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CHAPTER 11: OTHER BUSINESSES

Article 1 – Special Events

Sec. 11.101 Definitions:

- (1) “Special Event” Any outdoor or seasonal event such as a tent sale, warehouse sale, sidewalk sale, craft fair, carnival, picnic, contest, game, sporting event, rodeo, 5K run, produce stand, farmers market, Christmas tree sales lot, or similar promotion event.

Sec. 11.102 Permit Required: Special events as defined require a Special Events permit. An application for a special events permit must be filed with the Village Clerk not less than three weeks prior to the first day of the special event. The Village Clerk will coordinate review of the permit with affected village departments. Cost for permit issuance will be set by the Village Board of Trustees.

Sec. 11.103 Liquor Sales: A Class “F” liquor license may be issued to the holder of any valid Class “A” or Class “C” license for any premises or area immediately adjacent to and extending no more than 100 feet from the licensed premises described in the then current license so issued to permit the sale of liquor at a Special Event.

Sec. 11.104 Duration of Special Event: The duration of any special event will not exceed three days.

Section 11.105 Application Required: With each Special Events permit application, the applicant must also provide the following related information (if applicable):

1. Traffic and parking plan (parking area; street closing or one-way restrictions; traffic control points where police assistance may be needed; overflow parking areas);
2. Contingency plans for rain (relocation or rescheduling of events; alternative parking areas; method of notifying the public of changes);
3. Proof of liability insurance; and if the event is held on village property, the village shall be named as an additional insured with coverage limits in an amount deemed acceptable by the Village President;
4. Health permits for all food concessions;
5. Liquor license information for alcohol sales (including hours of sale);
6. Plans for toilet facilities;
7. A list of for-profit vendors and sales tax numbers (to verify that sales tax is collected and remitted) to be provided prior to the event;
8. A security plan;
9. The name and phone number for the person in charge of the event and a secondary contact;
10. Special consideration requests, i.e. Village provided assistance requested for street closings, park needs, police, being as specific as possible (Fees may be charged for these services);
11. Electrical inspections are required for all exterior electrical connections. Notice must be given 24 hours prior to inspection.

Section 11.106 Special Restrictions: The Village of Deer Creek reserves the right to impose such terms and conditions upon the award of the Special Event Permit as deemed necessary by the President and Board of Trustees, which restrictions shall be reasonably calculated to protect public order and safety in light of the particular circumstances of the Special Event.

Article 2 - Scavengers

Sec. 11.201 License Required: It shall be unlawful for any person, firm or corporation to engage in the business of scavenger, or the collection or disposal of animal, or vegetable refuse, or offal, without having first secured a permit therefore. The annual fee for such permit shall be Twenty Dollars (\$20.00).

Sec. 11.202 Application: Application for such license shall be made to the Village Clerk and shall be referred by him to the Village Council; no such permit shall be issued except on order of the Village Council. No more than two such licenses shall be in force at any time in the Village. In granting a yearly license, first preference shall be given to those parties who presently hold a license if such present holder is in compliance with this Article.

Sec. 11.203 Vehicles: Any vehicle used by such scavenger in his business shall be water tight and equipped with air tight covers for such portions as are used for the transportation of refuse.

Sec. 11.204 Insurance: No license shall be issued under the provisions of this Chapter unless the applicant for such license has first submitted proof of insurance in the form of a certificate of insurance issued by an insurer duly authorized to issue such policies in the State of Illinois. Such certificates shall show that the applicant for a license has public liability insurance covering his operation within the Village; shall show the date of expiration of such insurance and shall certify that the same shall not be canceled without at least ten days notice to the Village Clerk. Upon cancellation or expiration without renewal of such insurance, the license or permit issued hereunder to the insured shall be void. Such insurance shall be in the amount of not less than one hundred thousand dollars (\$100,000.00) for all personal injuries arising from one accident, and not less than twenty-five thousand dollars (\$25,000.00) for property damage in any one accident.

Sec. 11.205 Complying with Chapter: Licenses shall comply with all Chapter provisions relating to the business and will properly dispose of all garbage and refuse collected. A failure to comply with the provisions hereof because of conditions, acts or occurrences beyond the control of the licensee, or mechanical failure of equipment repaired or replaced as promptly as possible, shall not be considered a breach of these conditions.

Sec. 11.206 Disposal: It shall be unlawful for any scavenger to dispose of or store any refuse in any place within the Village limits, or within one mile thereof, excepting with the permission of the President and Village Council.

Sec. 11.207 Penalty: Any person, firm or corporation violating any provision of this Chapter shall be fined not less than One Hundred Dollars (\$100.00) nor more than Seven Hundred Fifty Dollars (\$750.00) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Article 3 - Solicitors

Sec. 11.301 Definitions: For the purpose of this Article, the following words as used herein shall be considered to have the meaning herein ascribed thereto:

1. "Itinerant Merchant" Any person engaging temporarily in the retail or wholesale sale of goods, services, wares or merchandise in any place within the Village of Deer Creek and who, for the purpose of conducting such business, occupies any lot, building, room or structure of any kind. For the purposes of this definition, "temporarily" shall mean for a period of time not exceeding one hundred (100) days in a calendar year. A person who is a peddler is not an itinerant

merchant. A person operating a store or stand at any fair or special event declared exempt from the provisions of this chapter by the Village Board of the Village of Deer Creek is not an itinerant merchant.

2. "Peddler" Any person who sells or offers for sale, barter or exchanges any goods, wares, food items, merchandise or services of any kind (1) while traveling from place to place in, along or upon the streets, alleys or sidewalks of the village of Deer Creek; or (2) from any public place within the Village.
3. "Residence" shall mean and include every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.
4. "Solicitor" Any person who engages in one or more of the following activities within the Village of Deer Creek: (1) seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs or services of any kind; (2) seeking to obtain prospective customers for application or purchases of insurance or financial services of any type, kind or character; (3) seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication; or (4) seeking to obtain gifts or contributions of money, clothing or any other valuable thing.

Sec. 11.302 License Requirement and Types of Licenses:

- A. It shall be unlawful for any person to act as a peddler, itinerant merchant or solicitor in the Village of Deer Creek without having first obtained a license therefor as provided herein.
- B. The fee for the license required by this Chapter shall be set by the Board of Trustees.
- C. No license issued under this Chapter shall be transferable.
- D. There shall be three classes of licenses available to peddlers, itinerant merchants and solicitors as follows:
 1. Daily License. A daily license shall be effective for the one calendar day specified on the face of the license. The license shall be effective at 12:01 a.m. on the specified day and shall expire at 11:59 p.m. on that same day.
 2. Monthly License. A monthly license shall be available for the one calendar month specified on the face of the license. The license shall be effective at 12:01 a.m. on the first day of the calendar month and shall expire at 11:59 p.m. on the last day of the calendar month.
 3. Yearly License. A yearly license shall be effective for the one calendar year specified on the face of the license. The license shall be effective at 12:01 a.m. on January 1 of the given year and shall expire at 11:59 p.m. on December 31 of the given year.

Sec. 11.303 Application:

- A. Application for licenses required by Section 11.302 of this Chapter shall be made in writing to the Village Clerk or his or her designee and shall state thereon:
 1. The name and permanent address of applicant;
 2. The kind of merchandise or nature of service to be sold or contracted for;
 3. The proposed area or place where the business is sought to be conducted;
 4. The proposed hours during which business will be conducted;
 5. The state sales tax number of the operator;
 6. A description of the vehicle to be used in the conduct of said business, if any, along with the license plate number of the same;
 7. Whether the applicant has ever been convicted of the commission of a felony; and
 8. In the case of a corporation or firm, the name of the corporation or firm, its permanent business address and the names of the principal officers of the same.
- B. In addition, all applicants shall be required to furnish state issued photo identification to the Village Clerk.

- C. Upon receipt of the application, the Chief of Police shall make an investigation of the applicant's business responsibility for the protection of public welfare and safety. The license shall not be issued to an applicant who has been convicted of the commission of a felony under the laws of the State of Illinois or any other state or federal law of the United States within five years of the date of the application nor to any person who has been convicted of the violation of any provisions of this Chapter, nor to any person whose license issued hereunder had previously been revoked as herein provided. The Chief of Police shall approve or deny the application within thirty days of receipt of the application. The Village of Deer Creek shall inform the applicant of approval or denial.
- D. Upon the approval of the Chief of Police, the Village Clerk shall issue the requested license and shall cause the same to be delivered to the applicant. Licenses issued hereunder shall state the expiration date thereof.

Sec. 11.304 Regulations on the Conduct of Licensees:

- A. Any person receiving a license hereunder shall prominently display said license on his or her person at all times when engaged in business in the village.
- B. Every vehicle or conveyance used by a person licensed hereunder shall be conspicuously marked with the name of the license holder or his or her employer. This provision shall apply to peddlers only.
- C. It shall be unlawful to engage in soliciting or peddling prior to 9:00 a.m. or after 7:00 p.m.
- D. It shall be unlawful for itinerant merchants to conduct their business upon public streets, alleys or other public locations in the Village unless a specific location has been approved in advance by the Village Board of the Village of Deer Creek.
- E. Any person licensed pursuant to this chapter shall display his or her license upon the demand of any police officer or upon the request of any person whose premises he or she seeks to enter.

Sec. 11.305 Appeal Procedure:

- A. Any person whose application for a license is denied or whose license granted under this chapter is revoked as provided herein shall have the right to appeal to the Board of Trustees. The appeal shall be taken by filing with the Board of Trustees within fourteen (14) days after notice of the decision has been mailed to such person's last known address a written statement setting forth the grounds for appeal. The Board of Trustees shall set the time and place for hearing. Notice for such hearing shall be mailed to the aggrieved individual at his or her last known address at least ten (10) days prior to the date set for the hearing.
- B. The order of the board of Trustees after the hearing shall be final.

Sec. 11.306 Violation of Other Laws or Regulations: Any license holder who violates any ordinance, state statute, federal law or any government agency rule or regulation shall upon notice of such violation immediately cease selling all products or property and turn his or her license into the village at which time it shall be considered void.

Sec. 11.307 Exemptions from Application and License Requirements: The following shall be exempt from the application and license process ordinarily required by this Chapter:

- A. Prior Invitation. Any person who, for the purpose of selling or taking orders for the sale of merchandise or services, has been previously invited by the occupant of a residence to call thereon.
- B. Farmers. Any person whose principal occupation is that of a farmer who sells products of their own farm, vineyard, orchard or garden.
- C. Newspaper Vendors. Any person who, on behalf of the publisher of any newspaper of general

- circulation within the Village, solicits to sell such newspaper.
- D. Garage Sales. Any person who, outside their usual employment, conducts the casual sale of tangible personal property on private property, which sale is advertised by any means whereby the public at large is or can be made aware of said sale; provided, however, that any person conducting a garage sale or similar casual sale more than four times within a twelve month period or more than four consecutive calendar days at any occurrence shall not be exempt from the application and license provisions of this Chapter.
 - E. Not-for-Profit Entities. Any government entity, not-for-profit corporation or organization, religious organization or school-related activity.
 - F. Local Regular Route-Based Sales. Businesses with a permanent or physical place of business within fifty miles of the Village of Deer Creek and who have an established regular route for delivering retail products to the Village of Deer Creek.
 - G. Children. Sales by any person under the age of twelve years old.

Sec. 11.308 Festivals and Special Events: The Village Board may from time to time enact rules and regulations establishing the procedure and requirements for declaring festivals and special events exempt from some or all of the provisions of this Chapter.

Sec. 11.309 Penalty: Any person violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Seven Hundred Fifty Dollars (\$750.00) for each offense.

Revised September 2016 Ord. 631

Article 4 – Adult Businesses

Sec. 11.401 Definitions: For the purpose of this Article, the following words and phrases shall have the meaning respectively prescribed to them by this Section.

1. “Adult Book Stores” An establishment having as a substantial portion of its stock in trade, books, magazines, films for sale or viewing on the premises by use of motion picture devices or any other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to ‘specified sexual activities,’ or “specified anatomical areas’ or an establishment with a segment or section devoted to the sale or display of such material.
2. “Adult Motion Picture Theater” An enclosed building with a capacity of fifty (50) or more persons used regularly and routinely for presenting motion pictures having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.
3. “Adult Mini-Motion Picture Theater” An enclosed building with a capacity for less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to ‘specified sexual activities” or “specified anatomical areas” for observation by patrons therein.
4. “Adult Entertainment Cabaret” A public or private establishment, which is licensed to serve food and/or alcoholic beverages, which features topless dancers and/or waitresses, strippers, male or female impersonators, male dancers, male dancers that have human, male genitals in a discernible turgid state even if completely covered, male or female dancers, wrestlers or boxers which emphasize and seek to arouse or excite the patrons sexual desires, or similar entertainers.

Revised: November 1997 Ord. #425

5. “Body Shop or Model Studio” Any public or private establishment which describes itself as a body shop or model studio, or where for any form of consideration or gratuity, figure models who display “specified anatomical areas” are provided to be observed, sketched, draw, painted, sculptured, photographed, or similarly depicted by persons paying such consideration or gratuity,

or where for any form of consideration or gratuity, nude and seminude dancing, readings, counseling sessions, body painting, and other activities that present materials distinguished or characterized by an emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” are provided for observation by or communication to persons paying such consideration or gratuity.

6. “Building Structure” Any structure or group of structures housing two or more businesses which share a common entry, exit, wall, or frontage wall, including, but not limited to, shopping centers, shopping malls, shopping plazas, or shopping squares.

7. “Massage Establishment” Any establishment having a fixed place of business where any person, firm, association, or corporation engages in, or carries on, or permits to be engaged in or carried on any of the activities mentioned in (10) of this Section.

8. “Specific Activities” Specified sexual activities are any of the following conditions:

(a) Human genitals in a state of sexual stimulation or arousal.

(b) Acts or representations of acts of human masturbation, sexual intercourse or sodomy, bestiality, oral copulation, or flagellation

(c) Fondling or erotic touching of human genitals pubic region, buttock, or female breast.

(d) Excretory functions as part of or in connection with any activities set forth in (a) through (c) above.

9. “Specific Areas” Specified anatomical areas are any of the following conditions:

(a) Less than completely and opaquely covered:

(i) Human genitals, pubic region, or pubic hairs

(ii) Buttock; and

(iii) Female breast below a point immediately above the top of the areola: and

(b) Human male genitals in a discernibly turgid state, even if completely covered.

10. “Massage” Any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or other parts of the human body or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

Sec. 11.402 Adult Uses Enumerated: The following shall be considered adult uses for the purpose of this Article:

1. Adult book store
2. Adult motion picture theater
3. Adult mini-motion picture theater
4. Adult entertainment cabaret
5. Massage establishment
6. Body shop or model studio

Sec. 11.403 Limitations on Adult Uses: Adult uses shall be permitted subject to the following restrictions:

1. An adult use shall not be allowed within six hundred (600) feet of another existing adult use.
2. An adult use shall not be located within six hundred (600) feet of any zoning district which is zoned for residential use, whether such residential use is for single family, two-family or multi-family use.
3. An adult use shall not be located within six hundred (600) feet of a pre-existing school, place of worship, or municipal park.
4. An adult use shall not be located in a building structure, which contains another business that

sells or dispenses in some manner alcoholic beverages, should such a use for selling or dispensing alcoholic beverages later be at any time authorized within the Village.

5. Any adult use doing business at the time this Article takes effect shall have one (1) year from the effective date of this Article to comply with the provisions of Paragraphs (1) through (4) inclusive, of this Section.
6. Any adult use doing business at the time this Article takes effect shall have thirty (30) days from the effective date of this Article to apply for the issuance of an adult use license.
7. Any adult use shall not have more than one outdoor sign advertising its' existence or location. The one outdoor sign that is allowed shall not exceed ten (10) feet in height or three (3) feet in width and the sign shall not contain any emphasis, either by wording or picture, or otherwise, of matters relating to sexual activities.
8. All adult uses shall post a notice at its' door that entry of persons under the age of eighteen (18) is forbidden.

Sec. 11.404 Measurement of Distances: For the purposes of this Article, measurements shall be made in a straight line, without regard to intervening structures or objects, from the property line of the adult use to the nearest property line of another adult use, school, place of worship, municipal park, or district zoned for residential use.

Sec. 11.405 License Required; Filing of Application; Filing Fee: It shall be unlawful for any person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises in the Village, the operation of an adult use as herein defined, without first having obtained a separate license for such adult use from the President of the Village. Every applicant for a license to maintain, operate, or conduct an adult use shall file an application in duplicate under oath with the President upon a form provided by the Village Clerk and pay a nonrefundable filing fee of five hundred dollars (\$500.00) to be delivered to this Village through the Village Clerk, who shall issue a receipt which shall be attached to the application filed with the President.

Within ten (10) days after receiving the application, the President shall notify the applicant that his application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty days unless otherwise agreed to by the applicant. Upon conclusion of such additional investigation, the President shall advise the applicant in writing whether the application is granted or denied. Whenever an application is denied or held for further investigation, the President shall advise the applicant in writing of the reasons for such action. Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath or affirmation regarding said application or his or her refusal to submit to or cooperate with any inspection or investigation required by this Article shall constitute an admission by the applicant that he or she is ineligible for such permit and shall be grounds for denial thereof by the President.

Revised: November 1997 Ord. #425

Sec. 11.406 Contents of Application for License: An applicant for a license shall furnish the following information under oath or affirmation about the applicant and any partner or limited partner of a partnership application and any officer or director of a corporate applicant and any stockholder owning more than five (5) percent of the stock of a corporate applicant:

1. Name and address.
2. Written proof that the individual is at least eighteen (18) years of age.
3. The exact nature of the adult use to be conducted and the proposed place of business and facilities thereto.
4. The legal description of the property upon which such proposed adult use business will be

conducted and a statement of whether or not such usage is prohibited by the terms of any lease of said premises or by any covenant running with the land.

5. A statement by applicant that he is familiar with this Article and will comply with the terms thereof.
6. All residential addresses maintained by the applicant for the past five (5) years.
7. The applicant's height, weight, color of eyes, hair, date of birth and drivers license number.
8. The business, occupation, employment of the applicant for the five (5) years immediately preceding the date of application.
9. A statement of similar businesses ever owned or participated in by the applicant including a statement as to whether the applicant has ever held a similar license by any other county or municipality and details of any revocation of any such license.
10. All criminal or civil ordinance violations, forfeiture of bond and pleadings of nolo contendere on all charges except minor traffic violations.
11. The fingerprints and photograph of the applicant.

Sec. 11.407 Issuance of Adult Use License: The President shall issue a license to maintain, operate, or conduct an adult use unless he finds:

1. That the applicant is under age of eighteen (18) years or under any legal disability.
2. That such use is not permitted under applicant's lease of the premises proposed to be used for such purpose or under a covenant running with the land.
3. That the applicant, at the time of application for renewal of any license issued under this Article, would not be eligible for such license upon a first application.
4. That the applicant, or any person listed in Section 11.406, has been convicted of a felony or crime of moral turpitude unless the applicant, or any person listed in Section 11.406, has affirmatively and clearly shown that the applicant, or the person listed in Section 11.406, has been fully rehabilitated.

Every adult use license issued pursuant to this Article will terminate at the expiration of one year from the date of its issuance, unless sooner revoked.

Sec. 11.408 Suspension or Revocation of License for Adult Use: Any license issued for an adult use may be revoked or suspended by the President if the President shall find:

1. That the licensee has violated any of the provisions of this Article regulating adult uses.
2. The licensee has knowingly furnished false or misleading information or withheld relevant information on any application for any license or permit required by this Article or knowingly caused or suffered another to furnish or withhold such information on his or her behalf.

The President before revoking or suspending any license shall give the licensee at least ten (10) days' written notice of the charges against him or her and the opportunity for a public hearing before the President, at which time the licensee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

Sec. 11.409 Automatic Suspension:

1. In the event a person under the age of eighteen (18) years is on the premises of an establishment operating as an adult use under this Article, and views any "specified sexual activities" or "specified anatomical areas" as defined in Section 11.401 of this Article, then the license issued pursuant to this Article shall be suspended for a period of three (3) months.
2. In the event a licensee is convicted of violating any of the provisions of Ill. Rev. Stat. (1979) Ch. 38, Section 11-20 as now in force or as may be amended from time to time or any Article of this Village with reference to obscenity, then the license issued pursuant to this Article shall be suspended for a period of three (3) months.

3. The President, before suspending any license, shall give at least ten (10) days written notice of the charge. The licensee may within five (5) days of receipt of said notice request a public hearing before the President at which time the licensee may present evidence bearing upon the question. The notice required hereunder may be delivered personally to the licensee or be posted on the premises of the establishment being used as an adult use.

Sec. 11.410 Exterior Display: No adult use shall be conducted in any manner that permits the observation of any material depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” by display, decoration, sign, show window, or other opening from any public way or from any property not licensed as an adult use.

Sec. 11.411 Display of License and Permit: Every licensee shall display a valid license in a conspicuous place within the adult use business so that the same may be readily seen by persons entering the premises.

Sec. 11.412 Employment of Persons Under Age of Eighteen (18) Prohibited: It shall be unlawful for any adult use licensee or his manager or employee to employ in any capacity within the adult business any person who is not at least eighteen (18) years of age.

Sec. 11.413 Illegal Activities on Premises: No licensee or any officer, associate, member, representative, agent or employee of such licensee shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the licensed premises which is prohibited by any ordinance of the Village or law of the State of Illinois or of the United States.

Sec. 11.414 Severability Clause: If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Article, or any part thereof, or application thereof to any person, firm, corporation, public agency, or circumstance, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article or any part thereof. It is hereby declared to be the legislative intent of the Village Council that this Article would have been adopted had such unconstitutional or invalid provision, clause, sentence, paragraph, section or part thereof not then been included.

Sec. 11.415 Violation and Penalty: Any person who shall violate any of the provisions of this Article shall be fined as provided herein. A person who is convicted shall be punished by a fine of not less than One Hundred Dollars (\$100.00) or more than Seven Hundred Fifty Dollars. (\$750.00)

Revised: November 1993 Ord. #375

Article 5 – Utility Tax

Sec. 11.501 Amount of Tax: A tax is imposed on all persons engaged in the following occupations or privileges:

- a. Persons engaged in the business or transmitting message by means of electricity, at the rate of 5% of the gross receipts from such business originating within the corporate limits of Deer Creek.
- b. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of Deer Creek, and not for resale, at the rate of 5% of the gross receipts therefrom.

Sec. 11.502 Constitutional Exemption: No tax is imposed by this Chapter with respect to any transaction in interstate commerce or otherwise to the extent to which such business may not, under the constitution and statutes of the United States, be made subject to taxation by this State or any political subdivision thereof: nor shall any persons engaged in the business of distributing, supplying, furnishing or selling gas, or electricity, or engaged in the business of transmitting messages be subject to taxation under the provisions of this Chapter for such transactions as are or may become subject to taxation under the provisions of the "Municipal Retailers Occupation Tax Act: authorized by Section 8-11-1 of the Illinois Municipal Code.

Sec. 11.503 Continuation of Other Obligations: Such tax shall be in addition to the payment of money, or value of products or services furnished to this municipality by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, thereon or thereunder of poles, wires, pipes or other equipment used in the operation of the taxpayers' business.

Sec. 11.504 Definitions: For the purposes of this Article the following definitions shall apply:

1. "Gross Receipts" means the consideration received for the transmission of messages, or for distributing, supplying, furnishing or selling gas, electricity, for the use or consumption and not for resale, as the case may be; and for all services rendered in connection therewith valued in money, whether received in money or otherwise, including cash, credit, services and property of every kind and material and for all services rendered therewith: and shall be determined without any deduction on account of the cost of transmitting said messages without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever.
2. "Transmitting messages", in addition to the usual and popular meaning of person to person communication, shall include the furnishing, for a consideration, of services or facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where such persons do not, in turn, receive any consideration in connection therewith, but shall not include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration, by such persons to other persons, for the transmission of messages.
3. "Persons" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, municipal corporation or political subdivision of this State, or a receiver, trustee, conservator or other representative appointed by order of any court.
4. "Utility" means any person, as defined in Section 11.504 (3) of the Article that is engaged in the occupations or privileges described in Section 11.501 of this Article.

Sec. 11.505 Effective Date: This Article shall take effect after publication and the tax provided for herein shall be based on the gross receipts, as herein defined, actually paid to the utility for services billed on or after the 1st day of May 1994.

Sec. 11.506 Reporting: On or before the first day of August 1994, each utility shall make a return to the Village Treasurer for the months of April, 1994; May, 1994 and June, 1994, stating:

1. His name
2. His principal place of business
3. His gross receipts during those months upon the basis of which the tax was imposed
4. Amount of tax
5. Such other reasonable and related information as the corporate authorities may require

On or before the first day of every third month thereafter, each utility shall make a like return to the Village Treasurer for a corresponding three months period. The utility making the return herein provided for shall, at the time or making such return, pay to the Village Treasurer, the amount of tax herein imposed provided that in connection with any return the utility may, if he so elects, report and pay in an amount based upon his total billings of business subject to the tax during the period for which the return is made (exclusive of any amounts previously billed) with prompt adjustments of later payments based upon any differences between such billings and the taxable gross receipt..

Sec. 11.507 Credit for Mistakes: If it shall appear that an amount of tax has been paid which was not due under the provisions of this Article, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due, or to become due, under this Article from the utility who made the erroneous payment: provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefore shall be so credited.

Sec. 11.508 Statute of Limitations: No action to recover any amount of tax due under the provisions of this Article shall be commenced more than three (3) years after the due date of such amount.

Sec. 11.509 Penalty: Any utility who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this Article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) and in addition shall be liable in a civil action for the amount of tax due.

Sec. 11.510 Collection Fee: Each of the persons defined in Section 11.501 of this Article shall be entitled to collect, as compensation for acting as collecting agent for the Village, the sum of .15% of the gross receipts as defined in Section 11.504(1.). This collection fee or .15% shall be in addition to the tax imposed in Section 1.

Sec. 11.511 Savings Clause: If any section or part of this Article is held invalid, it shall not affect the validity of the remainder of this Article.

Revised: February 1994 Ord. #377

Article 6 – Telecommunications Infrastructure Maintenance Fee

Sec. 11.601 Definitions: As used in this Article, the following terms shall have the following meanings:

1. “Gross Charges” means 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 such 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:
 - (a) any amounts added to a purchaser’s bill because of a charge made under: (i) the fee imposed by this Section, (ii) additional charges added to a purchaser’s bill under Section 9-221 or 9-222 of the Public Utilities Act, (iii) amounts collected under Section 8-11-17 of the Illinois Municipal Code, (iv) the Tax imposed by the Telecommunications Excise Tax Act, (v) 911 surcharges, or (vi) the tax imposed by Section 4251 of the Internal Revenue Code;

- (b) charges for a sent collect telecommunication received outside the Village;
 - (c) 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. Such 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;
 - (d) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;
 - (e) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Village;
 - (f) 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 such services;
 - (g) 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);
 - (h) charges paid by inserting coins in coin-operated telecommunications devices; or
 - (i) charges for telecommunications and all services and equipment provided to the Village.
2. “Public Right-of-Way” means 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. “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.
 3. “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 such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.
 4. “Sale of telecommunications at retail” means 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.
 5. “Service address” means 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.

6. "Telecommunications" 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. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "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 him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of inter-company 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. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47U.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.D.F. 7b.1550 and following) as now or hereafter amended.
7. "Telecommunications provider" means (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.
8. "Telecommunications retailer" or "retailer" or "carrier" means and 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 such 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.
9. "Wireless telecommunications" includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 U.S.C. §332(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

Sec. 11.602 Registration of telecommunications providers:

1. Every telecommunications provider as defined by this Article shall register with the Village within 30 days after the effective date of this Article 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 15.604(c) this Article shall be deemed to have registered in accordance with this Section.
2. Every telecommunications provider who has registered with the Village pursuant to Section 11.602 (1) has an affirmative duty to submit an amended registration form or current return as required by Section 11.604(3), 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.

Sec.11.603 Municipal telecommunications infrastructure maintenance fee:

1. A Village telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of one per cent (1%) of all gross charges charged by the telecommunications retailer to service addresses within the Village for telecommunications originating or received in the Village.
2. Upon the effective date of the infrastructure maintenance fee authorized in this Article, 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. Imposition of the infrastructure maintenance fee provided under this Article does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.
3. The Village telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in Section 11.604 of this Article.

Sec. 11.604 Collection, enforcement, and administration of telecommunications infrastructure maintenance fees:

1. 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.
2. 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. However, in the event that the total amount to be remitted to the Village is less than \$10.00 per month the telecommunications retailer shall remit to the Village not later than the last day of each January the infrastructure maintenance fee for the preceding calendar year that was collected pursuant to this Section after deduction of the foregoing two percent (2%) fee that may be retained by the telecommunications retailer.

Revised: December 1998 Ord. #439

3. Remittance of the municipal infrastructure fee to the Village shall be accompanied by a return, in a form to be prescribed by the Village, which shall contain such information as the Village may reasonably require.
4. Any infrastructure maintenance fee required to be collected pursuant to this Article and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the Village. The charge imposed under Section 11.604(1) by the telecommunications retailer pursuant to this Article shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.
5. If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this Article, whether as a result of a mistake or fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this Article, from the telecommunications retailer who made the erroneous payment; provided, however, the Village may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than three years after the date of the erroneous payment unless, (1) the credit is used only to offset a claim or underpayment made by the Village within the applicable statutory period of limitations, and (2) the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.

6. Amounts paid under this Article by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:
- (a) “gross charges” for purposes of the Telecommunications Excise Tax Act;
 - (b) “gross receipts” for purposes of the municipal utility tax as prescribed in Section 8-11-2 of the Illinois Municipal Code;
 - (c) “gross charges” for purposes of the municipal telecommunications tax as prescribed in Section 8-11-17 of the Illinois Municipal Code;
 - (d) “gross revenue” for purposes of the tax on annual gross revenue of public utilities prescribed in Section 2-202 of the Public Utilities Act.
7. The Village shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Article to determine whether the telecommunications retailer has properly accounted to the Village for the Village infrastructure maintenance fee. 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 five (5%) percent 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 five (5%) percent of the total amount of the underpayment determined in an audit. Said sum shall be paid to the Village within twenty-one (21) days after the date of issuance of an invoice for same.
8. The Village may promulgate such further or additional regulations concerning the administration and enforcement of this Article, consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to Section 11.602 of this Article of such regulations.

Sec. 11.605 Compliance with Other Laws: Nothing in this Article shall excuse any person or entity from obligations imposed under any law, including but not limited to:

- 1. Generally applicable taxes; and
- 2. 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; and
- 3. Any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and
- 4. Compliance with any ordinance or provision of this Code concerning uses or structures not located on, over, or within the right-of-way.

Sec. 11.606 Existing Franchises and Licenses: Any franchise, license, or similar agreements between telecommunications retailers and the Village entered into before the effective date of this Article 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.

Sec. 11.607 Penalties: Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Article shall be subject to fine in accordance with the general penalty provisions of the Deer Creek Village Code.

Sec. 11.608 Enforcement: Nothing in this Article shall be construed as limiting any additional or further remedies that the Village may have for enforcement of this Article.

Sec. 11.609 Severability: If any section, subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Sec. 11.610 Conflict: This Article supersedes all Village Ordinances adopted prior hereto, which are in conflict herewith, to the extent of such conflict.

Sec. 11.611 Waiver and Fee Implementation:

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. This waiver shall only be effective during the time the Infrastructure Maintenance Fee provided for in this Article is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

2. 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.

3. The Village infrastructure maintenance fee provided for in this Article shall become effective and imposed on the first day of the month not less than ninety (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 such existing franchise, license, or similar agreement during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the Village. The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence.

Revised: January 1998 Ord. #429

Article 7 – Municipal Utility Tax for Electricity Only

Sec. 11.701 Tax Imposed:

1. A tax is imposed on all persons engaged in the following occupations or privileges: The privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the municipality at the following rates, calculated on a monthly basis for each purchaser:

- (i) For the first 2,000 kilowatt-hours used or consumed in a month; 0.396 cents per kilowatt-hour;
- (ii) For the next 48,000 kilowatt-hours used or consumed in a month; 0.259 cents per kilowatt-hour;
- (iii) For the next 50,000 kilowatt-hours used or consumed in a month; 0.234 cents per kilowatt-hour;
- (iv) For the next 400,000 kilowatt-hours used or consumed in a month; 0.227 cents per kilowatt-hour;
- (v) For the next 500,000 kilowatt-hours used or consumed in a month; 0.221 cents per kilowatt-hour;
- (vi) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.208 cents per kilowatt-hour;
- (vii) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.204 cents per kilowatt-hour;
- (viii) For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.201 cents per kilowatt-hour;
- (ix) For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.198 cents per kilowatt-hour; and
- (x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month; .195 cents per kilowatt-hour.

The tax rates set forth in the preceding table will be used at least through December 31, 2008, are proportional to the rates enumerated in 65 ILCS § 5/8-1 1-2 (as modified by Public Act 90-56 1), and do not exceed the revenue that could have been collected during 1997 using the rates enumerated in 65 ILCS § 5/8-11-2 (as modified by Public Act 90-56 1).

2. Pursuant to 65 ILCS §5/8-11-2, the rates set forth in subsection (a) above shall be effective: (A) on August 1, 1999 for residential customers; and (B) on the earlier of (1) the last bill issued prior to December 31, 2000, or (2) the date of the first bill issued pursuant to 220 ILCS § 5/16-104, for nonresidential customers.

3. The provisions of Section 11.501 shall not be effective until August 1, 1999.

Sec. 11.702 Exceptions: None of the taxes authorized by this Article may be imposed with respect to any transaction in interstate commerce or otherwise to the extent to which the business or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State or any political sub-division thereof; nor shall any persons engaged in the business of distributing, supplying, furnishing, or selling or transmitting gas, water, or electricity, or engaged in the business of transmitting messages, or using or consuming electricity acquired in a purchase at retail, be subject to taxation under the provisions of this Article for those transactions that are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by Section 8-1 1-1; nor shall any tax authorized by this Article be imposed upon any person engaged in a business or on any privilege unless the tax is imposed in like manner and at the same rate upon all persons engaged in businesses of the same class in the municipality, whether privately or municipally owned or operated, or exercising the same privilege within the municipality.

Sec. 11.703 Additional Taxes: Such tax shall be in addition to other taxes levied upon the taxpayer or its business.

Sec. 11.704 Collection: The tax authorized by this Article shall be collected from the purchaser by the person maintaining a place of business in this State who delivers the electricity to the purchaser. This tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser and if unpaid, is recoverable in the same manner as the original charge for delivering the electricity. Any tax required to be collected pursuant to this Article and any such tax collected by a person delivering electricity shall constitute a debt owed to the municipality by such person delivering the electricity. Persons delivering electricity shall collect the tax from the purchaser by adding such tax to the gross charge for delivering the electricity. Persons delivering electricity shall also be authorized to add to such gross charge an amount equal to 3% of the tax to reimburse the person delivering electricity for the expense incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the municipality upon request. If the person delivering electricity fails to collect the tax from the purchaser, then the purchaser shall be required to pay the tax directly to the municipality in the manner prescribed by the municipality. Persons delivering electricity who file returns pursuant to this paragraph (c) shall, at the time of filing such return, pay the municipality the amount of the tax collected pursuant to this Article.

Sec. 11.705 Reports to Municipality: On or before the last day of each month, each taxpayer shall make a return to the Village for the preceding month stating:

1. His name.
2. His principal place of business.
3. His gross receipts and/or kilowatt-hour usage during the month upon the basis of which the tax is imposed.
4. Amount of tax.

5. Such other reasonable and related information as the corporate authorities may require. The taxpayer making the return herein provided for shall, at the time of making such return, pay to the Village, the amount of tax herein imposed; provided that in connection with any return, the taxpayer may, if he so elects, report and pay an amount based upon his total billings of business subject to the tax during the period for which the return is made (exclusive of any amounts previously billed) with prompt adjustments of later payments based upon any differences between such billings, and the taxable gross receipts.

Sec. 11.706 Credit for Over-payment: If it shall appear that an amount of tax has been paid which was not due under the provisions of this Article, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due, or to become due, under this Article from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefore shall be so credited.

Sec. 11.707 Statute of Limitations: No action to recover any amount of tax due under the provisions of this Article shall be commenced more than three (3) years after the due date of such amount.

Sec. 11.708 Penalty: Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this Article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One hundred Dollars (\$100.00) nor more than Seven Hundred Fifty Dollars (\$750.00) in addition, shall be liable in a civil action for the amount of tax due. (See 65 ILCS 5/8-11-2)

Revised: June 1999 Ord. #442

Article 8 – Video Gaming Terminals

Sec. 11.801 Definitions: All terms and phrases not defined in this Article shall have the meaning ascribed to them in the video Gaming Act, 230 ILCS 40/1 et al.

Sec. 11.802 License Required: It shall be unlawful to display any video gaming terminal to be played or operated by the public within the Village of Deer Creek without having obtained a license and video gaming sticker from the Village of Deer Creek.

Sec. 11.803 Prerequisites to the Issuance of a Video Gaming Terminal License: To be eligible to be issues a video gaming terminal license by the Village of Deer Creek, the applicant must:

1. Hold a valid liquor license in good standing with the State of Illinois.
2. Hold a valid liquor license from the Village of Deer Creek, which license is in good standing at the time of application.
3. Hold a license to operate a video gaming terminal from the Illinois Gaming Board at the premises for which the Village of Deer Creek license is sought.

Sec. 11.804 Amount of Fees: The annual fee to operate a video gaming terminal in the village shall be \$25.00 per terminal. The license fee shall be a yearly fee. No proration of such fee shall be had if the applicant operates its video gaming terminal for less than the entire year for which the license fee is paid.

Sec. 11.805 Term of License: The term of a village of Deer Creek video gaming terminal license for the licensed premises. All renewal applications for the Village of Deer Creek video gaming terminal licenses shall be required to be submitted at the same time as renewal application for a Village of Deer Creek liquor license for the licensed premises.

Sec. 11.806 License Procedures: Prior to installation or use of any video gaming terminal, any liquor license holder seeking to display such terminals to be played or operated by the public shall first obtain a license from the State of Illinois Gaming Board. After obtaining such license, the applicant shall submit to the Village a copy of the State issued license, and an application for a Village of Deer Creek video gaming license on such form as may be made available from the Village of Deer Creek. At the time of application, the applicant shall provide to the Village of Deer Creek such further information as may be requested by any officer or official of the Village including, but not limited to, the Local Liquor Commissioner.

Sec. 11.807 Nature of License: A Village of Deer Creek video gaming terminal license shall be treated as a supplemental license to the licensed premises liquor license. Any violation of the Video Gaming Act, any violation of any provision of this Article, or any violation of Chapter 10 of the Village Code of the Village of Deer Creek shall constitute a violation of the terms and conditions of both the video gaming terminal license and the establishment's liquor license. Any suspension, revocation, termination or other disciplinary proceeding applicable to the licensed premises liquor license shall be applicable to its video gaming terminal license, and any proceedings applicable to the video gaming terminal license shall be applicable to the liquor license. A suspension, revocation or termination of either license shall automatically result in the suspension, revocation or termination of the other license. Any disciplinary proceeding relating to a video gaming terminal license shall utilize the same procedures as the disciplinary proceeding related to a liquor license as set forth in Chapter 10 of the Village Code.

Sec. 11.808 Location of Video Gaming Terminals: Any video gaming terminal utilized in the licensed premises shall be installed in a fixed location described in the license application and acceptable to the Local Liquor Commissioner. The video gaming terminal must be visible to staff of the licensed premises at all times. Video gaming terminals must be located in an area that is restricted to persons over 21 years of age.

Revised July 2013 Ord. 595

ARTICLE 9 - Cable/Video Service Provider Fee

Sec. 11.901 Definitions.

As used in this Article 9, the following terms shall have the following meanings:

- (a) "Cable service" means that term as defined in 47 U.S.C. § 522(5).
- (b) "Commission" means the Illinois Commerce Commission.
- (c) "Gross revenues" means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the holder for the operation of a cable or video system to provide cable service or video service within the holder's cable service or video service area within the Village.

(1) Gross revenues shall include the following;

- (i) Recurring charges for cable or video service
- (ii) Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
- (iii) Rental of set top boxes and other cable service or video service equipment.
- (iv) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.
- (v) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.

- (vi) Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
- (vii) A *pro rata* portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or service derived from the operation of the holder's network to provide cable service or video service within the Village. The allocation shall be based on the number of subscribers in the Village divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.
- (viii) Compensation received by the holder that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are received by the holder a compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to subsection (ix).
- (ix) In the case of a cable service or video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the holder's revenue attributable to the other services, capabilities, or applications shall be included in the gross revenue unless the holder can reasonably identify the division or exclusion of the revenue unless the holder can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
- (x) The service provider fee permitted by 220 ILCS 5/21-801(b).

(2) Gross revenues do not include any of the following:

- (i) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801 (C)(1)(vi).
- (ii) Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the holder of the State-issued authorization to the extent the refund, rebate, credit, or discount is attributable to cable service or video service.
- (iii) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing or any other revenues attributed by the holder to noncable service or nonvideo service in accordance with the holder's books and records and records kept in regular course of business and any applicable laws, rules, regulations, standards, or orders.
- (iv) The sale of cable services or video services for resale in which the purchaser is required to collect the service provider fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the Village and pay the fee permitted by 220 ILCS 5/21-801(b) with respect to the service.
- (v) Any tax or fee of general applicability imposed upon the subscribers or the transaction by a city, State, federal, or any other governmental entity and collected by the holder of the State-issued authorization and required to be remitted to the taxing entity, including sales and use taxes.
- (vi) Security deposits collected from subscribers.

- (vii) Amounts paid by subscribers to “home shopping” or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.
- (3) Revenue of an affiliate of a holder shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the holder has the effect of evading the payment of the fee permitted by 220 ILCS 5/21-801(b) which would otherwise be paid by the cable service or video service.
- (d) “Holder” means a person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.
- (e) “Service” means the provision of “cable service” or “video service” to subscribers and the interaction of subscribers with the person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.
- (f) “Service provider fee” means the amount paid under this Article and 220 ILCS 5/21-801 by the holder to the Village for the service areas within its territorial jurisdiction.
- (g) “Video service” means video programming and subscriber interaction, if any, that is required for the selection or use of such video programming services, and which is provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d) or any video programming provided solely as part of, and via, service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

Sec. 11.902 Cable/Video Service Provider Fee Imposed.

- (a) Fee Imposed. A fee is hereby imposed on any holder providing cable service or video service in the Village.
- (b) Amount of Fee. The amount of the fee imposed hereby shall be five percent (5%) of the holder’s gross revenues.
- (c) Notice to the Village. The holder shall notify the Village at least ten (10) days prior to the date on which the holder begins to offer cable service or video service in the Village.
- (d) Holder’s Liability. The holder shall be liable for and pay the service provider fee to the Village. The holder’s liability for the fee shall commence on the first day of the calendar month following thirty (30) days after receipt of the ordinance adopting this Article by the holder. The ordinance adopting this Article shall be sent by mail, postage prepaid, to the address listed on the holder’s application notice sent pursuant to 220 ILCS 5/21-401(b)(6) to the Village.
- (e) Payment Date. The payment of the service provider fee shall be due on the quarterly basis, forty-five (45) days after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.
- (f) Exemption. The fee hereby imposed does not apply to existing cable service or video service providers that have an existing franchise agreement with the Village in which a fee is paid.

- (g) Credit for Other Payments. An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(C) with credit for prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under Section 11.902(b).

Sec. 11.903 Applicable Principles.

All determinations and calculations under this Article shall be made pursuant to generally accepted accounting principles.

Sec. 11.904 No Impact on Other Taxes Due from Holder.

Nothing contained in this Article shall be construed to exempt a holder from any tax that is or may later be imposed by the Village, including any tax that is or may later be required to be paid by or through the holder with respect to cable service or video service. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the Village's simplified municipal telecommunications tax or any other tax as it applies to any telephone service provided by the holder. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the local unit of government's 911 or E911 fees, taxes or charges.

Sec. 11.905 Audits of Cable/Video Service Provider.

- (a) Audit Requirement. The Village will notify the holder of the requirements it imposes on other cable service or video service providers to submit to an audit or its books and records. The holder shall comply with the same requirements the Village imposes on other cable service or video service providers in its jurisdiction to audit the holder's books and records and to recompute any amounts determined to be payable under the requirements of the Village. If all local franchises between the Village and cable operator terminate, the audit requirements shall be those adopted by the Village pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.* No acceptance of amounts remitted should be construed as an accord that the amounts are correct.
- (b) Additional Payments. Any additional amount due after an audit shall be paid within thirty (30) days after the municipality's submission of an invoice for the sum.

Sec. 11.906 Late Fee / Payments.

All fees due and payments which are past due shall be governed by ordinances adopted by this municipality pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 *et seq.*
Revised August 2016 Ord. 628

Article 10 – Cable/Video Consumer Protection Law

Sec. 11.1001 Definitions.

As used in this Article “Cable and Video Consumer Protection Law” is defined to mean the statutes and regulations of 220 ILCS 5/70-501.

Sec. 11.1002 Adoptions.

The statutes and regulations of the Cable and Video Consumer Protection Law, 220 ILCS 5/70-501 are hereby adopted by reference and made applicable to the cable or video providers offering services within the Village's boundaries.

Sec. 11.1003 Amendments.

Any amendment to the Cable and Video Consumer Protection Law that becomes effective after the effective date of this Article shall be incorporated into this Article by reference and shall be applicable to cable or video providers offering services within the Village boundaries. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Article by reference without formal action by the corporate authorities of the Village.

Sec. 11.1004 Enforcement.

The Village does hereby pursuant to law declare its intent to enforce all of the customer service and privacy protection standards of the Cable and Video Protection Law with respect to complaints received from residents within the Village.

Sec. 11.1005 Penalties.

The Village, pursuant to 220 ILCS 5/70-501®(1), does hereby provide for a schedule of penalties for any material breach of the Cable and Video Protection law by cable or video providers in addition to the penalties provided in the law. The monetary penalties shall apply on a competitively neutral basis and shall not exceed \$750.00 for each day of the material breach and shall not exceed \$25,000.00 for each occurrence of a material breach per customer.

- (a) Material breach means any substantial failure of a cable or video provider to comply with service quality and other standards specified in any provision of the law.
- (b) The Village shall give the cable or video provider written notice of any alleged material breaches of the law and allow such provider at least 30 days from the receipt of this notice to remedy the specified material breach.
- (c) A material breach, for the purposes of assessing penalties, shall be deemed to occur for each day that a material breach has not been remedied by the cable or video service provider after the notice in (b).

Sec. 11.1006 Customer Credits.

The Village hereby adopts the schedule of customer credits for violations. Those credits shall be as provided for in the provisions of 220 ILCS 5/70-501(s) and applied on the statement issued to the customer for the next billing cycle following the violation or following the discovery of the violation. The cable or video provider is responsible for providing the credits and the customer is under no obligation to request the credit.

Revised August 2016 Ord. 629

Article 11 – Small Wireless Facilities

Sec. 11.1101 Definitions:

For the purposes of this Ordinance, the following terms shall have the following meanings:

1. **Antenna** – communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
2. **Applicable codes** – uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electric Safety Code.
3. **Applicant** – any person who submits an application and is a wireless provider.
4. **Application** – a request submitted by an applicant to the Village for a permit to collocate small wireless facilities, and a request that includes the installation of a new utility pole for such collocation, as well as any applicable fee for the review of such application.

5. **Collocate** or **collocation** – to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.
6. **Communications service** – cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(53), as amended; or wireless service other than mobile service.
7. **Communications service provider** – a cable operator, as defined in 47 U.S.C. 522(5), as amended; a provider of information service, as defined in 47 U.S.C. 153(24), as amended; a telecommunications carrier, as defined in 47 U.S.C. 153(51), as amended; or a wireless provider.
8. **FCC** – the Federal Communications Commission of the United States.
9. **Fee** – a one-time charge.
10. **Historic district** or **historic landmark** – a building, property, or site, or group of buildings, properties, or sites that are either (i) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i through Section VI.D.1.a.v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C; or (ii) designated as a locally landmarked building, property, site, or historic district by an ordinance adopted by the Village pursuant to a preservation program that meets the requirements of the Certified Local Government Program of the Illinois State Historic Preservation Office or where such certification of the preservation program by the Illinois State Historic Preservation Office is pending.
11. **Law** – a federal or State statute, common law, code, rule, regulation, order, or local ordinance or resolution.
12. **Micro wireless facility** – a small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.
13. **Municipal utility pole** – a utility pole owned or operated by the Village in public rights-of-way.
14. **Permit** – a written authorization required by the Village to perform an action or initiate, continue, or complete a project.
15. **Person** – an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.
16. **Public safety agency** – the functional division of the federal government, the State, a unit of local government, or a special purpose district located in whole or in part within this State, that provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services to respond to and manage emergency incidents.
17. **Rate** – a recurring charge.
18. **Right-of-way** – the area on, below, or above a public roadway, highway, street, public sidewalk, alley, or utility easement dedicated for compatible use. Right-of-way does not include Village-owned aerial lines.
19. **Small wireless facility** – a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 6 cubic feet; and (ii) all other wireless equipment attached directly to a utility pole associated with the facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

20. **Utility pole** – a pole or similar structure that is used in whole or in part by a communications service provider or for electric distribution, lighting, traffic control, or a similar function.
21. **Wireless facility** – equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: (i) equipment associated with wireless communications; and (ii) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes small wireless facilities. Wireless facility does not include: (i) the structure or improvements on, under, or within which the equipment is collocated; or (ii) wireline backhaul facilities, coaxial or fiber optic cable that is between wireless support structures or utility poles or coaxial, or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna.
22. **Wireless infrastructure provider** – any person authorized to provide telecommunications service in the State that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles and that is not a wireless services provider but is acting as an agent or a contractor for a wireless services provider for the application submitted to the Village.
23. **Wireless provider** – a wireless infrastructure provider or a wireless services provider.
24. **Wireless services** – any services provided to the general public, including a particular class of customers, and made available on a nondiscriminatory basis using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided using wireless facilities.
25. **Wireless services provider** – a person who provides wireless services.
26. **Wireless support structure** – a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. Wireless support structure does not include a utility pole.

Sec. 11.1102 Regulation of Small Wireless Facilities:

Permitted Use. Small wireless facilities shall be classified as permitted uses and subject to administrative review, except as provided in paragraph (9) regarding Height Exceptions or Variances, but not subject to zoning review or approval if they are collocated (i) in rights-of-way in any zoning district, or (ii) outside rights-of-way in property zoned exclusively for commercial or industrial use.

Permit Required. An applicant shall obtain one or more permits from the Village to collocate a small wireless facility. An application shall be received and processed, and permits issued shall be subject to the following conditions and requirements:

- (1) **Application Requirements.** A wireless provider shall provide the following information to the Village, together with the Village's Small Cell Facilities Permit Application, as a condition of any permit application to collocate small wireless facilities on a utility pole or wireless support structure:
 - a. Site specific structural integrity and, for a municipal utility pole, make-ready analysis prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989;
 - b. The location where each proposed small wireless facility or utility pole would be installed and photographs of the location and its immediate surroundings depicting the utility poles or structures on which each proposed small wireless facility would be

mounted or location where utility poles or structures would be installed. This should include a depiction of the completed facility;

- c. Specifications and drawings prepared by a structural engineer, as that term is defined in Section 4 of the Structural Engineering Practice Act of 1989, for each proposed small wireless facility covered by the application as it is proposed to be installed;
- d. The equipment type and model numbers for the antennas and all other wireless equipment associated with the small wireless facility;
- e. A proposed schedule for the installation and completion of each small wireless facility covered by the application, if approved; and
- f. Certification that the collocation complies with the Collocation Requirements and Conditions contained herein, to the best of the applicant's knowledge.
- g. In the event that the proposed small wireless facility is to be attached to an existing pole owned by an entity other than the Village, the wireless provider shall provide legally competent evidence of the consent of the owner of such pole to the proposed collocation.

(2) Application Process. The Village shall process applications as follows:

- a. The first completed application shall have priority over applications received by different applicants for collocation on the same utility pole or wireless support structure.
- b. An application to collocate a small wireless facility on an existing utility pole or wireless support structure, or replacement of an existing utility pole or wireless support structure shall be processed on a nondiscriminatory basis and shall be deemed approved if the Village fails to approve or deny the application within 90 days after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the Village in writing of its intention to invoke the deemed approved remedy no sooner than 75 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 90th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the Village. The receipt of the deemed approved notice shall not preclude the Village's denial of the permit request within the time limits as provided under this Ordinance.

- c. An application to collocate a small wireless facility that includes the installation of a new utility pole shall be processed on a nondiscriminatory basis and deemed approved if the Village fails to approve or deny the application within 120 days after the submission of a completed application.

However, if an applicant intends to proceed with the permitted activity on a deemed approved basis, the applicant shall notify the Village in writing of its intention to

invoke the deemed approved remedy no sooner than 105 days after the submission of a completed application.

The permit shall be deemed approved on the latter of the 120th day after submission of the complete application or the 10th day after the receipt of the deemed approved notice by the Village. The receipt of the deemed approved notice shall not preclude the Village's denial of the permit request within the time limits as provided under this Ordinance.

- d. The Village shall deny an application which does not meet the requirements of this Ordinance.

If the Village determines that applicable codes, ordinances or regulations that concern public safety, or the Collocation Requirements and Conditions contained herein require that the utility pole or wireless support structure be replaced before the requested collocation, approval shall be conditioned on the replacement of the utility pole or wireless support structure at the cost of the provider.

The Village shall document the basis for a denial, including the specific code provisions or application conditions on which the denial is based, and send the documentation to the applicant on or before the day the Village denies an application. The applicant may cure the deficiencies identified by the Village and resubmit the revised application once within 30 days after notice of denial is sent to the applicant without paying an additional application fee. The Village shall approve or deny the revised application within 30 days after the applicant resubmits the application or it is deemed approved. Failure to resubmit the revised application within 30 days of denial shall require the applicant to submit a new application with applicable fees, and recommencement of the Village's review period.

The applicant must notify the Village in writing of its intention to proceed with the permitted activity on a deemed approved basis, which may be submitted with the revised application.

Any review of a revised application shall be limited to the deficiencies cited in the denial. However, this revised application does not apply if the cure requires the review of a new location, new or different structure to be collocated upon, new antennas, or other wireless equipment associated with the small wireless facility.

- e. Pole Attachment Agreement. Within 30 days after an approved permit to collocate a small wireless facility on a municipal utility pole, the Village and the applicant shall enter into a Master Pole Attachment Agreement, provided by the Village for the initial collocation on a municipal utility pole by the application. For subsequent approved permits to collocate on a small wireless facility on a municipal utility pole, the Village and the applicant shall enter into a License Supplement of the Master Pole Attachment Agreement.

- (3) Completeness of Application. Within 30 days after receiving an application, the Village shall determine whether the application is complete and notify the applicant. If an application is incomplete, the Village must specifically identify the missing information. An application shall be deemed complete if the Village fails to provide notification to the applicant within 30 days after all documents, information and fees specifically enumerated in the Village's permit application form are submitted by the applicant to the Village.

Processing deadlines are tolled from the time the Village sends the notice of incompleteness to the time the applicant provides the missing information.

- (4) Tolling. The time period for applications may be further tolled by:
- a. An express written agreement by both the applicant and the Village; or
 - b. A local, State or federal disaster declaration or similar emergency that causes the delay.
- (5) Consolidated Applications. An applicant seeking to collocate small wireless facilities within the jurisdiction of the Village shall be allowed, at the applicant's discretion, to file a consolidated application and receive a single permit for the collocation of up to 25 small wireless facilities if the collocations each involve substantially the same type of small wireless facility and substantially the same type of structure.

If an application includes multiple small wireless facilities, the Village may remove small wireless facility collocations from the application and treat separately small wireless facility collocations for which incomplete information has been provided or that do not qualify for consolidated treatment or that are denied. The Village may issue separate permits for each collocation that is approved in a consolidated application.

- (6) Duration of Permits. The duration of a permit shall be for a period of not less than 5 years, and the permit shall be renewed for equivalent durations unless the Village makes a finding that the small wireless facilities or the new or modified utility pole do not comply with the applicable Village codes or any provision, condition or requirement contained in this Ordinance.

If the Act is repealed as provided in Section 90 therein, renewals of permits shall be subject to the applicable Village code provisions or regulations in effect at the time of renewal.

- (7) Means of Submitting Applications. Applicants shall submit applications, supporting information and notices to the Village by personal delivery at the Village's designated place of business, by regular mail postmarked on the date due or by any other commonly used means, including electronic mail.

Collocation Requirements and Conditions.

- (1) Public Safety Space Reservation. The Village may reserve space on municipal utility poles for future public safety uses, for the Village's electric utility uses, or both, but a reservation of space may not preclude the collocation of a small wireless facility unless the Village reasonably determines that the municipal utility pole cannot accommodate both uses.
- (2) Installation and Maintenance. The wireless provider shall install, maintain, repair and modify its small wireless facilities in safe condition and good repair and in compliance with the requirements and conditions of this Ordinance. The wireless provider shall ensure that its employees, agents or contractors that perform work in connection with its small wireless facilities are adequately trained and skilled in accordance with all applicable industry and governmental standards and regulations.

- (3) No interference with public safety communication frequencies. The wireless provider's operation of the small wireless facilities shall not interfere with the frequencies used by a public safety agency for public safety communications.

A wireless provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment.

Unacceptable interference will be determined by and measured in accordance with industry standards and the FCC's regulations addressing unacceptable interference to public safety spectrum or any other spectrum licensed by a public safety agency.

If a small wireless facility causes such interference, and the wireless provider has been given written notice of the interference by the public safety agency, the wireless provider, at its own expense, shall remedy the interference in a manner consistent with the abatement and resolution procedures for interference with public safety spectrum established by the FCC including 47 CFR 22.970 through 47 CFR 22.973 and 47 CFR 90.672 through 47 CFR 90.675.

The Village may terminate a permit for a small wireless facility based on such interference if the wireless provider is not in compliance with the Code of Federal Regulations cited in the previous paragraph. Failure to remedy the interference as required herein shall constitute a public nuisance.

- (4) The wireless provider shall not collocate small wireless facilities on Village utility poles that are part of an electric distribution or transmission system within the communication worker safety zone of the pole or the electric supply zone of the pole.

However, the antenna and support equipment of the small wireless facility may be located in the communications space on the Village utility pole and on the top of the pole, if not otherwise unavailable, if the wireless provider complies with applicable codes for work involving the top of the pole.

For purposes of this subparagraph, the terms "communications space", "communication worker safety zone", and "electric supply zone" have the meanings given to those terms in the National Electric Safety Code as published by the Institute of Electrical and Electronics Engineers.

- (5) The wireless provider shall comply with all applicable codes and local code provisions or regulations that concern public safety.
- (6) The wireless provider shall comply with written design standards that are generally applicable for decorative utility poles, or reasonable stealth, concealment and aesthetic requirements that are set forth in a Village ordinance, written policy adopted by the Village, a comprehensive plan or other written design plan that applies to other occupiers of the rights-of-way, including on a historic landmark or in a historic district.
- (7) Alternate Placements. Except as provided in this Collocation Requirements and Conditions Section, a wireless provider shall not be required to collocate small wireless facilities on any specific utility pole, or category of utility poles, or be required to collocate multiple antenna systems on a single utility pole. However, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, the Village may

propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 100 feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions, and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant.

If the applicant refuses a collocation proposed by the Village, the applicant shall provide written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph.

- (8) Height Limitations. The maximum height of a small wireless facility shall be no more than 10 feet above the utility pole or wireless support structure on which the small wireless facility is collocated.

New or replacement utility poles or wireless support structures on which small wireless facilities are collocated may not exceed the higher of:

- a. 10 feet in height above the tallest existing utility pole, other than a utility pole supporting only wireless facilities, that is in place on the date the application is submitted to the Village, that is located within 300 feet of the new or replacement utility pole or wireless support structure and that is in the same right-of-way within the jurisdictional boundary of the Village, provided the Village may designate which intersecting right-of-way within 300 feet of the proposed utility pole or wireless support structures shall control the height limitation for such facility; or
 - b. 45 feet above ground level.
- (9) Height Exceptions or Variances. If an applicant proposes a height for a new or replacement pole in excess of the above height limitations on which the small wireless facility is proposed for collocation, the applicant shall apply for a [SPECIAL USE PERMIT, VARIANCE OR ADMINISTRATIVE WAIVER] in conformance with procedures, terms and conditions set forth in [INSERT APPROPRIATE SECTION(S) OF ZONING ORDINANCE].
- (10) Contractual Design Requirements. The wireless provider shall comply with requirements that are imposed by a contract between the Village and a private property owner that concern design or construction standards applicable to utility poles and ground-mounted equipment located in the right-of-way.
- (11) Ground-mounted Equipment Spacing. The wireless provider shall comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances.
- (12) Undergrounding Regulations. The wireless provider shall comply with local code provisions or regulations concerning undergrounding requirements that prohibit the installation of new or the modification of existing utility poles in a right-of-way without prior approval if the requirements include a waiver, zoning or other process that addresses requests

to install such new utility poles or modify such existing utility poles and do not prohibit the replacement of utility poles.

- (13) Collocation Completion Deadline. Collocation for which a permit is granted shall be completed within 180 days after issuance of the permit, unless the Village and the wireless provider agree to extend this period or a delay is caused by make-ready work for a municipal utility pole or by the lack of commercial power or backhaul availability at the site, provided the wireless provider has made a timely request within 60 days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed 360 days after issuance of the permit. Otherwise, the permit shall be void unless the Village grants an extension in writing to the applicant.

Application Fees. Application fees are imposed as follows:

- (1) Applicant shall pay an application fee of \$650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure, and \$350 for each small wireless facility addressed in a consolidated application to collocate more than one small wireless facility on existing utility poles or wireless support structures.
- (2) Applicant shall pay an application fee of \$1,000 for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.
- (3) Notwithstanding any contrary provision of State law or local ordinance, applications pursuant to this Section shall be accompanied by the required application fee. Application fees shall be non-refundable.
- (4) The Village shall not require an application, approval or permit, or require any fees or other charges, from a communications service provider authorized to occupy the rights-of-way, for:
 - a. routine maintenance;
 - b. the replacement of wireless facilities with wireless facilities that are substantially similar, the same size, or smaller if the wireless provider notifies the Village at least 10 days prior to the planned replacement and includes equipment specifications for the replacement of equipment consistent with subsection d. under the Section titled Application Requirements; or
 - c. the installation, placement, maintenance, operation or replacement of micro wireless facilities suspended on cables that are strung between existing utility poles in compliance with applicable safety codes.
- (5) Wireless providers shall secure a permit from the Village to work within rights-of-way for activities that affect traffic patterns or require lane closures.

Exceptions to Applicability. Nothing in this Ordinance authorizes a person to collocate small wireless facilities on:

- (1) property owned by a private party or property owned or controlled by the Village or another unit of local government that is not located within rights-of-way, or a privately-owned utility pole or wireless support structure without the consent of the property owner;

- (2) property owned, leased, or controlled by a park district, forest preserve district, or conservation district for public park, recreation or conservation purposes without the consent of the affected district, excluding the placement of facilities on rights-of-way located in an affected district that are under the jurisdiction and control of a different unit of local government as provided by the Illinois Highway Code; or
- (3) property owned by a rail carrier registered under Section 18c-7201 of the Illinois Vehicle Code, Metra Commuter Rail or any other public commuter rail service, or an electric utility as defined in Section 16-102 of the Public Utilities Act, without the consent of the rail carrier, public commuter rail service, or electric utility. The provisions of this Ordinance do not apply to an electric or gas public utility or such utility's wireless facilities if the facilities are being used, developed and maintained consistent with the provisions of subsection (i) of Section 16-108.5 of the Public Utilities Act.

For the purposes of this subsection, "public utility" has the meaning given to that term in Section 3-105 of the Public Utilities Act. Nothing in this Ordinance shall be construed to relieve any person from any requirement (a) to obtain a franchise or a State-issued authorization to offer cable service or video service or (b) to obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this Ordinance.

Pre-Existing Agreements. Existing agreements between the Village and wireless providers that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on Village utility poles, that are in effect on June 1, 2018, remain in effect for all small wireless facilities collocated on the Village's utility poles pursuant to applications submitted to the Village before June 1, 2018, subject to applicable termination provisions contained therein. Agreements entered into after June 1, 2018, shall comply with this Ordinance.

A wireless provider that has an existing agreement with the Village on the effective date of the Act may accept the rates, fees and terms that the Village makes available under this Ordinance for the collocation of small wireless facilities or the installation of new utility poles for the collocation of small wireless facilities that are the subject of an application submitted two or more years after the effective date of the Act by notifying the Village that it opts to accept such rates, fees and terms. The existing agreement remains in effect, subject to applicable termination provisions, for the small wireless facilities the wireless provider has collocated on the Village's utility poles pursuant to applications submitted to the Village before the wireless provider provides such notice and exercises its option under this paragraph.

Annual Recurring Rate. A wireless provider shall pay to the Village an annual recurring rate to collocate a small wireless facility on a Village utility pole located in a right-of-way that equals (i) \$200 per year or (ii) the actual, direct and reasonable costs related to the wireless provider's use of space on the Village utility pole.

If the Village has not billed the wireless provider actual and direct costs, the fee shall be \$200 payable on the first day after the first annual anniversary of the issuance of the permit or notice of intent to collocate, and on each annual anniversary date thereafter.

Abandonment. A small wireless facility that is not operated for a continuous period of 12 months shall be considered abandoned. The owner of the facility shall remove the small wireless facility within 90 days after receipt of written notice from the Village notifying the wireless provider of the abandonment.

The notice shall be sent by certified or registered mail, return receipt requested, by the Village to the owner at the last known address of the wireless provider. If the small wireless facility is not removed within 90 days of such notice, the Village may remove or cause the removal of such facility pursuant to the terms of its pole attachment agreement for municipal utility poles or through whatever actions are provided for abatement of nuisances or by other law for removal and cost recovery.

A wireless provider shall provide written notice to the Village if it sells or transfers small wireless facilities within the jurisdiction of the Village. Such notice shall include the name and contact information of the new wireless provider.

Sec. 11.1103 Dispute Resolution:

The Circuit Court of Tazewell and Woodford Counties shall have exclusive jurisdiction to resolve all disputes arising under the Small Wireless Facilities Deployment Act. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on municipal utility poles within the right-of-way, the Village shall allow the collocating person to collocate on its poles at annual rates of no more than \$200 per year per municipal utility pole, with rates to be determined upon final resolution of the dispute.

Sec. 11.1104 Indemnification:

A wireless provider shall indemnify and hold the Village harmless against any and all liability or loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of the Village improvements or right-of-way associated with such improvements by the wireless provider or its employees, agents, or contractors arising out of the rights and privileges granted under this Ordinance and the Act. A wireless provider has no obligation to indemnify or hold harmless against any liabilities and losses as may be due to or caused by the sole negligence of the Village or its employees or agents. A wireless provider shall further waive any claims that they may have against the Village with respect to consequential, incidental, or special damages, however caused, based on the theory of liability.

Sec. 11.1105 Insurance:

The wireless provider shall carry, at the wireless provider's own cost and expense, the following insurance:

- (i) property insurance for its property's replacement cost against all risks;
- (ii) workers' compensation insurance, as required by law;

OR

(iii) commercial general liability insurance with respect to its activities on the Village improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of Village improvements or rights-of-way, including coverage for bodily injury and property damage.

The wireless provider shall include the Village as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the Village in a commercial general liability policy prior to the collocation of any wireless facility.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirement required by the Village. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the name of additional insureds under this Section. A wireless provider that elects to self-insure shall provide to the Village evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage limits required by the Village.

Revised August 2018 Ord 654

Article 12 – Municipal Cannabis Retailers' Occupation Tax

Sec. 11.1201 Tax Imposed; Rate:

1. A tax is hereby imposed upon all persons engaged in the business of selling cannabis, other than cannabis purchased under the Compassionate Use of Medical Cannabis Pilot Program Act, at retail in the Village at the rate of 3% of the gross receipts from these sales made in the course of that business.
2. The imposition of this tax is in accordance with the provisions of Sections 8-11-22, of the Illinois Municipal Code (65 ILCS 5/8-11-22).

Sec. 11.1202 Collection of Tax by Retailers.

1. The tax imposed by this Ordinance shall be remitted by such retailer to the Illinois Department of Revenue (Department). Any tax required to be collected pursuant to or as authorized by this Ordinance and any such tax collected by such retailer and required to be remitted to the Department shall constitute a debt owed by the retailer to the State. Retailers may reimburse themselves for their seller's tax liability hereunder by separately stating that tax as an additional charge, which charge may be stated in combination, in a single amount, with any State tax that sellers are required to collect.
2. The taxes hereby imposed, and all civil penalties that may be assessed as an incident thereto, shall be collected and enforced by the Department. The Department shall have full power to administer and enforce the provisions of this article.

Revised September 2019 Ord 664