADS.**

(A) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle.

(B) No person shall stand on a roadway for the purpose of soliciting employment or business from the occupant of any vehicle.

(C) No person shall stand on a roadway for the purpose of soliciting contributions from the occupant of any vehicle, except upon each of the following conditions:

- (1) The soliciting agency shall secure approval from the Village Board;

(2) The soliciting agency is registered with the attorney general as a charitable organization as provided by Illinois law;

(3) The soliciting agency maintains liability for any injuries to any person or property during the solicitation which is causally related to solicitation;

(4) Any person engaged in the act of solicitation shall be 16 years of age or more and shall be wearing a high-visibility vest;

(5) Prior to the issuance of a permit, the soliciting agency shall provide the village with a certificate of liability insurance naming the village as an additional party insured;

(6) The solicitation shall be permitted only on a roadway at an intersection where all traffic is required to come to a full stop unless otherwise permitted by approval of the Village Board; and

(7) In no instance shall the solicitation interfere with the operation of official traffic control devices.

(Ord. 884, passed 7-1-2013; Am. Ord. 944, passed 6-1-2015) Penalty, see § 110.99

#### **§ 110.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) Any person convicted of violating any provision of this chapter, upon conviction thereof, shall be fined not less than \$100 nor more than \$750 and costs of prosecution, or imprisonment in the county jail for a term not exceeding 90 days, in the discretion of the court.

(Ord. 884, passed 7-1-2013)

## CHAPTER 111: ALCOHOLIC BEVERAGES

### Section

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- 111.02 License required
- 111.03 Application for license
- 111.04 Restriction of licenses
- 111.05 License classifications; number; fees
- 111.06 License term; conditions
- 111.07 Disposition of fees; record of licenses
- 111.08 License displayed
- 111.09 License renewal
- 111.10 Compensation of Local Liquor Control Commissioner
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- 111.13 Employee restrictions
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- 111.15 Sanitary requirements
- 111.16 Site limitations
- 111.17 Revocation of license
- 111.18 Sales without license
- 111.19 Sale or delivery to minor prohibited; exceptions
- 111.20 Identification required
- 111.21 Misrepresentation of age
- 111.22 Transfer, possession, and consumption of alcoholic liquor; restrictions
- 111.23 Consumption upon premises of owner or occupant prohibited
  
- 111.99 Penalty

### § 111.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ALCOHOLIC LIQUOR.*** Alcohol, spirits, wine, beer, and every liquid containing alcohol and capable of being consumed as a beverage by a human being.

**BEER.** A beverage obtained by the alcoholic fermentation of an infusion or concoction of barley or other grain, malt and hops and water and including among other things beer, ale, stout, lager beer, and the like.

**HOTEL.** Any building or other structure kept, used, maintained, advertised, and held out to the public to be a place where sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, in which 25 or more rooms are used for sleeping accommodations of such guests, with a common area or lounge available for guests.

**LICENSEE.** Any person, firm, corporation, or partnership holding a license under the provisions of this chapter.

**MINOR.** A person under the age of 21 years.

**ORIGINAL PACKAGE.** Any bottle, flask, jug, can, or other receptacle or container sealed and labeled by the manufacturer of alcoholic liquors to contain and to convey any alcoholic liquors.

**SALE.** Any transfer, exchange, or barter in any manner, or by any means whatsoever, including the transfer of alcoholic liquors by and through the transfer or negotiation of warehouse receipts or certificates, and includes and means all sales made by any person, whether principal, proprietor, agent, servant, or employee.

**SPECIAL EVENT.** A public or private event sponsored by or in conjunction with an educational, fraternal, political, civic, religious, governmental or non-profit organization and shall include weddings held on private property.

**SPIRITS.** Any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spiritous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

**WINE.** Any alcoholic beverage obtained by the fermentation of the natural contents of fruits, or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits, as above defined.

(Prior Code, § 90.01) (Ord. 381, passed 4-9-1992; Am. Ord. 856, passed 8-6-2012; Am. Ord. 10-7-2013; Am. Ord. 919, passed 8-18-2014)

## § 111.02 LICENSE REQUIRED.

It shall be unlawful to sell at retail, or offer to sell, or to solicit or to receive an order for, to keep or expose for sale or to keep with the intention of selling any alcoholic liquors without first having obtained a license therefor.

(Prior Code, § 90.02) Penalty, see § 111.99

**§ 111.03 APPLICATION FOR LICENSE.**

(A) (1) Applications for the licenses shall be made to the Village Mayor in writing, signed by the applicant, if an individual, or by a duly authorized agent thereof if a corporation, verified by oath or affidavit.

(2) Application forms shall be available from the Village Clerk.

(B) The application shall contain the following statements and information.

(1) As to an individual and all partners in a co-partnership:

(a) Name, age, residence, address, citizenship, place of birth, if a naturalized citizen, the date and place of the naturalization;

(b) Character of business and length of time the individual and each co-partner has been engaged in the business;

(c) A statement as to whether the individual and each co-partner has made application for license, other than the instant license application, in the village for the premises desired to be used and the disposition had on the application;

(d) A statement that the individual and each co-partner has never been convicted of a felony and is not disqualified to receive a license by reason of any matter or thing contained in this chapter, the laws of this state or the ordinances of this village;

(e) In the event that the individual or any co-partner has previously held a liquor license of any type issued by any state or subdivision thereof or by the federal government, a statement shall be made to that effect giving all pertinent data, including that as to the termination, and if revoked, the reason therefor;

(f) A statement that the individual and each partner of the co-partnership will not violate any of the laws of the State of Illinois, or of the United States, or any ordinance of the village in the conduct of his or her place of business;

(g) The location and description of the premises or place of business which is to be operated under the license;

(h) The percentile interest of each co-partner in the business; and

(i) A statement whether the applicant has made similar application for a similar alcoholic liquor license on premises other than those described in this application and the disposition of the application.

(2) As to corporations, the following information is required of each officer, director, and manager, together with each stockholder holding more than 10% of that stock in the corporation, and in the event that a corporation holds 10% or more of the stock of the applicant corporation, the same information must be furnished of the corporation as required of the applicant corporation:

(a) Name, residence address, place of birth, and, if a naturalized citizen, the date and place of the naturalization;

(b) Length of time, if any, each named individual has been engaged in the retail liquor business;

(c) A statement as to whether each named individual has made application for license other than the instant license application for the premises desired to be used and the disposition had on the application;

(d) A statement that each named individual has never been convicted of a felony. Further, that if each named individual had applied in his or her individual name, that no disqualification existed for that person receiving a license by reason of any matter or thing contained in this chapter, the laws of this state or the ordinances of this village;

(e) In the event that any of the individuals named in this corporate application have previously held liquor licenses of any type issued by any state or subdivision thereof or by the federal government, a statement shall be made to that effect giving pertinent data as to the termination, and if revoked, the reasons therefor;

(f) A statement that the corporation and the officers and directors and manager will not violate any of the laws of the State of Illinois, or of the United States, or any ordinance of the village in the conduct of the place of business;

(g) The location and description of the premises or place of business which is to be operated under the license; and

(h) In the event a manager described in division(B)(2) is replaced, the new manager must qualify and shall file a statement with the Village Mayor providing the information and affirmation set forth in divisions (B)(2)(a) through (B)(2)(f) above.

(3) Upon application for renewal of license, each individual, co-partnership, and corporation shall prepare and file between December 1 and December 15, of each calendar year, application forms containing the same information as shown above.

(4) Each and every applicant for a license, or renewal thereof, shall, simultaneously with the application therefor and prior to the issuance thereof; execute and deliver a bond in the penal sum of \$2,000 to the Village of Forsyth as the obligee. The bond shall be conditional for the faithful performance of all provisions of this chapter and all amendments thereto and the payment of all fines and penalties by reason of the violation thereof with security to be approved by the Village Mayor. The maximum liability of any and all sureties on the bonds shall be limited to the penalty thereof; to wit, the sum of \$2,000.

(5) Each applicant for a license shall furnish, contemporaneously with the application and bond, evidence of insurance coverage against dram shop liability under ILCS Ch. 235, Act 5, § 6-21, covering the proposed licensee and the owner of the premises for a full 12-month period from the date of the application. Evidence of similar coverage shall be furnished as a condition for each and every annual renewal of any license hereunder.

(Prior Code, § 90.03)

**§ 111.04 RESTRICTION OF LICENSES.**

No license shall be issued to:

(A) A person who is not of good character and reputation in the community in which that person resides;

(B) A person who is not a citizen of the United States;

(C) A person who has been convicted of (or placed on supervision) a felony under the laws of any state;

(D) A person who has been convicted of (or placed on supervision) being the keeper of or is keeping a house of ill fame;

(E) A person who has been convicted of (or placed on supervision) pandering, or other crime or misdemeanor opposed to decency and morality;

(F) A person whose license under this chapter has been revoked for cause;

(G) A person who at the time of application for renewal of any license issued heretofore would not be eligible for the license on first application;

(H) A co-partnership unless all of the members of the co-partnership shall be qualified to obtain a license;

(I) A corporation, if any officer, manager, or director thereof or any stockholder or stockholders owning in the aggregate more than 10% of the stock in the corporation would not be eligible to receive a license hereunder for any reason other than citizenship and residence within this political subdivision;

(J) A person whose place of business is conducted by a manager or agent unless the manager or agent possesses the same qualifications required of the licensee;

(K) A person who has been convicted of a violation of any federal or state law concerning the manufacture, possession, or sale of alcoholic liquor, or who shall have forfeited his or her bond to appear in court to answer charges for any such violation;

(L) Except for a special event license on public property, a person who does not own the premises for which a license is sought, or does not have a lease thereon for the full period for which the license is issued;

(M) Any law enforcing public official, Village Mayor, or any member of the Board of Trustees, and no such official shall be interested in any way, either directly or indirectly, in the manufacture, sale, or distribution of alcoholic liquor;

(N) Any person, firm, or corporation not eligible for a state retail liquor dealer's license;

(O) Any person for the sale of alcoholic liquor at a store or other place of business where the majority of customers are minors, or where the principal business transacted consists of school books, school supplies, food, lunches, or drinks for those minors; and/or

(P) Except in the case of hotels and motels, no alcoholic liquors shall be sold at retail upon any premises which has any access which leads from the premises to any other portion of the same building or structure used for dwelling or lodging purposes and which is permitted to be used or kept accessible for use by the public. This provision shall not prevent any connection between the premises and the other portion of the same building or structure which is used only by the licensee, his or her family, and personal guests.

(Prior Code, § 90.04) (Am. Ord. 894, passed 10-7-2013)

#### **§ 111.05 LICENSE CLASSIFICATIONS; NUMBER; FEES.**

(A) The classification of licenses shall be as follows.



(1) *Class A; restaurant.*

(a) *Classification.* Class A licenses shall authorize the retail sale of alcoholic liquors at a restaurant for consumption only on the premises where sold. A Class A license shall not be issued to any licensee whose gross receipts from the sale of alcoholic liquor will constitute 25% or more of its gross receipts from all sales. A restaurant shall comply with the following regulations.

1. Alcoholic liquors shall be sold, served, and consumed only between the hours of 11:00 a.m. and 1:00 a.m.

2. Alcoholic liquors shall be sold, served, and consumed only with and in conjunction with the sale of food for consumption in the public dining room on the premises, except that alcoholic liquors may also be sold, served, and consumed in adjacent rooms used to accommodate persons waiting to be seated in the public dining room.

3. Alcoholic liquors shall be sold and served only in individual orders and in proper containers for immediate consumption on the premises and not in bottles, casks, kegs, or any container suitable for the transportation of the alcoholic liquor from the dining rooms of the premises in which any liquor is served.

4. Alcoholic liquors shall not be prepared, poured, or mixed for sale or service in any dining room, nor shall there be any bar or display of alcoholic liquors in any dining room.

5. Alcoholic liquors shall not be advertised for sale by means of any signpost or billboard or other means of advertisement located on the exterior of the premises. Advertisements for the sale of alcoholic liquors or displays of alcoholic liquors located on or in the interior of the premises shall not be visible to passers-by from the exterior of the premises.

(b) *Number.* Seven; and  
(Am. Ord. 555, passed 11-19-2001; Am. Ord. 759, passed 9-15-2008)

(c) *Fee.* \$3,000.

(2) *Class B; wine and beer.*

(a) *Classification.*

1. Class B licenses shall authorize the sale of wine and beer for consumption on the premises to be served only in conjunction with the serving of food for consumption on the premises and specifically not a bar or other such facility and on the premises specified between the hours of 11:00 a.m. and 1:00 a.m. Alcoholic liquors shall be sold and served only in individual orders and in proper

containers for immediate consumption on the premises and not in bottles, casks, kegs, or any container suitable for the transportation of the liquor from the dining rooms of the premises in which any alcoholic liquor is served.

2. Alcoholic liquors shall not be advertised for sale by means of any signpost or billboard or other means of advertisement located on the exterior of the premises. Advertisements for the sale of wine and/or displays of beer and wine located on or in the interior of the premises shall not be visible to passers-by from the exterior of the premises.

(b) *Number.* Three; and

(c) *Fee.* \$3,000.

(3) *Class C; package liquor.*

(a) *Classification.*

1. Class C licenses shall authorize the retail sale of beer and wine which may be sold only in original package for consumption off the licensed premises. A Class C license shall not be issued to any licensee at any premises from which gross receipts from the sale of beer and wine will constitute 25% or more of its gross receipts from all sales; and a Class C licensee may not sell beer or wine from what is commonly referred to as a drive up window. A Class C license shall authorize the sale of beer and wine only between the hours of 8:00 a.m. and 10:00 p.m. of each and every day excepting Sunday, and between the hours of 9:00 a.m. and 10:00 p.m. on Sunday.

2. Beer and wine shall not be advertised for sale by means of any signpost or billboard or other means of advertisement located on the exterior of the premises. Advertisements for the sale of beer and wine or displays of beer and/or wine located on or in the interior of the premises shall not be visible to passers-by from the exterior of the premises.

(b) *Number.* Two; and

(c) *Fee.* \$3,000.

(4) *Class D; Retail packaged liquor store.*

(a) *Classification.*

1. Class D licenses shall authorize the retail sale of alcoholic liquor which may be sold only in original package for consumption off the licensed premises. A Class D license shall only be issued at a premises where the establishment's primary purpose is the sale of packaged alcoholic liquor. The establishment shall not have more than 10% of its shelf space used for consumable goods

(*CONSUMABLE GOODS* does not include tobacco or soft drinks) or derive more than 10% of its gross income from consumable goods. A Class D licensee may not sell alcoholic liquor from what is commonly referred to as a drive up window.

2. A Class D license shall authorize the sale of alcoholic liquor only between the hours of 8:00 a.m. and 10:00 p.m. of each and every day excepting Sunday and between the hours of 9:00 a.m. and 10:00 p.m. on Sunday.

3. Holders of a Class D license may conduct product sampling for consumption at the licensed retail location only. Not more than 5 samples consisting of no more than:

- a. One-quarter ounce of distilled spirits;
- b. One ounce of wine; or
- c. Two ounces of beer may be served to a consumer on 1 day.

(b) *Number.* One; and

(c) *Fee.* \$3,500.

(5) *Class SE; Special event.*

(a) *Classification.*

1. Class SE licenses shall only be issued for special public or private events sponsored by or in conjunction with educational, fraternal, political, civic, religious, governmental or non-profit organizations, including weddings held on private property, and shall authorize the retail sale, consumption, gift, or dispensing on the premises specified of beer and/or wine as specified in the license. A Class SE license may also be issued for special public or private events where all profits from the dispensing of beer and/or wine is donated to an educational, fraternal, political, civic, religious, governmental or non-profit organization.

2. Every Class SE license shall be designated as either SE-1 for special events to occur on public property or SE-2 for special events to occur on private property. The number of available licenses for each designated category shall be as provided in division (5)(c) below.

(b) *Class SE license regulations.* In addition to all other laws and regulations applicable to other liquor licenses issued by the village, including all other provisions of this chapter and the insurance requirements set forth in § 111.03(B)(5), the following regulations shall also specifically apply to Class SE licenses:

1. A single Class SE license may be issued for special events that allow the sale, gifting, dispensing and consumption of beer and/or wine for events lasting either 1 day, 2 consecutive days or 3 consecutive days. A Class SE license shall authorize the sale, gifting, dispensing and

consumption of beer and/or wine only between the hours of 11:00 a.m. and 11:00 p.m. on the day or days (not exceeding 3 consecutive days) specified in the license. Class SE license applications must be filed with the Village Clerk at least 30 days prior to the special event in connection with which the same is issued.

2. A Class SE license shall designate the area where alcoholic beverages may be sold, gifted, dispensed and consumed and the dates and times of same. If a Class SE-1 license is issued for a special event to be held on public property, the holder of a Class SE-1 license is responsible for providing temporary fencing around the area designated in the license and no beer and/or wine is permitted outside of said designated and fenced area. The fencing shall provide at least 1 primary means of ingress and egress around the area designated in the license, as well as an emergency exit, unless additional areas or exits are necessary for fire and safety reasons as determined by the village. If the special event is on private property, the holder of a Class SE-2 license must demonstrate the designated area is secure and provides proper ingress and egress points.

3. The holder of a Class SE license shall be responsible for monitoring the means of ingress and egress, as well as other areas of the designated area so as to provide for adequate crowd control and to prevent any beer and/or wine from being removed from the designated area by invitees or customers.

4. If the special event is to be held on public property, the holder of a Class SE-1 license shall be required to participate in a meeting with representatives from the village's law enforcement officers to review the physical layout of the site for the event and the designated area, to address the fencing and all other safety issues.

5. If the special event is to be held on public property or outside on private property, the holder of a Class SE-1 or Class SE-2 license is responsible for removal of all refuse, litter, debris, garbage and the like from the property within 24 hours of the ending time of the license. Any holder of a Class SE-1 or SE-2 license that fails to remove all refuse, litter, debris, garbage and the like as required shall be billed for the village's services in performing such removal which the holder agrees to pay within 60 days of billing.

6. The holder of a Class SE license, or an employee or agent thereof, shall be responsible for checking the identification of all invitees or guests that will consume beer and/or wine at the event and shall provide a wristband or other form of identification to demonstrate the individual is 21 years of age or over.

7. No Class SE license may be issued for a special event involving primarily youth related activities, including specifically all youth sporting events.

8. The holder of a Class SE license is required to provide necessary restroom facilities as determined by the village if such restroom facilities do not exist at the area designated for the special event.

9. If the special event is to be held on public property, the holder of the Class SE-1 license must obtain approval for the special event by a majority of the Village Board to use the property for such special event and must sign any required waivers and indemnification agreements required by the village. If the special event is to be held on private property, the owner of the property must sign the application for the Class SE-2 license.

(c) *Number.* There shall be no limit on the number of Class SE-1 or Class SE-2 licenses; and

(d) *Fee.* \$250.

(6) *Class H; Hotel.*

(a) *Classification.* Class “H” licenses shall authorize the retail sale, consumption, gift, or dispensing of beer and wine to registered guests of the hotel where the license is issued, for consumption on the premises. The license shall only be available for the premises defined as a hotel under § 111.01.

(b) *Class “H” license regulations.* In addition to all other laws and regulations applicable to other liquor licenses issued by the village, including all other provisions of this Chapter 111 and the insurance requirements set forth in § 111.03(B)(5), the following regulations shall also specifically apply to Class “H” licenses:

1. Beer or wine sold, gifted, or dispensed shall be for the benefit of hotel guests only and not for the general public.

2. A Class “H” license shall designate the area where beer and wine may be sold, gifted, dispensed and consumed which must be on the premises of the hotel and within a secure location. If an area is designated outside of the hotel building, the hotel must have control over the egress and ingress of said designated area. Under no circumstance may beer and wine sold, gifted, or dispensed be taken off the premises of the hotel or otherwise consumed or displayed outside of an area where the egress and ingress is controlled by the hotel.

3. The holder of a Class “H” license shall be responsible for monitoring the means of ingress and egress, as well as the area where beer or wine will be sold, gifted, dispensed and/or consumed so as to provide for adequate safety controls and to prevent any beer and/or wine from being removed from the designated areas and/or hotel by guests.

4. Beer and/or wine shall not be advertised for sale by means of any signpost or billboard or other means of advertisement located on the exterior of the premises. Advertisements or displays for the sale of beer and/or wine located in the interior of the premises shall not be visible to passers-by from the exterior of the premises.

5. The holder of a Class “H” license, or an employee or agent thereof, shall be responsible for checking the identification of all guests that will consume beer and/or wine at the hotel

and shall otherwise comply with all other applicable provisions of this chapter regarding the dispensing and sale of beer and wine.

6. A Class H license shall authorize the sale, gifting or dispensing of beer and/or wine only between the hours of 11:00 a.m. and 1:00 a.m.

(c) *Number.* Two; and

(d) *Fee.* \$3,000.

(B) No license issued under this chapter, except for the Class C and D licenses, shall authorize the retail sale of beer and wine or alcoholic liquor, according to the respective license, in the original package as herein defined.

(Prior Code, § 90.05) (Am. Ord. 735, passed 1-22-2008; Am. Ord. 809, passed 10-18-2010; Am. Ord. 856, passed 8-6-2012; Am. Ord. 894, passed 10-7-2013; Am. Ord. 903, passed 3-17-2014; Am. Ord. 919, passed 8-18-2014; Am. Ord. 941, passed 4-6-2015; Am. Ord. 2017-1, passed 2-6-2017; Am. Ord. 2017-15, passed 8-7-2017; Am. Ord. 2017-21, passed 10-2-2017) Penalty, see § 111.99

#### **§ 111.06 LICENSE TERM; CONDITIONS.**

(A) Except for special event licenses which may be valid up to 3 consecutive days only, licenses herein provided shall be applicable for annual periods of 12 months each, the first period commencing on January 1 and ending on December 31. The license fee shall be paid on the first day of each annual period or prior to the issuance of the special event license. No rebate shall be due to any applicant and each applicant must be qualified under the terms of this chapter and all applicable ordinances and statutes on each renewal date. A licensee must be open for business and operating as such on a regular basis within 6 months of receiving a license.

(B) A license issued hereunder shall be purely a personal privilege, good for not to exceed 12 months after issuance unless sooner revoked by the Village Mayor. The license hereunder shall not be subject to attachment, garnishment, or execution and shall not be subject to assignment or transferable and shall not descend upon the death of the licensee but shall automatically cease upon the death of the licensee or upon the licensee being declared a bankrupt.

(Prior Code, § 90.06) (Am. Ord. 894, passed 10-7-2013) Penalty, see § 111.99

#### **§ 111.07 DISPOSITION OF FEES; RECORD OF LICENSES.**

Upon the collection of all license fees by the Village Mayor, the same shall be forthwith turned over to the Village Treasurer. In the event the license applied for is denied, the fee shall be returned to the applicant. The Village Mayor shall keep or cause to be kept a complete record of all licenses issued.

(Prior Code, § 90.07)

**§ 111.08 LICENSE DISPLAYED.**

Each licensee shall cause his or her license to be framed and hung in plain view in a conspicuous place on the licensed premises.

(Prior Code, § 90.08) Penalty, see § 111.99

**§ 111.09 LICENSE RENEWAL.**

Any licensee may renew his or her license at the expiration thereof if he or she is then qualified to receive a license under the terms of this chapter; provided, however, that the renewal privilege herein granted shall not be construed as a vested right or as a prohibition in the deduction in the number of liquor licenses to be issued in the village.

(Prior Code, § 90.09)

**§ 111.10 COMPENSATION OF LOCAL LIQUOR CONTROL COMMISSIONER.**

Pursuant to the provisions of ILCS Ch. 235, Act 5, § 4-3, the compensation of the Local Liquor Control Commissioner is hereby set at \$50 per hour and the Local Liquor Control Commissioner shall be reimbursed for all costs and travel expenses incurred by the officer.

(Prior Code, § 90.10)

**§ 111.11 SALE ON PREMISES ONLY.**

A license issued hereunder shall permit the sale of alcoholic liquors only upon the premises described in the application and license. The location may be changed only upon the written permission of the Village Mayor and no change in location shall be permitted unless the proposed new location complies with all ordinances and statutes and is a proper location for the sale of alcoholic liquors.

(Prior Code, § 90.11) Penalty, see § 111.99

**§ 111.12 SALES TO MINORS, CERTAIN PERSONS.**

It shall be unlawful to sell, give, or deliver alcoholic liquors to any minor or to any intoxicated person.

(Prior Code, § 90.12) Penalty, see § 111.99

**§ 111.13 EMPLOYEE RESTRICTIONS.**

(A) *Minors.* It shall be unlawful for any minor, or for any person to permit any minor, to draw, pour, mix, or serve any alcoholic liquors; provided that persons 19 years of age and over who have

completed the Beverage Alcohol Sellers and Servers Education and Training (BASSET) program approved by the Educational Foundation of the National Restaurant Association may serve alcoholic beverages to patrons who are dining at the licensed premises if the service of the beverages is only incidental to their primary job function of serving food.

(B) *Diseased persons.* It shall be unlawful to employ in the premises any person who is afflicted with or who is a carrier of any contagious or infectious disease.

(Prior Code, § 90.13) (Am. Ord. 659, passed 7-18-2005) Penalty, see § 111.99

#### § 111.14 PROHIBITED ACTS.

(A) *Gambling.* There shall be no gambling of any kind allowed on the premises licensed to sell alcoholic liquors. For the purpose of this division (A), the sale of Illinois lottery tickets duly authorized by the State of Illinois shall not be considered gambling.

(B) *Peddling liquor.* It shall be unlawful to peddle alcoholic liquors in the village.

(C) *Obscene conduct on premises.* The following kinds of conduct on premises in this village licensed to sell alcoholic liquor are prohibited:

(1) The performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts;

(2) The actual or simulated exhibition, touching, caressing, or fondling on the breast, buttocks, anus, or genitals;

(3) The actual or simulated display of the breasts, buttocks, pubic hair, anus, vulva, or genitals;

(4) The permitting by a licensee of any person to remain in or upon the licensed premises who exposes to public view any portion of his or her breasts, buttocks, genitals, vulva, or anus; and

(5) The displaying of films, video recordings, or pictures depicting acts, a live performance of which are prohibited by the regulations quoted above.

(Prior Code, § 90.14) Penalty, see § 111.99

#### § 111.15 SANITARY REQUIREMENTS.

All premises used for the retail sale of alcoholic liquors, or for the storage of the liquors for sale, shall be kept in a clean and sanitary condition and shall be kept in full compliance with the provisions regulating conditions of the premises used for the storage or sale of food for human consumption as regulated by the Macon County Health Department.

(Prior Code, § 90.15) Penalty, see § 111.99



**§ 111.16 SITE LIMITATIONS.**

No license shall be issued for the sale at retail of any alcoholic liquor within 100 feet from any church, school, day-care center, hospital, home for the aged or indigent persons or for veterans, their wives or children, or any military or naval station. The 100-foot measurement provided in this section is measured from the outside perimeter of the establishment in which alcoholic liquor is permitted to be sold (although not necessarily the outside perimeter of the property in which the building is placed) and the perimeter of the lot on which a church, school, day-care center, hospital, home for the aged or indigent persons or for veterans, their wives or children, or any military or naval station is located. (Prior Code, § 90.16)

**§ 111.17 REVOCATION OF LICENSE.**

The Village Mayor may suspend or revoke any license issued hereunder for a period of time up to 30 days for any violation of any provision of this chapter or for any violation of any state law pertaining to the sale of alcoholic liquors. (Prior Code, § 90.17)

**§ 111.18 SALES WITHOUT LICENSE.**

(A) (1) No person, partnership, fiduciary, firm, or corporation shall operate an establishment for the public use which allows the possession, sale, distribution, or consumption of alcoholic beverages within the village limits unless authorized by and licensed by the village under this chapter.

(2) This section shall not affect the private possession of alcoholic beverages in a private residence within the village limits.

(3) However, the sale of alcoholic beverages from a private residence within the village limits, is hereby expressly prohibited.

(B) Nothing in this section shall excuse or relieve any person, partnership, fiduciary, firm, or corporation from restrictions and requirements of any other applicable ordinances of the village or the state statutes.

(Prior Code, § 90.18) (Ord. 148A, passed 3-17-1975) Penalty, see § 111.99

***Statutory reference:***

*State law provisions regarding passage of local legislation, see ILCS Ch. 235, Act 5, § 9-2*

**§ 111.19 SALE OR DELIVERY TO MINOR PROHIBITED; EXCEPTIONS.**

(A) (1) No person, firm, or corporation shall sell, give, or deliver alcoholic liquor to any person under the age of 21 years or to any intoxicated person or to any person known by him or her to be under legal disability or in need of mental treatment.

(2) No person, firm, or corporation after purchasing or otherwise obtaining alcoholic liquor shall sell, give, or deliver the alcoholic liquor to any person under the age of 21 years, except in the performance of a religious ceremony or service.

(B) No person under the age of 21 years shall consume, accept delivery of, or possess alcoholic liquors; provided, possession, dispensing, or consumption of alcoholic liquor by the person in the performance of a religious service or ceremony, the consumption of alcoholic liquor by such a person in the privacy of, under the direct supervision of, and with the approval of a parent or guardian of the person are not prohibited.

(Prior Code, § 90.19) (Ord. 284, passed 7-16-1984) Penalty, see § 111.99

***Statutory reference:***

*Sales to minors or the like, see ILCS Ch. 235, Act 5, § 6-16*

**§ 111.20 IDENTIFICATION REQUIRED.**

(A) For the purpose of preventing a violation of § 111.19(A), any person, firm, or corporation may refuse to give or deliver alcoholic beverages to any person who is unable to produce adequate written evidence of identity, and of the fact that he or she is of the attained age of 21 years or over.

(B) Adequate written evidence of age and identity of a person in the village, is no less than 2 documents, each of which is issued by a federal, state, county, or municipal government, subdivision, or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the Armed Forces, 1 of which documents incorporate a photograph of the person, along with a statement of the month, day, and year of the person's birth.

(Prior Code, § 90.20) (Ord. 284, passed 7-16-1984) Penalty, see § 111.99

***Statutory reference:***

*Identification, see ILCS Ch. 235, Act 5, § 6-16*

**§ 111.21 MISREPRESENTATION OF AGE.**

(A) No person shall sell, give, or furnish to any person under the age of 21 years any false or fraudulent written or printed photostatic evidence of the age or identity of the person, or shall sell, give, or furnish to any person under the age of 21 years evidence of age and identification of any other person.

(B) No person under the age of 21 years shall present or offer to any person, firm, or corporation in the village, for the purpose of securing alcoholic liquor, any written, printed, or photostatic evidence of age or identity, which is false, fraudulent, or not actually the person's own, or have in his or her possession any false or fraudulent written, printed, or photostatic evidence of age and identity. (Prior Code, § 90.21) (Ord. 284, passed 7-16-1984) Penalty, see § 111.99

**Statutory reference:**

*Misrepresentation, see ILCS Ch. 235, Act 5, § 6-16*

**§ 111.22 TRANSFER, POSSESSION, AND CONSUMPTION OF ALCOHOLIC LIQUOR; RESTRICTIONS.**

(A) Any person to whom the sale, gift or delivery of any alcoholic liquor is prohibited because of age shall not purchase, or accept a gift of such alcoholic liquor or have such alcoholic liquor in his or her possession.

(B) If a licensee or his or her agents or employees believes or has reason to believe that a sale or delivery of any alcoholic liquor is prohibited because of the non-age of the prospective recipient, he or she shall, before making such sale or delivery demand presentation of some form of positive identification, containing proof of age, issued by a public officer in the performance of his or her official duties.

(C) No person shall transfer, alter, or deface such an identification card; use the identification card of another; carry or use a false or forged identification card; or obtain an identification card by means of false information.

(D) No person shall purchase, accept delivery or have possession of alcoholic liquor in violation of this section.

(E) The consumption of alcoholic liquor by any person under 21 years of age is forbidden.

(F) Whoever violates any provisions of this section shall be guilty of a Class A misdemeanor.

(G) The possession and dispensing, or consumption by a person under 21 years of age of alcoholic liquor in the performance of a religious service or ceremony, or the consumption by a person under 21 years of age under the direct supervision and approval of the parents or parent or those persons standing in loco parentis of such person under 21 years of age in the privacy of a home, is not prohibited by this section.

(Prior Code, § 90.22) (Ord. 284, passed 7-16-1984) Penalty, see § 111.99

**Statutory reference:**

*Alcoholic liquor restrictions, see ILCS Ch. 235, Act 5, § 6-20*

**§ 111.23 CONSUMPTION UPON PREMISES OF OWNER OR OCCUPANT PROHIBITED.**

(A) It shall be a petty offense for any owner or occupant of any premises within the village, to knowingly permit a gathering of 2 or more persons where any 1 or more of the persons is under 18 years of age and the following factors also apply:

(1) The person occupying the residence knows that a person under the age of 18 is in possession of or is consuming any alcoholic beverage;

(2) The possession or consumption of the alcohol by the person under 18 is not otherwise permitted by this chapter; and

(3) The person occupying the residence knows that the person under the age of 18 leaves the residence in an intoxicated condition.

(B) For the purposes of this section, where the residence has an owner and a tenant or lessee, there is a rebuttable presumption that the residence is occupied only by the tenant or lessee. (ILCS Ch. 235, Act 5, § 6-16) (Prior Code, § 90.23) Penalty, see § 111.99

**§ 111.99 PENALTY.**

(A) *Revocation; suspension; complaints.*

(1) *Violation determined by Commissioner.*

(a) (1) The Liquor Control Commissioner may suspend, for not more than 30 days, or revoke any license issued by the Liquor Control Commissioner, and may levy a fine of up to \$1,000, if he or she determines that there has been any violation of any state law pertaining to the sale of alcoholic liquor or any provision of this chapter, or any applicable rules or regulations established by the Liquor Control Commissioner, or the state, or for the failure to pay any license cost or fee or any tax imposed on alcoholic liquor or the sale thereof. However, except as provided in this section, no license shall be revoked or suspended, nor fine levied, except after a public hearing by the Liquor Control Commissioner, to commence no sooner than 3 days from the date of service, personally or by certified U.S. mail, of notice upon the licensee or his or her agent or any employee thereof in charge of the licensed premises, affording the licensee an opportunity to appear and defend, unless the right to a hearing is waived.

(2) If the Liquor Control Commissioner has reason to believe that any continued operation of any particular licensed premises will threaten the welfare of the community, he or she may, upon the issuance of a written order stating the reason for such conclusion and without notice or hearing,

order a licensed premises closed for not more than 7 days pending a hearing on the suspension or revocation of the license thereof. The order shall contain notice of the date, time and place of the hearing, which shall commence not less than 3 nor more than 7 days from the date of service, personally or by certified U.S. mail, of the notice upon the licensee or his or her agent, or any employee in charge of the licensed premises. The Liquor Control Commissioner shall hold the hearing at the date, time and place set forth in the notice, giving the licensee an opportunity to be heard. If the licensee is also engaged in the conduct of another business or businesses on the licensed premises, the initial closing order shall not be applicable to the other business or businesses.

(b) Appeals shall be taken to the Illinois Liquor Control Commission in the manner provided by law. All appeals to the Illinois Liquor Control Commission shall be limited to a review of the official record of the proceedings of the Liquor Control Commissioner.

(2) *Violation determined by court.*

(a) Whenever any licensee is convicted in court of any violation of state law pertaining to the sale of alcoholic liquor, or any provision of this chapter, or any applicable rules or regulations established by the Liquor Control Commissioner or the State Commission, or any law or regulation pertaining to liquor license fees or taxes, the license of the licensee may in the discretion of the Liquor Control Commissioner, be immediately revoked. The revocation need not be preceded by notice or a hearing for the licensee. However, the licensee shall have a right to a public hearing by the Liquor Control Commissioner for the purpose of showing cause for re-issuing the revoked license by petitioning for a hearing within 15 days of the revocation of the license. The hearing shall be held within a reasonable time and shall allow the licensee an opportunity to be heard.

(b) Whenever an officer, director or manager or other employee of any licensee under this chapter is convicted of any violation of any law, ordinance or provision as provided in division (1)(a) above, while engaged in the course of his or her employment or while on the premises described in the license, the license may be immediately revoked in the discretion of the Liquor Control Commissioner, subject to a subsequent hearing as provided in division (2)(a) above.

(3) *Complaints.* Any person may file a complaint with the Liquor Control Commissioner alleging that any licensee has been or is violating state law pertaining to the sale of alcoholic liquor, or the provisions of this chapter or the rules and regulations issued pursuant to this chapter. The complaint shall be in writing, in the form prescribed by the Liquor Control Commissioner, and shall be signed and sworn to by the parties complaining. The complaint shall state the particular law, provisions, rule or regulation believed to have been violated and the facts in detail upon which such belief is based. If the Liquor Control Commissioner is satisfied that the complaint substantially charges a violation and finds probable cause to believe the same, he or she shall set the matter for hearing and shall serve notice upon the licensee of the time and place of the hearing and of the particular charges in the complaint, such hearing to take place not sooner than 3 days from the date upon which the notice is served personally on or is mailed by certified U.S. mail to the licensee or his or her agent or any employee in charge of the licensed premises, affording the licensee an opportunity to appear and defend.

(B) *Violations; fines.*

(1) *Fines in general.* In addition to the suspension of a license issued pursuant to this chapter, any person who violates any provision of this chapter may, for a first offense, be fined not less than \$50 nor more than \$1,000, and for a second or subsequent offense be fined not less than \$100 nor more than \$1,000. Not more than \$10,000 in fines may be imposed under this section against any licensee during the period of that license.

(2) *Separate offenses.* Each day on or during which any person violates or continues to violate any of the provisions of this chapter, and each separate act or transaction in violation of this chapter, shall constitute a separate offense.

(3) *Vicarious liability.* Every act or omission of whatsoever nature constituting a violation of any of the provisions of this chapter by any officer, director, manager or other agent or employee of any licensee shall be deemed and held to be the act of the employer or licensee and the employer or licensee shall be punishable in the same manner as if said act or omission had been done by him personally.

(4) *BASSET Course.* In addition to other penalties imposed in this chapter, a person violating any regulation of this chapter may be required to complete a BASSET or similar training at his or her expense.

(Prior Code, § 90.99) (Am. Ord. 856, passed 8-6-2012)

## CHAPTER 112: TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE

### Section

- 112.01 Recitals
- 112.02 Definitions
- 112.03 Registration of telecommunications providers
- 112.04 Municipal telecommunications infrastructure maintenance fee
- 112.05 Collection, enforcement, and administration of telecommunications infrastructure maintenance fees
- 112.06 Compliance with other laws
- 112.07 Existing franchises and licenses
- 112.08 Enforcement
- 112.09 Waiver and fee implementation
- 112.10 Effective date

### § 112.01 RECITALS.

The facts and statements contained in the preamble to this chapter are found to be true and correct and are hereby adopted as part of this chapter.  
(Ord. 498, passed 11-17-1997)

### § 112.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**GROSS CHARGES.** The amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the village, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of the telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. **GROSS CHARGES** for private line service shall include charges imposed at each channel point

within the village, charges for the channel mileage between each channel point within the village, and charges for that portion of the interstate inter-office channel provided within the village. However, **GROSS CHARGES** shall not include:

- (1) Any amounts added to a purchaser's bill because of a charge made under:
  - (a) The fee imposed by this chapter;
  - (b) Additional charges added to a purchaser's bill under ILCS Ch. 220, Act 5, §§ 9-221 or 9-222 of the Public Utilities Act;
  - (c) The tax imposed by the Telecommunications Excise Tax Act;
  - (d) 911 surcharges; or
  - (e) The tax imposed by § 4251 of the Internal Revenue Code.
- (2) Charges for a sent collect telecommunication received outside the village;
- (3) Charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. The equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;
- (4) Charges for customer equipment, including the equipment that is leased or rented by the customer from any source, wherein the charges are disaggregated and separately identified from other charges;
- (5) Charges to business enterprises certified under ILCS Ch. 220, Act 5, § 9-222.1 of the Public Utilities Act to the extent of the exemption and during the period of time specified by the village;
- (6) Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly-owned subsidiaries or between wholly-owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly-owned subsidiaries or between wholly-owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering the services;
- (7) Bad debts (**BAD DEBT** means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);



- (8) Charges paid by inserting coins in coin-operated telecommunications devices; or
- (9) Charges for telecommunications and all services and equipment provided to the village.

***PUBLIC RIGHT-OF-WAY.***

(1) Any municipal street, alley, water, or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the village has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities.

(2) ***PUBLIC RIGHT-OF-WAY*** shall not include any real or personal village property that is not specifically described in the previous sentence and shall not include village buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.

***RETAILER MAINTAINING A PLACE OF BUSINESS IN THIS STATE.*** Or any like term, means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether the place of business or agent or other representative is located here permanently or temporarily, or whether the retailer or subsidiary is licensed to do business in this state.

***SALE OF TELECOMMUNICATIONS AT RETAIL.*** The transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly-owned subsidiaries or between wholly-owned subsidiaries, when the gross charge made by 1 corporation to another corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

***SERVICE ADDRESS.*** The location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, ***SERVICE ADDRESS*** shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

***TELECOMMUNICATIONS.***

(1) Includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities.

(2) Unless the context clearly requires otherwise, **TELECOMMUNICATIONS** shall also include wireless telecommunications as hereinafter defined.

(3) **TELECOMMUNICATIONS** shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission.

(4) **TELECOMMUNICATIONS** shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications.

(5) Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale.

(6) **TELECOMMUNICATIONS** shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. §§ 521 *et seq.*) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the village through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.

#### **TELECOMMUNICATIONS PROVIDER.**

(1) Any telecommunications retailer; and

(2) Any person that is not a telecommunications retailer that installs, owns, operates, or controls equipment in the public right-of-way that is used or designed to be used to transmit telecommunications in any form.

**TELECOMMUNICATIONS RETAILER** or **RETAILER** or **CARRIER**. Includes every person engaged in the business of making sales of telecommunications at retail as defined in this section. The village may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this state, who, to the satisfaction of the village, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of the retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the village.

**WIRELESS TELECOMMUNICATIONS**. Includes cellular mobile telephone services, personal wireless services as defined in § 704(C) of the Telecommunications Act of 1996 (Pub. L. No. 104-104), 42 U.S.C. § 332(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

(Ord. 498, passed 11-17-1997)

**§ 112.03 REGISTRATION OF TELECOMMUNICATIONS PROVIDERS.**

(A) Every telecommunications provider as defined by this chapter shall register with the village within 30 days after the effective date of this chapter or becoming a telecommunications provider, whichever is later, on a form to be provided by the village, provided, however, that any telecommunications retailer that has filed a return pursuant to § 112.05(C) shall be deemed to have registered in accordance with this section.

(B) Every telecommunications provider who has registered with the village pursuant to division (A) above has an affirmative duty to submit an amended registration form or current return as required by § 112.05(C), as the case may be, to the village within 30 days from the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the village.

(Ord. 498, passed 11-17-1997) Penalty, see § 10.99

**§ 112.04 MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE.**

(A) A village telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of 1% of all gross charges charged by the telecommunications retailer to service addresses within the village for telecommunications originating or received in the village.

(B) (1) Upon the effective date of the infrastructure maintenance fee authorized in this chapter, the village infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights-of-way within the village by telecommunications retailers.

(2) Imposition of the infrastructure maintenance fee provided under this chapter does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.

(C) The village telecommunications infrastructure maintenance fee authorized by this section shall be collected, enforced, and administered as set forth in § 112.05.

(Ord. 498, passed 11-17-1997)

**§ 112.05 COLLECTION, ENFORCEMENT, AND ADMINISTRATION OF TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEES.**

(A) A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the village infrastructure maintenance fee attributable to that customer's service address.

(B) Unless otherwise approved by the Village Administrator, the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the village not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the village infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.

(C) Remittance of the municipal infrastructure fee to the village shall be accompanied by a return, in a form to be prescribed by the Village Administrator, which shall contain the information as the Village Administrator may reasonably require.

(D) (1) Any infrastructure maintenance fee required to be collected pursuant to this chapter and any such infrastructure maintenance fee collected by the telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the village.

(2) The charge imposed under division (A) above by the telecommunications retailer pursuant to this chapter shall constitute a debt of the purchaser to the telecommunications retailer who provides the services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for the services.

(E) (1) If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this chapter, whether as a result of a mistake of fact or an error of law, then the amount shall be credited against any infrastructure maintenance fee due, or to become due, under this chapter, from the telecommunications retailer who made the erroneous payment; provided, however, the Village Administrator may request, and telecommunications retailer shall provide, written substantiation for the credit.

(2) However, no claim for the credit may be made more than 3 years after the date of the erroneous payment unless, the credit is used only to offset a claim of underpayment made by the village within the applicable statutory period of limitations, and the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.

(F) Amounts paid under this chapter by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:

(1) Gross charges for purposes of the Telecommunications Excise Tax Act;

(2) Gross receipts for purposes of the municipal utility tax as prescribed in ILCS Ch. 65, Act 5, § 8-11-2;

(3) Gross charges for purposes of the municipal telecommunications tax; and/or

(4) Gross revenue for purposes of the tax on annual gross revenue of public utilities prescribed in ILCS Ch. 220, Act 5, § 2-202 of the Public Utilities Act.

(G) (1) The village shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this chapter to determine whether the telecommunications retailer has properly accounted to the village for the village infrastructure maintenance fee.

(2) Any underpayment of the amount of the village infrastructure maintenance fee due to the village by the telecommunications retailer shall be paid to the village plus 5% of the total amount of the underpayment determined in an audit, plus any costs incurred by the village in conducting the audit, in an amount not to exceed 5% of the total amount of the underpayment determined in an audit.

(3) The sum shall be paid to the village within 21 days after the date of issuance of an invoice for same.

(H) The Village Administrator, or his or her designee, may promulgate the further or additional regulations concerning the administration and enforcement of this chapter, consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to § 112.03 of the regulations.

(Ord. 498, passed 11-17-1997) Penalty, see § 10.99

**§ 112.06 COMPLIANCE WITH OTHER LAWS.**

Nothing in this chapter shall excuse any person or entity from obligations imposed under any law, including but not limited to:

(A) Generally applicable taxes;

(B) Standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to free standing towers and other structures upon the public rights-of-way, as provided;

(C) Any liability imposed for the failure to comply with the generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and

(D) Compliance with any ordinance or provision of this code concerning uses or structures not located on, over, or within the right-of-way.

(Ord. 498, passed 11-17-1997)

***Cross-reference:***

*Streets and Sidewalks, see Ch. 90*

**§ 112.07 EXISTING FRANCHISES AND LICENSES.**

Any franchise, license, or similar agreements between telecommunications retailers and the village entered into before the effective date of this chapter regarding the use of public rights-of-way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived.

(Ord. 498, passed 11-17-1997)

**§ 112.08 ENFORCEMENT.**

(A) Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this chapter shall be subject to fine in accordance with the general penalty provisions of this code.

(B) Nothing in this chapter shall be construed as limiting any additional or further remedies that the village may have for enforcement of this chapter.

(Ord. 498, passed 11-17-1997) Penalty, see § 10.99

**§ 112.09 WAIVER AND FEE IMPLEMENTATION.**

(A) (1) The village hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the village by a telecommunications retailer pursuant to any existing village franchise, license, or similar agreement with a telecommunications retailer during the time the village imposes the telecommunications infrastructure maintenance fee.

(2) This waiver shall only be effective during the time the infrastructure maintenance fee provided for in this chapter is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

(B) The Village Clerk shall send a notice of the waiver by certified mail/return receipt requested to each telecommunications retailer with whom the village has a franchise.

(C) (1) The village infrastructure maintenance fee provided for in this chapter shall become effective and imposed on the first day of the month not less than 90 days after the village provides written notice by certified mail to each telecommunications retailer with whom the village has an existing franchise, license, or similar agreement that the village waives all compensation under the existing franchise, license, or similar agreement during the time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the village.

(2) The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence.

(Ord. 498, passed 11-17-1997)

**§ 112.10 EFFECTIVE DATE.**

This chapter shall take effect immediately upon its passage, approval, and publication in pamphlet form.

(Ord. 498, passed 11-17-1997)





**CHAPTER 113: (RESERVED)**

[Text continues on page 35]



## CHAPTER 114: OIL WELLS

### Section

- 114.01 Permit or written consent required
- 114.02 Application to be filed; fee
- 114.03 Information required on application
- 114.04 Bond to accompany application
- 114.05 Location of drilling restricted
- 114.06 Promulgation of rules and regulations

114.98 Violations

114.99 Penalty

### ***Statutory reference:***

*Power of municipalities to regulate oil wells, see ILCS Ch. 65, Act 5, § 11-56-1*

### **§ 114.01 PERMIT OR WRITTEN CONSENT REQUIRED.**

No person, firm, or corporation shall drill or explore for oil or other minerals within the village limits, without a permit therefor issued by the appropriate agency of the state or without a written consent therefor issued by the Village Board.

(Prior Code, § 112.01) (Ord. 234, passed 1-19-1981) Penalty, see § 114.99

### **§ 114.02 APPLICATION TO BE FILED; FEE.**

Any person, firm, or corporation who shall require a consent of the Village Board, for a permit to drill or explore for other minerals within the village limits, shall make and file with the Village Clerk, a written application for consent to drill within the village limits, signed by the person, firm, or corporation who will apply for the state drilling permit. The written application shall be accompanied by a fee of \$500.

(Prior Code, § 112.02) (Ord. 234, passed 1-19-1981)

**§ 114.03 INFORMATION REQUIRED ON APPLICATION.**

(A) *Generally.* Each written application for a consent by the village, for drilling or exploring for oil or other minerals within the village limits, shall contain the following.

(B) *Required information.*

- (1) The legal description of the tract on which the operation is proposed and a map showing the location of the proposed drilling or exploration site on the tract;
- (2) An agreement by the applicant to fence the drilling or exploration area with a child-tight fence and to maintain the child-tight fence for so long as any drilling, exploring, or pumping or other removal operations shall be carried on, on the site;
- (3) A description of the size, width, and weight of all equipment to be used in drilling or exploration;
- (4) A statement of the method by which equipment to be used in drilling will be delivered to the site;
- (5) A description of the route and village streets to be used in delivering equipment to be used in drilling to the site and to be used in removing equipment to be used in drilling from the site;
- (6) An estimate of possible damage to village streets and an agreement to restore the village streets to their existing condition immediately after any damage occurs, both in delivering and removing the equipment, and including any mud or other debris deposited on any village street surface in the course of operations;
- (7) A description of the size, width, and weight of equipment to be used if exploration is successful;
- (8) A statement of the method by which equipment to be used if exploration is successful will be delivered to site;
- (9) A description of the route and village streets to be used in delivering equipment to be used if exploration is successful to site and to be used in removing equipment to be used if exploration is successful from the site;
- (10) An estimate of possible damage to village streets and an agreement to restore the village streets to their existing condition immediately after any damage occurs, both in delivering and removing the equipment to be used if exploration is successful, and including any mud or other debris deposited on any village street surface in the course of operations;

(11) Proposed screening for installation, both during drilling or exploration, and later operations if exploration is successful;

(12) Location of any storage tanks, bins, and the like; and

(13) An agreement to clean up site and restore same to original condition when operations in connection with the exploration or pumping or other recovery methods are concluded.

(Prior Code, § 112.03) (Ord. 234, passed 1-19-1981)

#### **§ 114.04 BOND TO ACCOMPANY APPLICATION.**

Each application shall be accompanied by a bond acceptable to the Village Board, in an amount of not less than \$10,000, conditioned upon compliance by the applicant with all regulations contained in this chapter, and all agreements of applicant in the written application. The bond requirement may be increased or decreased by the Village Board in order to fully ensure compliance with this chapter.

(Prior Code, § 112.04) (Ord. 234, passed 1-19-1981)

#### **§ 114.05 LOCATION OF DRILLING RESTRICTED.**

No oil well shall be drilled or pumped, and no storage tanks for oil shall be installed nearer than 50 feet to any village street right-of-way or nearer than 200 feet to any residence, garage, barn, or other outbuilding.

(Prior Code, § 112.05) (Ord. 234, passed 1-19-1981) Penalty, see § 114.99

#### **§ 114.06 PROMULGATION OF RULES AND REGULATIONS.**

The Village Administrator is authorized and directed to promulgate the rules and regulations and take the actions as may be deemed by him or her to be reasonable and desirable to carry out the intent and purpose hereof.

(Prior Code, § 112.06) (Ord. 234, passed 1-19-1981)

#### **§ 114.98 VIOLATIONS.**

Whenever any violation of any provision hereof is charged, any person, firm, or corporation who has applied for the consent of the Village Board, as herein provided, shall be prima facie responsible for the violation and subject to the penalty therefor.

(Prior Code, § 112.98) (Ord. 234, passed 1-19-1981)

**§ 114.99 PENALTY.**

Any person, firm, or corporation found guilty of violation of any provisions of this chapter shall, upon conviction, be fined not to exceed \$200. Each day a violation continues shall be considered a new violation.

(Prior Code, § 112.99) (Ord. 234, passed 1-19-1981)

## CHAPTER 115: CONSTRUCTION OF UTILITY FACILITIES IN THE RIGHTS-OF-WAY

### Section

- 115.01 Purpose and scope
- 115.02 Definitions
- 115.03 Annual registration required
- 115.04 Permit required; applications and fees
- 115.05 Action on permit applications
- 115.06 Effect of permit
- 115.07 Revised permit drawings
- 115.08 Insurance
- 115.09 Indemnification
- 115.10 Security
- 115.11 Permit suspension and revocation
- 115.12 Change of ownership or owner's identity or legal status
- 115.13 General construction standards
- 115.14 Traffic control
- 115.15 Location of facilities
- 115.16 Construction methods and materials
- 115.17 Vegetation control
- 115.18 Removal, relocation, or modifications of utility facilities
- 115.19 Clean-up and restoration
- 115.20 Maintenance and emergency maintenance
- 115.21 Variances
- 115.22 Enforcement
  
- 115.99 Penalty

### § 115.01 PURPOSE AND SCOPE.

(A) *Purpose.* The purpose of this chapter is to establish policies and procedures for constructing facilities on rights-of-way within the village's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the village rights-of-way and the village as a whole.

(B) *Intent.* In enacting this chapter, the village intends to exercise its authority over the rights-of-way in the village and, in particular, the use of the public ways and property by utilities, by

establishing uniform standards to address issues presented by utility facilities, including without limitation:

- (1) Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
- (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) Prevent interference with the facilities and operations of the village's utilities and of other utilities lawfully located in rights-of-way or public property;
- (4) Protect against environmental damage, including damage to trees, from the installation of utility facilities;
- (5) Protect against increased stormwater run-off due to structures and materials that increase impermeable surfaces;
- (6) Preserve the character of the neighborhoods in which facilities are installed;
- (7) Preserve open space, particularly the tree-lined parkways that characterize the village's residential neighborhoods;
- (8) Prevent visual blight from the proliferation of facilities in the rights-of-way; and
- (9) Assure the continued safe use and enjoyment of private properties adjacent to utility facilities locations.

(C) *Facilities subject to this chapter.* This chapter applies to all facilities on, over, above, along, upon, under, across, or within the rights-of-way within the jurisdiction of the village. A facility lawfully established prior to the effective date of this chapter may continue to be maintained, repaired and operated by the utility as presently constructed and located, except as may be otherwise provided in any applicable franchise, license or similar agreement.

(D) *Franchises, licenses, or similar agreements.* The village, in its discretion and as limited by law, may require utilities to enter into a franchise, license or similar agreement for the privilege of locating their facilities on, over, above, along, upon, under, across, or within the village rights-of-way. Utilities that are not required by law to enter into such an agreement may request that the village enter into such an agreement. In such an agreement, the village may provide for terms and conditions inconsistent with this chapter.

(E) *Effect of franchises, licenses, or similar agreements.*

(1) *Utilities other than telecommunications providers.* In the event that a utility other than a telecommunications provider has a franchise, license or similar agreement with the village, such



franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

(2) *Telecommunications providers.* In the event of any conflict with, or inconsistency between, the provisions of this chapter and the provisions of any franchise, license or similar agreement between the village and any telecommunications provider, the provisions of such franchise, license or similar agreement shall govern and control during the term of such agreement and any lawful renewal or extension thereof.

(F) *Conflicts with other chapters.* This chapter supersedes all chapters or parts of chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

(G) *Conflicts with state and federal laws.* In the event that applicable federal or state laws or regulations conflict with the requirements of this chapter, the utility shall comply with the requirements of this chapter to the maximum extent possible without violating federal or state laws or regulations.

(H) *Sound engineering judgment.* The village shall use sound engineering judgment when administering this chapter and may vary the standards, conditions, and requirements expressed in this chapter when the village so determines. Nothing herein shall be construed to limit the ability of the village to regulate its rights-of-way for the protection of the public health, safety and welfare.  
(Ord. 738, passed 2-4-2008)

## § 115.02 DEFINITIONS.

As used in this chapter and unless the context clearly requires otherwise, the words and terms listed shall have the meanings ascribed to them in this section. Any term not defined in this section shall have the meaning ascribed to it in 92 Ill. Adm. Code § 530.30, unless the context clearly requires otherwise.

**AASHTO.** American Association of State Highway and Transportation Officials.

**ANSI.** American National Standards Institute.

**APPLICANT.** A person applying for a permit under this chapter.

**ASTM.** American Society for Testing and Materials.

**BACKFILL.** The methods or materials for replacing excavated material in a trench or pit.

**BORE or BORING.** To excavate an underground cylindrical cavity for the insertion of a pipe or electrical conductor.

**CABLE OPERATOR.** That term as defined in 47 U.S.C. 522(5).

**CABLE SERVICE.** That term as defined in 47 U.S.C. 522(6).

**CABLE SYSTEM.** That term as defined in 47 U.S.C. 522(7).

**CARRIER PIPE.** The pipe enclosing the liquid, gas or slurry to be transported.

**CASING.** A structural protective enclosure for transmittal devices such as: carrier pipes, electrical conductors, and fiber optic devices.

**CLEAR ZONE.** The total roadside border area, starting at the edge of the pavement, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a nonrecoverable slope, and a clear run-out area. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. Distances are specified in the AASHTO Roadside Design Guide.

**COATING.** Protective wrapping or mastic cover applied to buried pipe for protection against external corrosion.

**CODE.** The Forsyth, Illinois, Code of Ordinances.

**CONDUCTOR.** Wire carrying electrical current.

**CONDUIT.** A casing or encasement for wires or cables.

**CONSTRUCTION** or **CONSTRUCT.** The installation, repair, maintenance, placement, alteration, enlargement, demolition, modification or abandonment in place of facilities.

**COVER.** The depth of earth or backfill over buried utility pipe or conductor.

**CROSSING FACILITY.** A facility that crosses 1 or more right-of-way lines of a right-of-way.

**DIRECTOR OF PUBLIC WORKS.** The Public Works Director or his or her designee.

**DISRUPT THE RIGHT-OF-WAY.** For the purposes of this chapter, any work that obstructs the right-of-way or causes a material adverse effect on the use of the right-of-way for its intended use. Such work may include, without limitation, the following: excavating or other cutting; placement (whether temporary or permanent) of materials, equipment, devices, or structures; damage to vegetation; and compaction or loosening of the soil, and shall not include the parking of vehicles or equipment in a manner that does not materially obstruct the flow of traffic on a highway.

**EMERGENCY.** Any immediate maintenance to the facility required for the safety of the public using or in the vicinity of the right-of-way or immediate maintenance required for the health and safety of the general public served by the utility.

**ENCASEMENT.** Provision of a protective casing.

**ENGINEER.** The Village Engineer or his or her designee.

**EQUIPMENT.** Materials, tools, implements, supplies, and/or other items used to facilitate construction of facilities.

**EXCAVATION.** The making of a hole or cavity by removing material, or laying bare by digging.

**EXTRA HEAVY PIPE.** Pipe meeting ASTM standards for this pipe designation.

**FACILITY.** All structures, devices, objects, and materials (including, but not limited to, track and rails, wires, ducts, fiber optic cable, antennas, vaults, boxes, equipment enclosures, cabinets, pedestals, poles, conduits, grates, covers, pipes, cables, and appurtenances thereto) located on, over, above, along, upon, under, across, or within rights-of-way under this chapter. For purposes of this chapter, the term **FACILITY** shall not include any facility owned or operated by the village.

**FREESTANDING FACILITY.** A facility that is not a crossing facility or a parallel facility, such as an antenna, transformer, pump, or meter station.

**FRONTAGE ROAD.** Roadway, usually parallel, providing access to land adjacent to the highway where it is precluded by control of access to a highway.

**HAZARDOUS MATERIALS.** Any substance or material which, due to its quantity, form, concentration, location, or other characteristics, is determined by the Public Works Director to pose an unreasonable and imminent risk to the life, health or safety of persons or property or to the ecological balance of the environment, including, but not limited to explosives, radioactive materials, petroleum or petroleum products or gases, poisons, etiology (biological) agents, flammables, corrosives or any substance determined to be hazardous or toxic under any federal or state law, statute or regulation.

**HIGHWAY CODE.** The Illinois Highway Code, ILCS Ch. 605, Act 5, §§ 1-101 et seq., as amended from time to time.

**HIGHWAY.** A specific type of right-of-way used for vehicular traffic including rural or urban roads or streets. **HIGHWAY** includes all highway land and improvements, including roadways, ditches and embankments, bridges, drainage structures, signs, guardrails, protective structures and appurtenances necessary or convenient for vehicle traffic.

**HOLDER.** A person or entity that has received authorization to offer or provide cable or video service from the ICC pursuant to the Illinois Cable and Video Competition Law, ILCS Ch. 220, Act 5, § 21-401.

**IDOT.** Illinois Department of Transportation.

**ICC.** Illinois Commerce Commission.

**JACKING.** Pushing a pipe horizontally under a roadway by mechanical means with or without boring.

**JETTING.** Pushing a pipe through the earth using water under pressure to create a cavity ahead of the pipe.

**JOINT USE.** The use of pole lines, trenches or other facilities by 2 or more utilities.

**J.U.L.I.E.** The Joint Utility Locating Information for Excavators utility notification program.

**MAJOR INTERSECTION.** The intersection of 2 or more major arterial highways.

**OCCUPANCY.** The presence of facilities on, over or under right-of-way.

**PARALLEL FACILITY.** A facility that is generally parallel or longitudinal to the centerline of a right-of-way.

**PARKWAY.** Any portion of the right-of-way not improved by street or sidewalk.

**PAVEMENT CUT.** The removal of an area of pavement for access to facility or for the construction of a facility.

**PERMITTEE.** That entity to which a permit has been issued pursuant to §§ 115.04 and 115.05.

**PRACTICABLE.** That which is performable, feasible or possible, rather than that which is simply convenient.

**PRESSURE.** The internal force acting radially against the walls of a carrier pipe expressed in pounds per square inch gauge (psig).

**PETROLEUM PRODUCTS PIPELINES.** Pipelines carrying crude or refined liquid petroleum products including, but not limited to, gasoline, distillates, propane, butane, or coal-slurry.

**PROMPT.** That which is done within a period of time specified by the village. If no time period is specified, the period shall be 30 days.

**PUBLIC ENTITY.** A legal entity that constitutes or is part of the government, whether at local, state or federal level.

**RESTORATION.** The repair of a right-of-way, highway, roadway, or other area disrupted by the construction of a facility.

**RIGHT-OF-WAY** or **RIGHTS-OF-WAY.** Any street, alley, other land or waterway, dedicated or commonly used for pedestrian or vehicular traffic or other similar purposes, including utility easements,

in which the village has the right and authority to authorize, regulate or permit the location of facilities other than those of the village. **RIGHT-OF-WAY** or **RIGHTS-OF-WAY** shall not include any real or personal village property that is not specifically described in the previous 2 sentences and shall not include village buildings, fixtures and other structures or improvements, regardless of whether they are situated in the right-of-way.

**ROADWAY.** That part of the highway that includes the pavement and shoulders.

**SALE OF TELECOMMUNICATIONS AT RETAIL.** The transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

**SECURITY FUND.** That amount of security required pursuant to § 115.10.

**SHOULDER.** A width of roadway, adjacent to the pavement, providing lateral support to the pavement edge and providing an area for emergency vehicular stops and storage of snow removed from the pavement.

**SOUND ENGINEERING JUDGMENT.** A decision(s) consistent with generally accepted engineering principles, practices and experience.

**TELECOMMUNICATIONS.** This term includes, but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange service, private line services, mobile radio services, cellular mobile telecommunications services, stationary 2-way radio, paging service and any other form of mobile or portable 1-way or 2-way communications, and any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. **PRIVATE LINE** means a dedicated non-traffic sensitive service for a single customer that entitles the customer to exclusive or priority use of a communications channel, or a group of such channels, from 1 or more specified locations to 1 or more other specified locations. Telecommunications shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. Telecommunications shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the end-to-end communications. Telecommunications shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Sections 521 and following), as now or hereafter amended, or cable or other programming services subject to an open video system fee payable to the village through an open video system as defined in the Rules of the Federal Communications Commission (47 C.F.R. § 76.1500 and following), as now or hereafter amended.

**TELECOMMUNICATIONS PROVIDER.** Any person that installs, owns, operates or controls facilities in the right-of-way used or designed to be used to transmit telecommunications in any form.

**TELECOMMUNICATIONS RETAILER.** Includes every person engaged in making sales of telecommunications at retail as defined herein.

**TRENCH.** A relatively narrow open excavation for the installation of an underground facility.

**UTILITY.** The individual or entity owning or operating any facility as defined in this chapter.

**VENT.** A pipe to allow the dissipation into the atmosphere of gases or vapors from an underground casing.

**VIDEO SERVICE.** That term as defined in ILCS Ch. 220, Act 5, § 21-201(v), the Illinois Cable and Video Competition Law of 2007.

**VILLAGE.** The Village of Forsyth, Illinois.

**WATER LINES.** Pipelines carrying raw or potable water.

**WET BORING.** Boring using water under pressure at the cutting auger to soften the earth and to provide a sluice for the excavated material.  
(Ord. 738, passed 2-4-2008)

### **§ 115.03 ANNUAL REGISTRATION REQUIRED.**

Every utility that occupies right-of-way within the village shall register on January 1 of each year with the Director of Public Works, providing the utility's name, address and regular business telephone and telecopy numbers, the name of 1 or more contact persons who can act on behalf of the utility in connection with emergencies involving the utility's facilities in the right-of-way and a 24-hour telephone number for each such person, and evidence of insurance as required in § 115.08, in the form of a certificate of insurance.

(Ord. 738, passed 2-4-2008) Penalty, see § 115.99

### **§ 115.04 PERMIT REQUIRED; APPLICATIONS AND FEES.**

(A) *Permit required.* No person shall construct (as defined in this chapter) any facility on, over, above, along, upon, under, across, or within any village right-of-way which changes the location of the facility, adds a new facility, disrupts the right-of-way (as defined in this chapter), or materially increases the amount of area or space occupied by the facility on, over, above, along, under across or within the right-of-way, without first filing an application with the Director of Public Works and obtaining a permit from the village therefor, except as otherwise provided in this chapter. No permit shall be required for

installation and maintenance of service connections to customers' premises where there will be no disruption of the right-of-way.

(B) *Permit application.* All applications for permits pursuant to this chapter shall be filed on a form provided by the village and shall be filed in such number of duplicate copies as the village may designate. The applicant may designate those portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

(C) *Minimum general application requirements.* The application shall be made by the utility or its duly authorized representative and shall contain, at a minimum, the following:

- (1) The utility's name and address and telephone and telecopy numbers;
- (2) The applicant's name and address, if different than the utility, its telephone, telecopy numbers, e-mail address, and its interest in the work;
- (3) The names, addresses and telephone and telecopy numbers and e-mail addresses of all professional consultants, if any, advising the applicant with respect to the application;
- (4) A general description of the proposed work and the purposes and intent of the facility and the uses to which the facility will be put. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed;
- (5) Evidence that the utility has placed on file with the village:
  - (a) A written traffic control plan demonstrating the protective measures and devices that will be employed consistent with the *Illinois Manual on Uniform Traffic Control Devices*, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
  - (b) An emergency contingency plan which shall specify the nature of potential emergencies, including, without limitation, construction and hazardous materials emergencies, and the intended response by the applicant. The intended response shall include notification to the village and shall promote protection of the safety and convenience of the public. Compliance with ICC regulations for emergency contingency plans constitutes compliance with this section unless the village finds that additional information or assurances are needed;
- (6) Drawings, plans and specifications showing the work proposed, including the certification of an engineer that such drawings, plans, and specifications comply with applicable codes, rules, and regulations;
- (7) Evidence of insurance as required in § 115.08;

- (8) Evidence of posting of the security fund as required in § 115.10;
- (9) Any request for a variance from 1 or more provisions of this chapter (see § 115.21); and
- (10) Such additional information as may be reasonably required by the village.

(D) *Supplemental application requirements for specific types of utilities.* In addition to the requirements of division (C) of this section, the permit application shall include the following items, as applicable to the specific utility that is the subject of the permit application:

(1) In the case of the installation of a new electric power, communications, telecommunications, cable television service, video service or natural gas distribution system, evidence that any “Certificate of Public Convenience and Necessity” or other regulatory authorization that the applicant is required by law to obtain, or that the applicant has elected to obtain, has been issued by the ICC or other jurisdictional authority;

(2) In the case of natural gas systems, state the proposed pipe size, design, construction class, and operating pressures;

(3) In the case of water lines, indicate that all requirements of the Illinois Environmental Protection Agency, Division of Public Water Supplies, have been satisfied;

(4) In the case of sewer line installations, indicate that the land and water pollution requirements of the Illinois Environmental Protection Agency, Division of Water Pollution Control and the Decatur Sanitary Sewer District have been satisfied; or

(5) In the case of petroleum products pipelines, state the type or types of petroleum products, pipe size, maximum working pressure, and the design standard to be followed.

(E) *Applicant’s duty to update information.* Throughout the entire permit application review period and the construction period authorized by the permit, any amendments to information contained in a permit application shall be submitted by the utility in writing to the village within 30 days after the change necessitating the amendment.

(F) *Application fees.* Unless otherwise provided by franchise, license, or similar agreement, all applications for permits pursuant to this chapter shall not require a fee. No application fee is required to be paid by any electricity utility that is paying the municipal electricity infrastructure maintenance fee pursuant to the Electricity Infrastructure Maintenance Fee Act.

(Ord. 738, passed 2-4-2008) Penalty, see § 115.99



**§ 115.05 ACTION ON PERMIT APPLICATIONS.**

(A) *Village review of permit applications.* Completed permit applications, containing all required documentation, shall be examined by the Director of Public Works within a reasonable time after filing. If the application does not conform to the requirements of applicable ordinances, codes, laws, rules, and regulations, the Director of Public Works shall reject such application in writing, stating the reasons therefor. If the Director of Public Works is satisfied that the proposed work conforms to the requirements of this chapter and applicable ordinances, codes, laws, rules, and regulations, the Director of Public Works shall issue a permit therefor as soon as practicable. In all instances, it shall be the duty of the applicant to demonstrate, to the satisfaction of the Director of Public Works, that the construction proposed under the application shall be in full compliance with the requirements of this chapter.

(B) *Additional village review of applications of telecommunications retailers.*

(1) Pursuant to ILCS Ch. 220, Act 65, § 4, the Telephone Company Act, a telecommunications retailer shall notify the village that it intends to commence work governed by this chapter for facilities for the provision of telecommunications services. Such notice shall consist of plans, specifications, and other documentation sufficient to demonstrate the purpose and intent of the facilities, and shall be provided by the telecommunications retailer to the village not less than 10 days prior to the commencement of work requiring no excavation and not less than 30 days prior to the commencement of work requiring excavation. The Director of Public Works shall specify the portion of the right-of-way upon which the facility may be placed, used and constructed.

(2) In the event that the Director of Public Works fails to provide such specification of location to the telecommunications retailer within either 10 days after service of notice to the village by the telecommunications retailer in the case of work not involving excavation for new construction or 25 days after service of notice by the telecommunications retailer in the case of work involving excavation for new construction, the telecommunications retailer may commence work without obtaining a permit under this chapter.

(3) Upon the provision of such specification by the village, where a permit is required for work pursuant to § 115.04 the telecommunications retailer shall submit to the village an application for a permit and any and all plans, specifications and documentation available regarding the facility to be constructed. Such application shall be subject to the requirements of division (A) of this section.

(C) *Additional village review of applications of holders of state authorization under the Cable and Video Competition Law of 2007.* Applications by a utility that is a holder of a state-issued authorization under the Cable and Video Competition Law of 2007 shall be deemed granted 45 days after submission to the village, unless otherwise acted upon by the village, provided the holder has complied with applicable village codes, ordinances, and regulations.

(Ord. 738, passed 2-4-2008)

**§ 115.06 EFFECT OF PERMIT.**

(A) *Authority granted; no property right or other interest created.* A permit from the village authorizes a permittee to undertake only certain activities in accordance with this chapter on village rights-of-way, and does not create a property right or grant authority to the permittee to impinge upon the rights of others who may have an interest in the rights-of-way.

(B) *Duration.* No permit issued under this chapter shall be valid for a period longer than 6 months unless construction is actually begun within that period and is thereafter diligently pursued to completion.

(C) *Pre-construction meeting required.* No construction shall begin pursuant to a permit issued under this chapter prior to attendance by the permittee and all major contractors and subcontractors who will perform any work under the permit at a pre-construction meeting. The pre-construction meeting shall be held at a date, time and place designated by the village with such village representatives in attendance as the village deems necessary. The meeting shall be for the purpose of reviewing the work under the permit, and reviewing special considerations necessary in the areas where work will occur, including, without limitation, presence or absence of other utility facilities in the area and their locations, procedures to avoid disruption of other utilities, use of rights-of-way by the public during construction, and access and egress by adjacent property owners.

(D) *Compliance with all laws required.* The issuance of a permit by the village does not excuse the permittee from complying with other requirements of the village and applicable statutes, laws, ordinances, rules, and regulations.

(Ord. 738, passed 2-4-2008) Penalty, see § 115.99

**§ 115.07 REVISED PERMIT DRAWINGS.**

In the event that the actual locations of any facilities deviate in any material respect from the locations identified in the plans, drawings and specifications submitted with the permit application, the permittee shall submit a revised set of drawings or plans to the village within 90 days after the completion of the permitted work. The revised drawings or plans shall specifically identify where the locations of the actual facilities deviate from the locations approved in the permit. If any deviation from the permit also deviates from the requirements of this chapter, it shall be treated as a request for variance in accordance with § 115.21. If the village denies the request for a variance, then the permittee shall either remove the facility from the right-of-way or modify the facility so that it conforms to the permit and submit revised drawings or plans therefor.

(Ord. 738, passed 2-4-2008)

**§ 115.08 INSURANCE.**

(A) *Required coverages and limits.* Unless otherwise provided by franchise, license, or similar agreement, each utility occupying right-of-way or constructing any facility in the right-of-way shall

secure and maintain the following liability insurance policies insuring the utility as named insured and naming the village, and its elected and appointed officers, officials, agents, and employees as additional insureds on the policies listed in divisions (A)(1) and (2) below:

(1) Commercial general liability insurance, including premises-operations, explosion, collapse, and underground hazard (commonly referred to as “X,” “C,” and “U” coverages) and products-completed operations coverage with limits not less than:

- (a) Five million dollars for bodily injury or death to each person;
- (b) Five million dollars for property damage resulting from any one accident; and
- (c) Five million dollars for all other types of liability;

(2) Automobile liability for owned, non-owned and hired vehicles with a combined single limit of \$1,000,000 for personal injury and property damage for each accident;

(3) Worker’s compensation with statutory limits; and

(4) Employer’s liability insurance with limits of not less than \$1,000,000 per employee and per accident.

(5) If the utility is not providing such insurance to protect the contractors and subcontractors performing the work, then such contractors and subcontractors shall comply with this section.

(B) *Excess or umbrella policies.* The coverages required by this section may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

(C) *Copies required.* The utility shall provide copies of any of the policies required by this section to the village within 10 days following receipt of a written request therefor from the village.

(D) *Maintenance and renewal of required coverages.* The insurance policies required by this section shall contain the following endorsement:

“It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty (30) days after receipt by the Village, by registered mail or certified mail, return receipt requested, of a written notice addressed to the Village Administrator of such intent to cancel or not to renew.”

Within 10 days after receipt by the village of said notice, and in no event later than 10 days prior to said cancellation, the utility shall obtain and furnish to the village evidence of replacement insurance policies meeting the requirements of this section.

(E) *Self-insurance.* A utility may self-insure all or a portion of the insurance coverage and limit requirements required by division (A) of this section. A utility that self-insures is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under division (A) of this section, or the requirements of divisions (B), (C) and (D) of this section. A utility that elects to self-insure shall provide to the village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under division (A) of this section, such as evidence that the utility is a “private self-insurer” under the Workers Compensation Act.

(F) *Effect of insurance and self-insurance on utility’s liability.* The legal liability of the utility to the village and any person for any of the matters that are the subject of the insurance policies or self-insurance required by this section shall not be limited by such insurance policies or self-insurance or by the recovery of any amounts thereunder.

(G) *Insurance companies.* All insurance provided pursuant to this section shall be effected under valid and enforceable policies, issued by insurers legally able to conduct business with the licensee in the State of Illinois. All insurance carriers and surplus line carriers shall be rated “A-“ or better and of a class size “X” (500 – 750 million in adjusted policyholders’ surplus) or higher by A.M. Best Company.

(Ord. 738, passed 2-4-2008) Penalty, see § 115.99

#### **§ 115.09 INDEMNIFICATION.**

By occupying or constructing facilities in the right-of-way, a utility shall be deemed to agree to defend, indemnify and hold the village and its elected and appointed officials and officers, employees, agents and representatives harmless from and against any and all injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney’s fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the utility or its affiliates, officers, employees, agents, contractors or subcontractors in the construction of facilities or occupancy of the rights-of-way, and in providing or offering service over the facilities, whether such acts or omissions are authorized, allowed or prohibited by this chapter or by a franchise, license, or similar agreement; provided, however, that the utility’s indemnity obligations hereunder shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses arising out of or resulting from the negligence, misconduct or breach of this chapter by the village, its officials, officers, employees, agents or representatives.

(Ord. 738, passed 2-4-2008)

#### **§ 115.10 SECURITY.**

(A) *Purpose.* The permittee shall establish a Security Fund in a form and in an amount as set forth in this section. The Security Fund shall be continuously maintained in accordance with this section at the permittee’s sole cost and expense until the completion of the work authorized under the permit. The Security Fund shall serve as security for:

(1) The faithful performance by the permittee of all the requirements of this chapter;

(2) Any expenditure, damage, or loss incurred by the village occasioned by the permittee's failure to comply with any codes, rules, regulations, orders, permits and other directives of the village issued pursuant to this chapter; and

(3) The payment by permittee of all liens and all damages, claims, costs, or expenses that the village may pay or incur by reason of any action or nonperformance by permittee in violation of this chapter including, without limitation, any damage to public property or restoration work the permittee is required by this chapter to perform that the village must perform itself or have completed as a consequence solely of the permittee's failure to perform or complete, and all other payments due the village from the permittee pursuant to this chapter or any other applicable law.

(B) *Form.* The permittee shall provide the Security Fund to the village in the form, at the permittee's election, of cash, a surety bond in a form acceptable to the village, or an unconditional letter of credit in a form acceptable to the village. Any surety bond or letter of credit provided pursuant to this division shall, at a minimum:

(1) Provide that it will not be canceled without prior notice to the village and the permittee;

(2) Not require the consent of the permittee prior to the collection by the village of any amounts covered by it; and

(3) Shall provide a location convenient to the village and within the State of Illinois at which it can be drawn.

(C) *Amount.* The dollar amount of the Security Fund shall be sufficient to provide for the reasonably estimated cost to restore the right-of-way to at least as good a condition as that existing prior to the construction under the permit, as determined by the Director of Public Works, and may also include reasonable, directly related costs that the village estimates are likely to be incurred if the permittee fails to perform such restoration. Where the construction of facilities proposed under the permit will be performed in phases in multiple locations in the village, with each phase consisting of construction of facilities in 1 location or a related group of locations, and where construction in another phase will not be undertaken prior to substantial completion of restoration in the previous phase or phases, the Director of Public Works may, in the exercise of sound discretion, allow the permittee to post a single amount of security which shall be applicable to each phase of the construction under the permit. The amount of the Security Fund for phased construction shall be equal to the greatest amount that would have been required under the provisions of this division for any single phase.

(D) *Withdrawals.* The village, upon 14 days' advance written notice clearly stating the reason for, and its intention to exercise withdrawal rights under this division, may withdraw an amount from the Security Fund, provided that the permittee has not reimbursed the village for such amount within the 14-day notice period. Withdrawals may be made if the permittee:

- (1) Fails to make any payment required to be made by the permittee hereunder;
- (2) Fails to pay any liens relating to the facilities that are due and unpaid;
- (3) Fails to reimburse the village for any damages, claims, costs or expenses which the village has been compelled to pay or incur by reason of any action or non-performance by the permittee; or
- (4) Fails to comply with any provision of this chapter that the village determines can be remedied by an expenditure of an amount in the Security Fund.

(E) *Replenishment.* Within 14 days after receipt of written notice from the village that any amount has been withdrawn from the Security Fund, the permittee shall restore the Security Fund to the amount specified in division (C) of this section.

(F) *Interest.* The permittee may request that any and all interest accrued on the amount in the Security Fund be returned to the permittee by the village, upon written request for said withdrawal to the village, provided that any such withdrawal does not reduce the Security Fund below the minimum balance required in division (C) of this section.

(G) *Closing and return of Security Fund.* Upon completion of the work authorized under the permit, the permittee shall be entitled to the return of the Security Fund, or such portion thereof as remains on deposit, within a reasonable time after account is taken for all offsets necessary to compensate the village for failure by the permittee to comply with any provisions of this chapter or other applicable law. In the event of any revocation of the permit, the Security Fund, and any and all accrued interest therein, shall become the property of the village to the extent necessary to cover any reasonable costs, loss or damage incurred by the village as a result of said revocation, provided that any amounts in excess of said costs, loss or damage shall be refunded to the permittee.

(H) *Rights not limited.* The rights reserved to the village with respect to the Security Fund are in addition to all other rights of the village, whether reserved by this chapter or otherwise authorized by law, and no action, proceeding or exercise of right with respect to said Security Fund shall affect any other right the village may have. Notwithstanding the foregoing, the village shall not be entitled to a double monetary recovery with respect to any of its rights which may be infringed or otherwise violated. (Ord. 738, passed 2-4-2008) Penalty, see § 115.99

#### **§ 115.11 PERMIT SUSPENSION AND REVOCATION.**

(A) *Village right to revoke permit.* The village may revoke or suspend a permit issued pursuant to this chapter for 1 or more of the following reasons:

- (1) Fraudulent, false, misrepresenting, or materially incomplete statements in the permit application;

(2) Non-compliance with this chapter;

(3) Permittee's physical presence or presence of permittee's facilities on, over, above, along, upon, under, across, or within the rights-of-way presents a direct or imminent threat to the public health, safety, or welfare; or

(4) Permittee's failure to construct the facilities substantially in accordance with the permit and approved plans.

(B) *Notice of revocation or suspension.* The village shall send written notice of its intent to revoke or suspend a permit issued pursuant to this chapter stating the reason or reasons for the revocation or suspension and the alternatives available to permittee under this section.

(C) *Permittee alternatives upon receipt of notice of revocation or suspension.* Upon receipt of a written notice of revocation or suspension from the village, the permittee shall have the following options:

(1) Immediately provide the village with evidence that no cause exists for the revocation or suspension;

(2) Immediately correct, to the satisfaction of the village, the deficiencies stated in the written notice, providing written proof of such correction to the village within 5 working days after receipt of the written notice of revocation; or

(3) Immediately remove the facilities located on, over, above, along, upon, under, across, or within the rights-of-way and restore the rights-of-way to the satisfaction of the village providing written proof of such removal to the village within 10 days after receipt of the written notice of revocation.

(4) The village may, in its discretion, for good cause shown, extend the time periods provided in this division.

(D) *Stop work order.* In addition to the issuance of a notice of revocation or suspension, the village may issue a stop work order immediately upon discovery of any of the reasons for revocation set forth within division (A) of this section.

(E) *Failure or refusal of the permittee to comply.* If the permittee fails to comply with the provisions of division (C) of this section, the village or its designee may, at the option of the village: correct the deficiencies; upon not less than 20 days notice to the permittee, remove the subject facilities or equipment; or after not less than 30 days notice to the permittee of failure to cure the non-compliance, deem them abandoned and property of the village. The permittee shall be liable in all events to the village for all costs of removal.

(Ord. 738, passed 2-4-2008)

**§ 115.12 CHANGE OF OWNERSHIP OR OWNER'S IDENTITY OR LEGAL STATUS.**

(A) *Notification of change.* A utility shall notify the village no less than 30 days prior to the transfer of ownership of any facility in the right-of-way or change in identity of the utility. The new owner of the utility or the facility shall have all the obligations and privileges enjoyed by the former owner under the permit, if any, and applicable laws, ordinances, rules and regulations, including this chapter, with respect to the work and facilities in the right-of-way.

(B) *Amended permit.* A new owner shall request that any current permit be amended to show current ownership. If the new owner fails to have a new or amended permit issued in its name, the new owner shall be presumed to have accepted, and agreed to be bound by, the terms and conditions of the permit if the new owner uses the facility or allows it to remain on the village's right-of-way.

(C) *Insurance and bonding.* All required insurance coverage or bonding must be changed to reflect the name of the new owner upon transfer.

(Ord. 738, passed 2-4-2008) Penalty, see § 115.99

**§ 115.13 GENERAL CONSTRUCTION STANDARDS.**

(A) *Standards and principles.* All construction in the right-of-way shall be consistent with applicable ordinances, codes, laws, rules and regulations, and commonly recognized and accepted traffic control and construction principles, sound engineering judgment and, where applicable, the principles and standards set forth in the following IDOT publications, as amended from time to time:

- (1) Standard Specifications for Road and Bridge Construction;
- (2) Supplemental Specifications and Recurring Special Provisions;
- (3) Highway Design Manual;
- (4) Highway Standards Manual;
- (5) Standard Specifications for Traffic Control Items;
- (6) Illinois Manual on Uniform Traffic Control Devices (92 Ill. Adm. Code 545);
- (7) Flagger's Handbook; and
- (8) Work Site Protection Manual for Daylight Maintenance Operations.

(B) *Interpretation of municipal standards and principles.* If a discrepancy exists between or among differing principles and standards required by this chapter, the Director of Public Works shall determine, in the exercise of sound engineering judgment, which principles apply and such decision shall be final.



If requested, the Director of Public Works shall state which standard or principle will apply to the construction, maintenance, or operation of a facility in the future.

(Ord. 738, passed 2-4-2008) Penalty, see § 115.99

#### § 115.14 TRAFFIC CONTROL.

(A) *Minimum requirements.* The village's minimum requirements for traffic protection are contained in IDOT's *Illinois Manual on Uniform Traffic Control Devices* and this Code of Ordinances.

(B) *Warning signs, protective devices, and flaggers.* The utility is responsible for providing and installing warning signs, protective devices and flaggers, when necessary, meeting applicable federal, state, and local requirements for protection of the public and the utility's workers when performing any work on the rights-of-way.

(C) *Interference with traffic.* All work shall be phased so that there is minimum interference with pedestrian and vehicular traffic.

(D) *Notice when access is blocked.* At least 48 hours prior to beginning work that will partially or completely block access to any residence, business or institution, the utility shall notify the resident, business or institution of the approximate beginning time and duration of such work; provided, however, that in cases involving emergency repairs pursuant to § 115.20, the utility shall provide such notice as is practicable under the circumstances.

(E) *Compliance.* The utility shall take immediate action to correct any deficiencies in traffic protection requirements that are brought to the utility's attention by the village.

(Ord. 738, passed 2-4-2008) Penalty, see § 115.99

#### § 115.15 LOCATION OF FACILITIES.

(A) *General requirements.* In addition to location requirements applicable to specific types of utility facilities, all utility facilities, regardless of type, shall be subject to the general location requirements of this division.

(1) *No interference with village facilities.* No utility facilities shall be placed in any location if the Director of Public Works determines that the proposed location will require the relocation or displacement of any of the village's utility facilities or will otherwise interfere with the operation or maintenance of any of the village's utility facilities.

(2) *Minimum interference and impact.* The proposed location shall cause only the minimum possible interference with the use of the right-of-way and shall cause only the minimum possible impact upon, and interference with the rights and reasonable convenience of property owners who adjoin said right-of-way.

(3) *No interference with travel.* No utility facility shall be placed in any location that interferes with the usual travel on such right-of-way.

(4) *No limitations on visibility.* No utility facility shall be placed in any location so as to limit visibility of or by users of the right-of-way.

(5) *Size of utility facilities.* The proposed installation shall use the smallest suitable vaults, boxes, equipment enclosures, power pedestals, and/or cabinets then in use by the facility owner, regardless of location, for the particular application.

(B) *Parallel facilities located within highways.*

(1) *Overhead parallel facilities.* An overhead parallel facility may be located within the right-of-way lines of a highway only if:

(a) Lines are located as near as practicable to the right-of-way line and as nearly parallel to the right-of-way line as reasonable pole alignment will permit;

(b) Where pavement is curbed, poles are as remote as practicable from the curb with a minimum distance of 2 feet (0.6 m) behind the face of the curb, where available;

(c) Where pavement is uncurbed, poles are as remote from pavement edge as practicable with minimum distance of 4 feet (1.2 m) outside the outer shoulder line of the roadway and are not within the clear zone;

(d) No pole is located in the ditch line of a highway; and

(e) Any ground-mounted appurtenance is located within 1 foot (0.3 m) of the right-of-way line or as near as possible to the right-of-way line.

(2) *Underground parallel facilities.* An underground parallel facility may be located within the right-of-way lines of a highway only if:

(a) The facility is located as near the right-of-way line as practicable and not more than 8 feet (2.4 m) from and parallel to the right-of-way line;

(b) A new facility may be located under the paved portion of a highway only if other locations are impracticable or inconsistent with sound engineering judgment (e.g., a new cable may be installed in existing conduit without disrupting the pavement); and

(c) In the case of an underground power or communications line, the facility shall be located as near the right-of-way line as practicable and not more than 5 feet (1.5 m) from the right-of-way line and any above-grounded appurtenance shall be located within 1 foot (0.3 m) of the right-of-way line or as near as practicable.

(C) *Facilities crossing highways.*

(1) *No future disruption.* The construction and design of crossing facilities installed between the ditch lines or curb lines of village highways may require the incorporation of materials and protections (such as encasement or additional cover) to avoid settlement or future repairs to the roadbed resulting from the installation of such crossing facilities.

(2) *Cattle passes, culverts, or drainage facilities.* Crossing facilities shall not be located in cattle passes, culverts, or drainage facilities.

(3) *90 degree crossing required.* Crossing facilities shall cross at or as near to a 90 degree angle to the centerline as practicable.

(4) *Overhead power or communication facility.* An overhead power or communication facility may cross a highway only if:

(a) It has a minimum vertical line clearance as required by ICC's rules entitled, *Construction of Electric Power and Communication Lines* (83 Ill. Adm. Code 305);

(b) Poles are located within 1 foot (0.3 m) of the right-of-way line of the highway and outside of the clear zone; and

(c) Overhead crossings at major intersections are avoided.

(5) *Underground power or communication facility.* An underground power or communication facility may cross a highway only if:

(a) The design materials and construction methods will provide maximum maintenance-free service life; and

(b) Capacity for the utility's foreseeable future expansion needs is provided in the initial installation.

(6) *Markers.* The village may require the utility to provide a marker at each right-of-way line where an underground facility other than a power or communication facility crosses a highway. Each marker shall identify the type of facility, the utility, and an emergency phone number. Markers may also be eliminated as provided in current federal regulations. (49 C.F.R. § 192.707 (1989)).

(D) *Facilities to be located within particular rights-of-way.* The village may require that facilities be located within particular rights-of-way that are not highways, rather than within particular highways.

(E) *Freestanding facilities.*

(1) The village may restrict the location and size of any freestanding facility located within a right-of-way.

(2) The village may require any freestanding facility located within a right-of-way to be screened from view.

(F) *Facilities installed above ground.* Above ground facilities may be installed only if:

(1) No other existing facilities in the area are located underground;

(2) New underground installation is not technically feasible; and

(3) The proposed installation will be made at a location, and will employ suitable design and materials, to provide the greatest protection of aesthetic qualities of the area being traversed without adversely affecting safety. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable. Existing utility poles and light standards shall be used wherever practicable; the installation of additional utility poles is strongly discouraged.

(G) *Facility attachments to bridges or roadway structures.*

(1) Facilities may be installed as attachments to bridges or roadway structures only where the utility has demonstrated that all other means of accommodating the facility are not practicable. Other means shall include, but are not limited to, underground, underwater, independent poles, cable supports and tower supports, all of which are completely separated from the bridge or roadway structure. Facilities transmitting commodities that are volatile, flammable, corrosive, or energized, especially those under significant pressure or potential, present high degrees of risk and such installations are not permitted.

(2) A utility shall include in its request to accommodate a facility installation on a bridge or roadway structure supporting data demonstrating the impracticability of alternate routing. Approval or disapproval of an application for facility attachment to a bridge or roadway structure will be based upon the following considerations:

(a) The type, volume, pressure or voltage of the commodity to be transmitted and an evaluation of the resulting risk to persons and property in the event of damage to or failure of the facility;

(b) The type, length, value, and relative importance of the highway structure in the transportation system;

(c) The alternative routings available to the utility and their comparative practicability;

(d) The proposed method of attachment;

(e) The ability of the structure to bear the increased load of the proposed facility;

- (f) The degree of interference with bridge maintenance and painting;
- (g) The effect on the visual quality of the structure; and
- (h) The public benefit expected from the utility service as compared to the risk involved.

(H) *Appearance standards.*

(1) The village may prohibit the installation of facilities in particular locations in order to preserve visual quality.

(2) A facility may be constructed only if its construction does not require extensive removal or alteration of trees or terrain features visible to the right-of-way user or to adjacent residents and property owners, and if it does not impair the aesthetic quality of the lands being traversed. (Ord. 738, passed 2-4-2008) Penalty, see § 115.99

**§ 115.16 CONSTRUCTION METHODS AND MATERIALS.**

(A) *Standards and requirements for particular types of construction methods.*

(1) *Boring or jacking.*

(a) Pits and shoring. Boring or jacking under rights-of-way shall be accomplished from pits located at a minimum distance specified by the Director of Public Works from the edge of the pavement. Pits for boring or jacking shall be excavated no more than 48 hours in advance of boring or jacking operations and backfilled within 48 hours after boring or jacking operations are completed. While pits are open, they shall be clearly marked and protected by barricades. Shoring shall be designed, erected, supported, braced, and maintained so that it will safely support all vertical and lateral loads that may be imposed upon it during the boring or jacking operation.

(b) Wet boring or jetting. Wet boring or jetting shall not be permitted under the roadway.

(c) Borings with diameters greater than 6 inches. Borings over 6 inches (0.15 m) in diameter shall be accomplished with an auger and following pipe, and the diameter of the auger shall not exceed the outside diameter of the following pipe by more than 1 inch (25 mm).

(d) Borings with diameters 6 inches or less. Borings of 6 inches or less in diameter may be accomplished by either jacking, guided with auger, or auger and following pipe method.

(e) Tree preservation. Any facility located within the drip line of any tree designated by the village to be preserved or protected shall be bored under or around the root system.

(2) *Trenching.* Trenching for facility installation, repair, or maintenance on rights-of-way shall be done in accord with the applicable portions of Section 603 of IDOT's *Standard Specifications for Road and Bridge Construction*.

(a) Length. The length of open trench shall be kept to the practicable minimum consistent with requirements for pipe-line testing. Only one-half of any intersection may have an open trench at any time unless special permission is obtained from the Director of Public Works.

(b) Open trench and excavated material. Open trench and windrowed excavated material shall be protected as required by Chapter 6 of the *Illinois Manual on Uniform Traffic Control Devices*. Where practicable, the excavated material shall be deposited between the roadway and the trench as added protection. Excavated material shall not be allowed to remain on the paved portion of the roadway. Where right-of-way width does not allow for windrowing excavated material off the paved portion of the roadway, excavated material shall be hauled to an off-road location.

(c) Drip line of trees. The utility shall not trench within the drip line of any tree designated by the village to be preserved.

(3) *Backfilling.*

(a) Any pit, trench, or excavation created during the installation of facilities shall be backfilled for its full width, depth, and length using methods and materials in accordance with IDOT's *Standard Specifications for Road and Bridge Construction*. When excavated material is hauled away or is unsuitable for backfill, suitable granular backfill shall be used.

(b) For a period of 3 years from the date construction of a facility is completed, the utility shall be responsible to remove and restore any backfilled area that has settled due to construction of the facility. If so ordered by the Director of Public Works, the utility, at its expense, shall remove any pavement and backfill material to the top of the installed facility, place and properly compact new backfill material, and restore new pavement, sidewalk, curbs, and driveways to the proper grades, as determined by the Director of Public Works.

(4) *Pavement cuts.* Pavement cuts for facility installation or repair shall be permitted on a highway only if that portion of the highway is closed to traffic. If a variance to the limitation set forth in this subdivision (4) is permitted under § 115.21, the following requirements shall apply:

(a) Any excavation under pavements shall be backfilled and compacted as soon as practicable with granular material of CA-6 or CA-10 gradation, as designated by the Director of Public Works.

(b) Restoration of pavement, in kind, shall be accomplished as soon as practicable, and temporary repair with bituminous mixture shall be provided immediately. Any subsequent failure of either the temporary repair or the restoration shall be rebuilt upon notification by the village.

(c) All saw cuts shall be full depth.

(d) For all rights-of-way which have been reconstructed with a concrete surface/base in the last 7 years, or resurfaced in the last 3 years, permits shall not be issued unless such work is determined to be an emergency repair or other work considered necessary and unforeseen before the time of the reconstruction or unless a pavement cut is necessary for a J.U.L.I.E. locate.

(5) *Encasement.*

(a) Casing pipe shall be designed to withstand the load of the highway and any other superimposed loads. The casing shall be continuous either by one-piece fabrication or by welding or jointed installation approved by the village.

(b) The venting, if any, of any encasement shall extend within 1 foot (0.3 m) of the right-of-way line. No above-ground vent pipes shall be located in the area established as clear zone for that particular section of the highway.

(c) In the case of water main or service crossing, encasement shall be furnished between bore pits unless continuous pipe or village approved jointed pipe is used under the roadway. Casing may be omitted only if pipe is installed prior to highway construction and carrier pipe is continuous or mechanical joints are of a type approved by the village. Bell and spigot type pipe shall be encased regardless of installation method.

(d) In the case of gas pipelines of 60 psig or less, encasement may be eliminated.

(e) In the case of gas pipelines or petroleum products pipelines with installations of more than 60 psig, encasement may be eliminated only if: extra heavy pipe is used that precludes future maintenance or repair and cathodic protection of the pipe is provided;

(f) If encasement is eliminated for a gas or petroleum products pipeline, the facility shall be located so as to provide that construction does not disrupt the right-of-way.

(6) *Minimum cover of underground facilities.* Cover shall be provided and maintained at least in the amount specified in the following table for minimum cover for the type of facility:

<i>TYPE OF FACILITY</i>	<i>MINIMUM COVER</i>
Electric lines	30 inches (0.8 m)
Communication, cable or video service lines	18 to 24 inches (0.6 m, as determined by village)
Gas or petroleum products	30 inches (0.8 m)

<i>TYPE OF FACILITY</i>	<i>MINIMUM COVER</i>
Water line	Sufficient cover to provide freeze protection
Sanitary sewer, storm sewer, or drainage line	Sufficient cover to provide freeze protection

(B) *Standards and requirements for particular types of facilities.*

(1) *Electric power or communication lines.*

(a) Code compliance. Electric power or communications facilities within village rights-of-way shall be constructed, operated, and maintained in conformity with the provisions of 83 Ill. Adm. Code Part 305 (formerly General Order 160 of the Illinois Commerce Commission) entitled “Rules for Construction of Electric Power and Communications Lines,” and the National Electrical Safety Code.

(b) Overhead facilities. Overhead power or communication facilities shall use single pole construction and, where practicable, joint use of poles shall be used. Utilities shall make every reasonable effort to design the installation so guys and braces will not be needed. Variances may be allowed if there is no feasible alternative and if guy wires are equipped with guy guards for maximum visibility.

(c) Underground facilities. Cable may be installed by trenching or plowing, provided that special consideration is given to boring in order to minimize damage when crossing improved entrances and side roads. If a crossing is installed by boring or jacking, encasement shall be provided between jacking or bore pits. Encasement may be eliminated only if: the crossing is installed by the use of “moles,” “whip augers,” or other approved method which compress the earth to make the opening for cable installation or the installation is by the open trench method which is only permitted prior to roadway construction. Cable shall be grounded in accordance with the National Electrical Safety Code.

(d) Burial of drops. All temporary service drops placed between November 1 of the prior year and March 15 of the current year, also known as snowdrops, shall be buried by May 31 of the current year, weather permitting, unless otherwise permitted by the village. Weather permitting, utilities shall bury all temporary drops, excluding snowdrops, within ten business days after placement.

(2) *Underground facilities other than electric power or communication lines.* Underground facilities other than electric power or communication lines may be installed by:

(a) The use of “moles,” “whip augers,” or other approved methods which compress the earth to move the opening for the pipe;

(b) Jacking or boring with vented encasement provided between the ditch lines or toes of slopes of the highway;

(c) Open trench with vented encasement between ultimate ditch lines or toes of slopes, but only if prior to roadway construction; or



(d) Tunneling with vented encasement, but only if installation is not possible by other means.

(3) *Gas transmission, distribution and service.* Gas pipelines within rights-of-way shall be constructed, maintained, and operated in a village approved manner and in conformance with the Federal Code of the Office of Pipeline Safety Operations, Department of Transportation, Part 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards (49 CFR §192), IDOT’s *Standard Specifications for Road and Bridge Construction*, and all other applicable laws, rules, and regulations.

(4) *Petroleum products pipelines.* Petroleum products pipelines within rights-of-way shall conform to the applicable sections of ANSI Standard Code for Pressure Piping. (Liquid Petroleum Transportation Piping Systems ANSI-B 31.4).

(5) *Waterlines, sanitary sewer lines, storm water sewer lines or drainage lines.* Water lines, sanitary sewer lines, storm sewer lines, and drainage lines within rights-of-way shall meet or exceed the recommendations of the current *Standard Specifications for Water and Sewer Main Construction in Illinois*.

(6) *Ground mounted appurtenances.* Ground mounted appurtenances to overhead or underground facilities, when permitted within a right-of-way, shall be provided with a vegetation-free area extending 1 foot (305 mm) in width beyond the appurtenance in all directions. The vegetation-free area may be provided by an extension of the mounting pad, or by heavy duty plastic or similar material approved by the Director of Public Works. With the approval of the Director of Public Works, shrubbery surrounding the appurtenance may be used in place of vegetation-free area. The housing for ground-mounted appurtenances shall be painted a neutral color to blend with the surroundings.

(C) *Materials.*

(1) *General standards.* The materials used in constructing facilities within rights-of-way shall be those meeting the accepted standards of the appropriate industry, the applicable portions of IDOT’s *Standards Specifications for Road and Bridge Construction*, the requirements of the Illinois Commerce Commission, or the standards established by other official regulatory agencies for the appropriate industry.

(2) *Material storage on right-of-way.* No material shall be stored on the right-of-way without the prior written approval of the Director of Public Works. When such storage is permitted, all pipe, conduit, wire, poles, cross arms, or other materials shall be distributed along the right-of-way prior to and during installation in a manner to minimize hazards to the public or an obstacle to right-of-way maintenance or damage to the right-of-way and other property. If material is to be stored on right-of-way, prior approval must be obtained from the village.

(3) *Hazardous materials.* The plans submitted by the utility to the village shall identify any hazardous materials that may be involved in the construction of the new facilities or removal of any existing facilities.

(D) *Operational restrictions.*

(1) Construction operations on rights-of-way may, at the discretion of the village, be required to be discontinued when such operations would create hazards to traffic or the public health, safety, and welfare. Such operations may also be required to be discontinued or restricted when conditions are such that construction would result in extensive damage to the right-of-way or other property.

(2) These restrictions may be waived by the Director of Public Works when emergency work is required to restore vital utility services.

(3) Unless otherwise permitted by the village, the hours of construction are hereby set as between 7:00 a.m. and 6:00 p.m.

(E) *Location of existing facilities.* Any utility proposing to construct facilities in the village shall contact J.U.L.I.E. and ascertain the presence and location of existing above-ground and underground facilities within the rights-of-way to be occupied by its proposed facilities. The village will make its permit records available to a utility for the purpose of identifying possible facilities. When notified of an excavation or when requested by the village or by a utility shall locate and physically mark its underground facilities within 48 hours, excluding weekends and holidays, in accordance with the Illinois Underground Facilities Damage Prevention Act, ILCS Ch. 220, Act 50, §§ 1 et seq. (Ord. 738, passed 2-4-2008) Penalty, see § 115.99

## § 115.17 VEGETATION CONTROL.

(A) *Electric utilities – compliance with state laws and regulations.* An electric utility shall conduct all tree-trimming and vegetation control activities in the right-of-way in accordance with applicable Illinois laws and regulations, and additionally, with such local franchise or other agreement with the village as permitted by law.

(B) *Other utilities – tree trimming permit required.* Tree trimming that is done by any other utility with facilities in the right-of-way and that is not performed pursuant to applicable Illinois laws and regulations specifically governing same, shall not be considered a normal maintenance operation, but shall require the application for, and the issuance of, a permit, in addition to any other permit required under this chapter.

(1) *Application for tree trimming permit.* Applications for tree trimming permits shall include assurance that the work will be accomplished by competent workers with supervision who are experienced in accepted tree pruning practices. Tree trimming permits shall designate an expiration date in the interest of assuring that the work will be expeditiously accomplished.

(2) *Damage to trees.* Poor pruning practices resulting in damaged or misshapen trees will not be tolerated and shall be grounds for cancellation of the tree trimming permit and for assessment of damages. The village will require compensation for trees extensively damaged and for trees removed

without authorization. The formula developed by the International Society of Arboriculture will be used as a basis for determining the compensation for damaged trees or unauthorized removal of trees. The village may require the removal and replacement of trees if trimming or radical pruning would leave them in an unacceptable condition.

(C) *Specimen trees or trees of special significance.* The village may require that special measures be taken to preserve specimen trees or trees of special significance. The required measures may consist of higher poles, side arm extensions, covered wire or other means.

(D) *Chemical use.*

(1) Except as provided in the following subdivision (2), no utility shall spray, inject or pour any chemicals on or near any trees, shrubs or vegetation in the village for any purpose, including the control of growth, insects or disease.

(2) Spraying of any type of brush-killing chemicals will not be permitted on rights-of-way unless the utility demonstrates to the satisfaction of the Director of Public Works that such spraying is the only practicable method of vegetation control.

(Ord. 738, passed 2-4-2008) Penalty, see § 115.99

#### **§ 115.18 REMOVAL, RELOCATION, OR MODIFICATIONS OF UTILITY FACILITIES.**

(A) *Notice.* Within 90 days following written notice from the village, a utility shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any utility facilities within the rights-of-way whenever the corporate authorities have determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any village improvement in or upon, or the operations of the village in or upon, the rights-of-way.

(B) *Removal of unauthorized facilities.* Within 30 days following written notice from the village, any utility that owns, controls, or maintains any unauthorized facility or related appurtenances within the rights-of-way shall, at its own expense, remove all or any part of such facilities or appurtenances from the rights-of-way. A facility is unauthorized and subject to removal in the following circumstances:

(1) Upon expiration or termination of the permittee's license or franchise, unless otherwise permitted by applicable law;

(2) If the facility was constructed or installed without the prior grant of a license or franchise, if required;

(3) If the facility was constructed or installed without prior issuance of a required permit in violation of this chapter; or

(4) If the facility was constructed or installed at a location not permitted by the permittee's license or franchise.

(C) *Emergency removal or relocation of facilities.* The village retains the right and privilege to cut or move any facilities located within the rights-of-way of the village, as the village may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the municipality shall attempt to notify the utility, if known, prior to cutting or removing a facility and shall notify the utility, if known, after cutting or removing a facility.

(D) *Abandonment of facilities.* Upon abandonment of a facility within the rights-of-way of the village, the utility shall notify the village within 90 days. Following receipt of such notice the village may direct the utility to remove all or any portion of the facility if the Director of Public Works determines that such removal will be in the best interest of the public health, safety and welfare. In the event that the village does not direct the utility that abandoned the facility to remove it, by giving notice of abandonment to the village, the abandoning utility shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person.

(Ord. 738, passed 2-4-2008) Penalty, see § 115.99

#### **§ 115.19 CLEAN-UP AND RESTORATION.**

The utility shall remove all excess material and restore all turf and terrain and other property within 10 days after any portion of the rights-of-way are disturbed, damaged or destroyed due to construction or maintenance by the utility, all to the satisfaction of the village. This includes restoration of entrances and side roads. Restoration of roadway surfaces shall be made using materials and methods approved by the Director of Public Works. Such cleanup and repair may be required to consist of backfilling, regrading, reseeding, resodding, or any other requirement to restore the right-of-way to a condition substantially equivalent to that which existed prior to the commencement of the project. The time period provided in this section may be extended by the Director of Public Works for good cause shown.

(Ord. 738, passed 2-4-2008) Penalty, see § 115.99

#### **§ 115.20 MAINTENANCE AND EMERGENCY MAINTENANCE.**

(A) *General.* Facilities on, over, above, along, upon, under, across, or within rights-of-way are to be maintained by or for the utility in a manner satisfactory to the village and at the utility's expense.

(B) *Emergency maintenance procedures.* Emergencies may justify non-compliance with normal procedures for securing a permit:

(1) If an emergency creates a hazard on the traveled portion of the right-of-way, the utility shall take immediate steps to provide all necessary protection for traffic on the highway or the public on the right-of-way including the use of signs, lights, barricades or flaggers. If a hazard does not exist on the traveled way, but the nature of the emergency is such as to require the parking on the shoulder of

equipment required in repair operations, adequate signs and lights shall be provided. Parking on the shoulder in such an emergency will only be permitted when no other means of access to the facility is available.

(2) In an emergency, the utility shall, as soon as possible, notify the Director of Public Works or his or her duly authorized agent of the emergency, informing him or her as to what steps have been taken for protection of the traveling public and what will be required to make the necessary repairs. If the nature of the emergency is such as to interfere with the free movement of traffic, the village police, through the Macon County Sheriff's Office, shall be notified immediately.

(3) In an emergency, the utility shall use all means at hand to complete repairs as rapidly as practicable and with the least inconvenience to the traveling public.

(C) *Emergency repairs.* The utility must file in writing with the village a description of the repairs undertaken in the right-of-way within 48 hours after an emergency repair. (Ord. 738, passed 2-4-2008) Penalty, see § 115.99

#### § 115.21 VARIANCES.

(A) *Request for variance.* A utility requesting a variance from 1 or more of the provisions of this chapter must do so in writing to the Director of Public Works as a part of the permit application. The request shall identify each provision of this chapter from which a variance is requested and the reasons why a variance should be granted.

(B) *Authority to grant variances.* The Village Administrator will decide whether a variance is authorized for each provision of this chapter identified in the variance request on an individual basis.

(C) *Conditions for granting of variance.* The Village Administrator may authorize a variance only if the utility requesting the variance has demonstrated that:

(1) One or more conditions not under the control of the utility (such as terrain features or an irregular right-of-way line) create a special hardship that would make enforcement of the provision unreasonable, given the public purposes to be achieved by the provision; and

(2) All other designs, methods, materials, locations or facilities that would conform with the provision from which a variance is requested are impracticable in relation to the requested approach.

(D) *Additional conditions for granting of a variance.* As a condition for authorizing a variance, the Village Administrator may require the utility requesting the variance to meet reasonable standards and conditions that may or may not be expressly contained within this chapter but which carry out the purposes of this chapter.

(E) *Right to appeal.* Any utility aggrieved by any order, requirement, decision or determination, including denial of a variance, made by the Village Administrator under the provisions of this chapter shall have the right to appeal to the Board of Trustees. The application for appeal shall be submitted in writing to the Village Clerk within 30 days after the date of such order, requirement, decision or determination. The Village Board shall commence its consideration of the appeal at the Board's next regularly scheduled meeting occurring at least 7 days after the filing of the appeal. The Board of Trustees shall timely decide the appeal.

(Ord. 738, passed 2-4-2008)

#### **§ 115.22 ENFORCEMENT.**

Nothing in this chapter shall be construed as limiting any additional or further remedies that the village may have for enforcement of this chapter.

(Ord. 738, passed 2-4-2008)

#### **§ 115.99 PENALTY.**

Any person who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this chapter shall be subject to fine in accordance with the penalty provisions of this Code of Ordinances. There may be times when the village will incur delay or other costs, including third party claims, because the utility will not or cannot perform its duties under its permit and this chapter. Unless the utility shows that another allocation of the cost of undertaking the requested action is appropriate, the utility shall bear the village's costs of damages and its costs of installing, maintaining, modifying, relocating, or removing the facility that is the subject of the permit. No other administrative agency or commission may review or overrule a permit related cost apportionment of the village. Sanctions may be imposed upon a utility that does not pay the costs apportioned to it.

(Ord. 738, passed 2-4-2008)

## CHAPTER 116: PROHIBITION OF VIDEO GAMING

### Section

116.01 Definition of video gaming terminal

116.02 Prohibition of video gaming

### § 116.01 DEFINITION OF VIDEO GAMING TERMINAL.

*VIDEO GAMING TERMINAL* shall mean any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, line up and blackjack, as authorized by the Illinois Gaming Board, utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash or tokens or is for amusement purposes only.

(Ord. 854, passed 7-2-2012)

### § 116.02 PROHIBITION OF VIDEO GAMING.

No video gaming, as contemplated in the Video Gaming Act, or the use of the video gaming terminals as defined above shall be permitted within the corporate limits of the village. Accordingly, as set forth in Section 27 of the Video Gaming Act, video gaming is prohibited within the village.

(Ord. 854, passed 7-2-2012)





## CHAPTER 117: ITINERANT MERCHANTS AND TRANSIENT VENDORS

### Section

- 117.01 Village policy on itinerant merchants and transient vendors
- 117.02 Definitions
- 117.03 License requirement
- 117.04 License application
- 117.05 Standards for license issuance
- 117.06 Denial of license
- 117.07 Revocation of license
- 117.08 Appeal of license denial or revocation
- 117.09 Exemptions
- 117.10 Other regulations and standards of conduct

### § 117.01 VILLAGE POLICY ON ITINERANT MERCHANTS AND TRANSIENT VENDORS.

It shall be the policy of the village that no person shall be entitled to be an itinerant merchant or transient vendor within the village for any reason except in compliance with this chapter.  
(Ord. 2016-7, passed 5-2-2016)

### § 117.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ITINERANT MERCHANT.*** Any person who is engaged temporarily in the retail sale of goods, wares, or merchandise in this village and who, for the purpose of conducting such business, occupies any building, room, vehicle, structure of any kind, or vacant lot for a period of less than 6 months. However, this provision does not apply to any person selling vegetables, fruit, or perishable farm products at an established village market; to any person operating a stand or booth on property owned by him or upon which he resides; to any person operating a stand or booth at a trade show, exposition, convention or similar event; or to temporary or permanent stands located inside a shopping center or mall.

***PERSON.*** Any individual, corporation, partnership, trust, firm, association, or other entity.

***TRANSIENT VENDOR.*** Any person who transports tangible personal property for retail sale within this village who does not maintain in this village an established office, distribution house, sales house, warehouse, service center, or residence from which such business is conducted. However, this provision does not apply to any person who delivers tangible personal property within this village who is fulfilling an order for such property which was solicited or placed by mail or other means.  
(Ord. 2016-7, passed 5-2-2016)

### **§ 117.03 LICENSE REQUIREMENT.**

(A) It is a violation of this chapter for any person to conduct business as an itinerant merchant or transient vendor in the village without first complying with the requirements of Section 2a of the Retailers' Occupation Tax Act by obtaining a certificate of registration and without having obtained a license under this chapter.

(B) Any person who wishes to obtain a license as an itinerant merchant or transient vendor shall file a written license application with the village. A license shall not be issued to any person under 16 years of age.

(C) It shall be prima facie evidence that a person is an itinerant merchant or transient vendor if the person does not transact business from a fixed location or if the person does not own or lease for a term of at least 6 months the property from which business is conducted.  
(Ord. 2016-7, passed 5-2-2016)

### **§ 117.04 LICENSE APPLICATION.**

(A) An application for an itinerant merchant or transient vendor license shall be made in writing on a form provided by and filed with the village. Each applicant shall state the following information under oath:

(1) The name, address, and telephone number of the person making application for the itinerant merchant or transient vendor license;

(2) The location at which the applicant intends to do business with a general site plan attached including details and dimensions for any structures or signage to be used;

(3) Written permission, by lease or otherwise, from the person in control of the property authorizing the applicant to conduct business on the property;

(4) The nature of the business the applicant intends to conduct;

(5) The length of time and dates for which the transient vendor or itinerant merchant seek a license with a maximum time frame of 3 months per license;

(6) A complete list of the type of merchandise the applicant intends to offer for sale;

(7) A State of Illinois sales tax number or a copy of the applicant's certificate of registration under the Retailers' Occupation Tax Act to ensure the business is registered with the state department of revenue;

(8) A list of all the licenses to conduct business as an itinerant merchant or transient vendor obtained by the applicant in this village and State of Illinois in the 12 months preceding the date of filing the application; and

(9) Information regarding any conviction of any felony or misdemeanor involving dishonesty, theft, fraud, false statements, a threat to public safety, or a crime involving sex offenses or offenses involving bodily harm against persons under the laws of this state or any other state or federal law of the United States within 5 years of the date of the license application for any individual to be working for the applicant within the village.

(B) There shall be a license fee of \$10 per day, \$25 per week, or \$50 per month from any person wishing to conduct business as either an itinerant merchant or transient vendor under this chapter.

(C) An applicant is permitted to apply for multiple itinerant merchant or transient vendor licenses, but the total time frame of all the licenses shall not exceed a maximum time frame of 6 months during a calendar year.

(Ord. 2016-7, passed 5-2-2016)

**§ 117.05 STANDARDS FOR LICENSE ISSUANCE.**

(A) Within 14 business days of receiving an application, or within such extended time period as may be necessary, the Village Administrator, or his or her designee, shall issue an itinerant merchant or transient vendor license if a determination is made that:

(1) The material statements made in the application are true;

(2) The individual(s) to be working for the applicant within the village has not been convicted of any felony or misdemeanor involving dishonesty, theft, fraud, false statements, a threat to public safety, or a crime involving sex offenses or offenses involving bodily harm against persons under the laws of this state or any other state or federal law of the United States, within 5 years of the date of the license application;

(3) The applicant has not had a previously issued license revoked by the village or by any other municipality within 5 years of the date of the application; and

(4) The applicant has not been convicted of violating any provisions of this chapter within 5 years of the date of application.

(B) A license issued under this chapter shall expire on December 31 of the year it was issued.  
(Ord. 2016-7, passed 5-2-2016)

#### **§ 117.06 DENIAL OF LICENSE.**

If the Village Administrator, or his or her designee, determines and finds that the applicant has not met one or more of the above conditions, the Village Administrator, or his or her designee, shall deny issuance of the license and shall give written notification of such denial to the applicant. Such notice shall be delivered in person or by U.S. mail addressed to the address set forth in the license application, stating the action taken and the reasons supporting such action.

(Ord. 2016-7, passed 5-2-2016)

#### **§ 117.07 REVOCATION OF LICENSE.**

(A) *Disqualification.* Any license issued hereunder shall be revoked by the Village Administrator, or his or her designee, if the holder of the license has committed a violation of any of the provisions of this chapter, has made a false material statement in the application or otherwise becomes disqualified for the issuance of a license under the terms of this chapter.

(B) *Notice of revocation.* Immediately upon such revocation, written notice thereof shall be given by the Village Administrator, or his or her designee, to the holder of the certificate in person or by certified U.S. mail addressed to the address set forth in the application.

(C) *Registration null and void.* Immediately upon the giving of such notice the license shall become null and void.

(Ord. 2016-7, passed 5-2-2016)

#### **§ 117.08 APPEAL OF LICENSE DENIAL OR REVOCATION.**

(A) Any person denied an itinerant merchant or transient vendor license or whose itinerant merchant or transient vendor license has been revoked may appeal by filing a written notice of appeal with the Mayor.

(B) Appeals must be taken in writing and must be filed with the Mayor within 10 business days after revocation or denial of the license and shall contain a statement setting forth the grounds for the appeal. The appealing party shall submit whatever documentation they desire to have the Mayor consider with the written appeal.

(C) The written decision of the Mayor shall be made available to the appealing party not later than 10 business days after the Mayor receives the written appeal.

(D) The decision of the Mayor is final. No new application for a license will be considered for 6 months after denial or revocation, unless said denial or revocation is without prejudice or is conditional and the conditions have been satisfied as determined by the Mayor.

(Ord. 2016-7, passed 5-2-2016)

**§ 117.09 EXEMPTIONS.**

The following are exempt from the terms and conditions of this chapter, namely:

(A) Any person selling vegetables, fruit, or perishable farm products at an established village market, meaning an outside market open to the public that is sponsored and organized by the village;

(B) Any person operating a stand or booth on property owned by him or upon which he resides as allowed by local, state or federal law or to stands located inside a shopping center or mall;

(C) Any person operating a stand or booth at a trade show, exposition, convention, or similar event;

(D) Any person that has received a class SE-1 or SE-2 liquor license permitting them to conduct liquor sales as regulated through Chapter 111 of this code;

(E) Religious, charitable, political, and other nonprofit organizations and their representatives;

(F) Garage sales; and

(G) Itinerant merchants or transient vendors related to youth activities for not-for-profit organizations, including but not limited to, Girl Scouts, Boy Scouts, and Youth Softball/Baseball or other school activities within the Maroa-Forsyth or Warrensburg school districts.

(Ord. 2016-7, passed 5-2-2016)

**§ 117.10 OTHER REGULATIONS AND STANDARDS OF CONDUCT.**

(A) As permitted by law, if any person makes retail sales as an itinerant merchant or transient vendor without having obtained a license as stated under this chapter, the village may hold the inventory,

vehicle, or other personal property of the person until the person obtains a license to conduct business as an itinerant merchant or transient vendor. If the property has been held by the village for more than 60 days and the person whose property is being held has not obtained a license under this chapter, the village may petition the circuit court for an order for the sale of the property being held. If the court finds that the person whose property is held has not obtained a license under this chapter, the court may order the village to sell the property. Proceeds of the sale of the property shall be deposited in the general fund of the village.

(B) Each person issued a license shall prominently display the itinerant merchant or transient vendor license issued.

(C) No one shall engage in the business of an itinerant merchant or transient vendor between the hours of 9:00 p.m. and 8:00 a.m.

(D) The activity of itinerant merchants or transient vendors shall comply with all regulations listed in the Village of Forsyth Development Ordinance and be located in areas properly zoned for business activity.

(E) Any person issued a license to operate as an itinerant merchant or transient vendor must operate in accordance with any and all applicable laws and regulations, whether local, state, or federal, and is responsible for payment of any and all taxes, including applicable local sales, food and beverage taxes. (Ord. 2016-7, passed 5-2-2016)