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## CHAPTER 8: VILLAGE REGULATIONS

### Article 1 – Officers and Employees

**Sec. 8.101 Effect:** The provisions of this chapter, unless otherwise indicated or inconsistent with state law or provisions contained elsewhere in this Code, shall apply to all officers and employees of the Village whether elected or appointed.

**Sec. 8.102 Qualification for Office:** No person shall be eligible to any Village office unless he is a qualified elector of the Village and has resided therein at least one (1) year next preceding his election or appointment. However, these requirements shall not apply to those positions, which require technical training or knowledge. Nor shall these requirements apply to the Village Attorney, who is not an officer of the Village. But no person shall be eligible to any Village office that is a defaulter to the Village.

**Sec. 8.103 Appointive Officers to be Commissioned:** All Village officers appointed by the Village Council shall be commissioned as provided in 65 ILCS 513.1-55-5 by the President issuing a certificate of appointment, under the corporate seal to the Village Clerk.

**Sec. 8.104 Oath of Office:** Every officer of the Village, whether elected or appointed, shall before entering upon the duties of office, take and subscribe the following oath:

“I, (state your name) do solemnly swear or affirm that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of \_\_\_\_\_ according to the best of my ability.”

This oath, so subscribed, shall be filed in the office of the Village Clerk.

**Sec. 8.105 Bonds - Required Approval, Amounts, Place of Filing:**

- a.) Before entering upon the duties of their respective offices, all officers, except trustees, shall execute a bond with security, to be approved by the corporate authorities.
- b.) The bond shall be payable to the Village in whatever penal sum may be directed by resolution or ordinance, conditioned upon the faithful performance of the duties of the office and the payment of all money received by such officer.
- c.) Whenever any officer shall be appointed by the Village Council to perform the duties of an additional office, his bond shall be rewritten so as to cover such additional duties as heretofore provided.
- d.) All certificates of bonds shall be filed with the Village Clerk, except the bond of the Clerk, which shall be filed with the Village Treasurer.

**Sec. 8.106 Bonds - No Officer to Become Surety for Another:** No member of the Village Council and no person holding any office in this Village shall become surety on the official bond of any other officer of this Village.

**Sec. 8.107 Term of Office:** Every appointive officer or employee of the Village shall hold office for a term not to exceed one (1) year or until his successor is appointed and qualified, unless otherwise provided by ordinance. Unless otherwise provided, the term of each office shall expire on April 30 following the appointment. All newly elected officials of the Village shall take office on the first regular or special meeting of the Village in the month of May following their election.

*Revised: March 1993 Ord. #367*

**Sec. 8.108 Assignment of Duties - Records:**

- a). The Village Council shall have the power to assign to any appointive officer any duty which is not assigned by ordinance to some other specific officer; and shall determine disputes or questions relating to the respective powers or duties of officers.
- b). All records kept by any officer of the Village shall be open to inspection by the President or any member of the Village Council at all reasonable times whether or not such records are required to be kept by Statute or ordinance.

**Sec. 8.109 Removal of Officers and Employees:** Except where otherwise provided by Statute, the President may remove any officer appointed by him, under this Code, on any formal charge, whenever he is of the opinion that the interests of the Village demand removal, but he shall report the reasons for the removal to the Village Council at a meeting to be held not less than five nor more than ten days after the removal. If the President fails or refuses to report to the Village Council the reasons for the removal, or if the Village Council by a two-thirds vote of all its members authorized by law to be elected, disapproves of the removal, the officer thereupon shall be restored to the office from which he was removed. The vote shall be by yeas and nays, which shall be entered upon the Board's journal. Upon restoration, the officer shall give a new bond and take a new oath of office. No officer shall be removed a second time for the same offense.

**Sec. 8.110 Duty Upon Termination of Office:** Every officer and employee of the Village, upon the expiration of his term for any cause whatsoever, shall deliver to his successor all books and records which may be the property of the Village; and if no successor has been appointed within one (1) week after the termination of office, such property shall be delivered either to the Village Clerk or to the Village Treasurer.

**Sec. 8.111 Compensation:**

- a). Village officers and employees shall receive the salary or compensation, which the Village Council shall provide by ordinance, resolution or motion, payable at such intervals as the Village Council may determine.
- b). No Officer or employee receiving a salary from the Village shall be entitled to retain any portion of any fees collected by him in the performance of his duties as Village officer or employee in the absence of a specific ordinance provision to that effect.

**Sec. 8.112 Pecuniary Interest in Contract, Free Service:**

- a). No Village officer or employee shall be interested directly or indirectly, in any contract, work or business of the municipality, or in the sale of any article, wherever the expense, price, or consideration of the contract, work, business or sale is paid either from the treasury or by any assessment levied by any Statute or ordinance. No Village officer shall be interested, directly or indirectly, in the purchase of any property, which (1) belongs to the municipality, or (2) is sold for taxes or assessments, or (3) is sold by virtue of legal process at the suit of the municipality.
- b). No Village officer or employee shall request, accept or receive, directly or indirectly from any person owning, operating or leasing within or partly within the City any public

utility, or any service or transportation, upon terms more favorable than are granted to the public generally, or any employment, for hire or otherwise, or any free service or transportation, either for himself or any other person, except as provided by Statute.

## **Article 2 – Ethics Policy**

**Sec. 8.201 Definitions.** For purposes of this Chapter, the following terms shall be given the following definitions:

1. "Campaign for elective office" means any activity in furtherance of an effort to influence the selection, nomination, election, or appointment of any individual to any federal, State, or local public office or office in a political organization, or the selection, nomination, or election of Presidential or Vice-Presidential electors, but does not include activities (i) relating to the support or opposition of any executive, legislative, or administrative action, (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person's official duties.
2. "Candidate" means a person who has filed nominating papers or petitions for nomination or election to an elected office, or who has been appointed to fill a vacancy in nomination, and who remains eligible for placement on the ballot at a regular election, as defined in section 1-3 of the Election Code (10 ILCS 5/1-3).
3. "Collective bargaining" has the same meaning as that term is defined in Section 3 of the Illinois Public Labor Relations Act (5 ILCS 315/3).
4. "Compensated time" means, with respect to an employee, any time worked by or credited to the employee that counts toward any minimum work time requirement imposed as a condition of his or her employment, but for purposes of this Ordinance, does not include any designated holidays, vacation periods, personal time, compensatory time off or any period when the employee is on a leave of absence. With respect to officers or employees whose hours are not fixed, "compensated time" includes any period of time when the officer is on premises under the control of the employer and any other time when the officer or employee is executing his or her official duties, regardless of location.
5. "Compensatory time off" means authorized time off earned by or awarded to an employee to compensate in whole or in part for time worked in excess of the minimum work time required of that employee as a condition of his or her employment. "Contribution" has the same meaning as that term is defined in section 9-1.4 of the Election Code (10 ILCS 5/9-1.4).
6. "Employee" means a person employed by the Village of Deer Creek, whether on a fulltime or part-time basis or pursuant to a contract, whose duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed, but does not include an independent contractor.
7. "Employer" means the Village of Deer Creek.
8. "Gift" means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to government employment or the official position of an officer or employee.
9. "Leave of absence" means any period during which an employee does not receive (i) compensation for employment, (ii) service credit towards pension benefits, and (iii) health insurance benefits paid for by the employer.
10. "Officer" means a person who holds, by election or appointment, an office created by statute or ordinance, regardless of whether the officer is compensated for service in his or her official capacity.
- 11 "Political activity" means any activity in support of or in connection with any campaign for elective office or any political organization, but does not include activities (i) relating to the support

or opposition of any executive, legislative, or administrative action, (ii) relating to collective bargaining, or (iii) that are otherwise in furtherance of the person's official duties.

12. "Political organization" means a party, committee, association, fund, or other organization (whether or not incorporated) that is required to file a statement of organization with the State Board of Elections or a county clerk under Section 9-3 of the Election Code (10 ILCS 5/9-3), but only with regard to those activities that require filing with the State Board of Elections or a county clerk.

13. "Prohibited political activity" means:

(a) Preparing for, organizing, or participating in any political meeting, political rally, political demonstration, or other political event.

(b) Soliciting contributions, including but not limited to the purchase of, selling, distributing, or receiving payment for tickets for any political fundraiser, political meeting, or other political event.

(c) Soliciting, planning the solicitation of, or preparing any document or report regarding anything of value intended as a campaign contribution.

(d) Planning, conducting, or participating in a public opinion poll in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.

(e) Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.

(f) Assisting at the polls on election day on behalf of any political organization or candidate for elective office or for or against any referendum question.

(g) Soliciting votes on behalf of a candidate for elective office or a political organization or for or against any referendum question or helping in an effort to get voters to the polls.

(h) Initiating for circulation, preparing, circulating, reviewing, or filing any petition on behalf of a candidate for elective office or for or against any referendum question.

(i) Making contributions on behalf of any candidate for elective office in that capacity or in connection with a campaign for elective office.

(j) Preparing or reviewing responses to candidate questionnaires.

(k) Distributing, preparing for distribution, or mailing campaign literature, campaign signs, or other campaign material on behalf of any candidate for elective office or for or against any referendum question.

(l) Campaigning for any elective office or for or against any referendum question.

(m) Managing or working on a campaign for elective office or for or against any referendum question.

(n) Serving as a delegate, alternate, or proxy to a political party convention.

(o) Participating in any recount or challenge to the outcome of any election.

14. "Prohibited source" means any person or entity who:

(a) is seeking official action (i) by an officer or (ii) by an employee, or by the officer or another employee directing that employee;

(b) does business or seeks to do business (i) with the officer or (ii) with an employee, or with the officer or another employee directing that employee;

(c) conducts activities regulated (i) by the officer or (ii) by an employee, or by the officer or another employee directing that employee; or

(d) has interests that may be substantially affected by the performance or non-performance of the official duties of the officer or employee.

## **Sec 8.202 Prohibited political activities.**

(1) No officer or employee shall intentionally perform any prohibited political activity during any compensated time, as defined herein. No officer or employee shall intentionally use any property or resources of the Village of Deer Creek in connection with any prohibited political activity.

(2) At no time shall any officer or employee intentionally require any other officer or employee to perform any prohibited political activity (i) as part of that officer or employee's duties, (ii) as a condition of employment, or (iii) during any compensated time off (such as holidays, vacation or personal time off).

(3) No officer or employee shall be required at any time to participate in any prohibited political activity in consideration for that officer or employee being awarded additional compensation or any benefit, whether in the form of a salary adjustment, bonus, compensatory time off, continued employment or otherwise, nor shall any officer or employee be awarded additional compensation or any benefit in consideration for his or her participation in any prohibited political activity.

(4) Nothing in this Section prohibits activities that are permissible for an officer or employee to engage in as part of his or her official duties, or activities that are undertaken by an officer or employee on a voluntary basis which are not prohibited by this Ordinance.

(5) No person either (i) in a position that is subject to recognized merit principles of public employment or (ii) in a position the salary for which is paid in whole or in part by federal funds and that is subject to the Federal Standards for a Merit System of Personnel Administration applicable to grant-in-aid programs, shall be denied or deprived of employment or tenure solely because he or she is a member or an officer of a political committee, of a political party, or of a political organization or club.

**Sec. 8.203 Gift ban.** Except as permitted by Sec. 8.204, no officer or employee, and no spouse of or immediate family member living with any officer or employee (collectively referred to herein as “recipients”), shall intentionally solicit or accept any gift from any prohibited source, as defined herein, or which is otherwise prohibited by law or ordinance. No prohibited source shall intentionally offer or make gift that violates this Section.

**Sec. 8.204 Exceptions.** Sec. 8.203 is not applicable to the following:

(1) Opportunities, benefits, and services that are available on the same conditions as for the general public.

(2) Anything for which the officer or employee, or his or her spouse or immediate family member, pays the fair market value.

(3) Any (i) contribution that is lawfully made under the Election Code or (ii) activities associated with a fundraising event in support of a political organization or candidate.

(4) Educational materials and missions.

(5) Travel expenses for a meeting to discuss business.

(6) A gift from a relative, meaning those people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother,

stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of the individual's spouse and the individual's fiancé or fiancée.

(7) Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient or his or her spouse or immediate family member and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other officers or employees, or their spouses or immediate family members.

(8) Food or refreshments not exceeding \$75 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared or (ii) catered. For the purposes of this Section, "catered," means food or refreshments that are purchased ready to consume which are delivered by any means.

(9) Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of an officer or employee), if the benefits have not been offered or enhanced because of the official position or employment of the officer or employee, and are customarily provided to others in similar circumstances.

(10) Intra-governmental and inter-governmental gifts. For the purpose of this Act, "intragovernmental gift" means any gift given to an officer or employee from another officer or employee, and "inter-governmental gift" means any gift given to an officer or employee by an officer or employee of another governmental entity.

(11) Bequests, inheritances, and other transfers at death.

(12) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$100.

Each of the exceptions listed in this Section is mutually exclusive and independent of every other.

**Sec. 8.205 Disposition of gifts.** An officer or employee, his or her spouse or an immediate family member living with the officer or employee, does not violate this Ordinance if the recipient promptly takes reasonable action to return a gift from a prohibited source to its source or gives the gift or an amount equal to its value to an appropriate charity that is exempt from income taxation under Section 501 (c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, renumbered, or succeeded.

**Sec 8.206 Penalties.** The following penalties shall apply to a violation of Sec. 8.202 and Sec. 8.203:

(1) A person who intentionally violates any provision of Sec. 8.202 of this Ordinance may be punished by a term of incarceration in a penal institution other than a penitentiary for a period of not more than 364 days, and may be fined in an amount not to exceed \$2,500.

(2) A person who intentionally violates any provision of Section 8.203 of this Ordinance is subject to a fine in an amount of not less than \$1,001 and not more than \$5,000.

(3) Any person who intentionally makes a false report alleging a violation of any provision of this Sec 8.202 and 8.203 to the local enforcement authorities, the State's Attorney or any other law enforcement official may be punished by a term of incarceration in a penal institution other than a penitentiary for a period of not more than 364 days, and may be fined in an amount not to exceed \$2,500.

(4) A violation of Sec. 8.202 of this Ordinance shall be prosecuted as a criminal offense by an attorney for the Village of Deer Creek by filing in the circuit court an information, or sworn complaint, charging such offense. The prosecution shall be under and conform to the rules of criminal procedure. Conviction shall require the establishment of the guilt of the defendant beyond a reasonable doubt.

(5) A violation of Sec. 8.203 of this Ordinance may be prosecuted as a quasi-criminal offense by an attorney for the Village of Deer Creek.

(6) In addition to any other penalty that may be applicable, whether criminal or civil, an officer or employee who intentionally violates any provision of Sec. 8.202 and 8.203 of this Ordinance is subject to discipline or discharge.

**Sec. 8.207 Subsequent State law changes.** Any amendment to the Act that becomes effective after the effective date of this Section shall be incorporated into this Section by reference and shall be applicable to the solicitation, acceptance, offering and making of gifts and to prohibited political activities. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Section by reference without formal action by Board of Trustees of the Village of Deer Creek.

**Sec. 8.208 Constitutionality.** If the Illinois Supreme Court declares the Act unconstitutional in its entirety, then Sec. 8.201 through and including 8.208 shall be repealed as of the date that the Illinois Supreme Court's decision becomes final and not subject to any further appeals or rehearings. These sections shall be deemed repealed without further action by the Board of Trustees of the Village of Deer Creek if the Act is found unconstitutional by the Illinois Supreme Court. If the Illinois Supreme Court declares part of the Act unconstitutional but upholds the constitutionality of the remainder of the Act, or does not address the remainder of the Act, then the remainder of the Act as adopted by Sec. 8.201 through and including 8.208 shall remain in full force and effect; however, that part of these sections relating to the part of the Act found unconstitutional shall be deemed repealed without further action by Board of Trustees of the Village of Deer Creek.

*Revised: May 2004 Ord. #499*

### **Article 3 - Investment Policy**

**Sec. 8.301 Policy:** It is the policy of the Village to invest public funds in a manner which will provide the highest investment return with the maximum security while meeting the daily cash flow demands of the Village and conforming to all state and local statutes governing the investment of public funds.

**Sec. 8.302 Scope:** This policy includes all funds governed by the Board of Trustees.

**Sec. 8.303 Prudence:** Investments shall be made with judgment and care, under circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital, as well as the probable income to be derived.

The standard of prudence to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio.

**Sec. 8.304 Objective:** The primary objective, in order of priority, shall be:

- Legality - conformance with federal, state and other legal requirements
- Safety - preservation of capital and protection of investment principal
- Liquidity - maintenance of sufficient liquidity to meet operating requirements
- Yield - attainment of market rates of return

The portfolio should be reviewed periodically as to its effectiveness in meeting the Village's needs for safety, liquidity, rate of return, diversification and its general performance.

**Sec. 8.305 Delegation of Authority:** Management and administrative responsibility for the investment program is hereby delegated to the Treasurer, who, under the delegation of the Village Council, shall establish written procedures for the operation of the investment program.

**Sec. 8.306 Ethics and Conflicts of Interest:** Officers and Employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions.

**Sec. 8.307 Authorized Financial Dealers and Institutions:** The Treasurer will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security brokers/dealers selected by credit worthiness.

**Sec. 8.308 Authorized and Suitable Investments:** Investments may be made in any type of security allowed for in Illinois statutes regarding the investment of public funds. Investments shall be made that reflect the cash flow needs of the fund type being invested.

**Sec. 8.309 Collateralization:** Funds on deposit (checking accounts, certificates of deposit, etc.) in excess of FDIC limits must be secured by some form of collateral or insurance and witnessed by a written agreement or proof of insurance.

**Sec. 8.310 Safekeeping and Custody:** All security transactions, including collateral for repurchase agreements, entered into by the Treasurer, shall be conducted on a delivery-versus-payment (DVP) basis. Securities will be held by an independent third party custodian designated by the Treasurer and evidenced by safekeeping receipts and a written custodial agreement.

**Sec. 8.311 Diversification:** The Village shall diversify its investments to the best of its ability based on the type of funds invested and the cash flow needs of those funds. Diversification can be by type of investment, number of institutions invested in, and length of maturity.

**Sec. 8.312 Maximum Maturities:** To the extent possible, the Treasurer shall attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the Treasurer will not directly invest in securities maturing more than three years from the date of purchase.

Reserve funds may be invested in securities not exceeding three years if the maturity of such investments is made to coincide as nearly as practicable with the expected use of the funds.

**Sec. 8.313 Internal Control:** The Treasurer is responsible for establishing and maintaining an internal control structure designed to insure that the assets of the Village are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The internal controls shall address the following points:

- Control of Collusion
- Separation of transaction authority from accounting
- Custodial safekeeping
- Written confirmation of telephone transactions from investments and wire transfers

**Sec. 8.314 Performance Standards:** This investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a comparable rate of return during a market/economic environment of stable interest rates. Portfolio performances should be compared to benchmarks with similar maturity liquidity and credit quality as the portfolio. (The Treasurer will have to insert their benchmark, i.e., 90-day T-bill, Illinois Funds, etc.)

**Sec. 8.315 Reporting:** The Treasurer shall prepare an investment report at least quarterly. The report should be provided to the Village Council and available on request. The report should be in a format suitable for review by the general public. An annual report should also be provided to the Council.

**Sec. 8.316 Marking to Market:** A statement of the market value of the portfolio shall be issued to the Village Council quarterly.

**Sec. 8.317 Investment Policy Review:** This policy shall be reviewed on an annual basis by the Treasurer and any modifications made thereto must be approved by the Village Council.

#### **Article 4 – Local Government Taxpayers’ Bill of Rights**

**Sec. 8.401 Title:** This Section of the Village Code shall be known as, and may be cited as, the “Locally Imposed and Administered Tax Rights and Responsibility Ordinance.”

**Sec. 8.402 Scope:** The provisions of this ordinance shall apply to the Village’s procedures in connection with all of the Village’s locally imposed and administered taxes.

**Sec. 8.403 Definitions:** Certain words or terms herein shall have the meaning ascribed to them as follows:

- (1) “Act” means the “Local Government Taxpayers’ Bill of Rights Act.”
- (2) “Corporate Authorities” means the Village’s President and Board of Trustees.
- (3) “Locally imposed and administered tax” or “tax” means each tax imposed by the Village that is collected or administered by the Village not an agency of department of the State. It does not include any tax imposed upon real property under the Property Tax Code or fees collected by the village other than infrastructure maintenance fees.
- (4) “Local tax administrator,” the Village’s Collector, is charged with the administration and collection of the locally imposed and administered taxes, including staff, employees or agents to the extent they are authorized by the local tax administrator to act in the local tax administrator’s stead. The local tax administrator shall have the authority to implement the terms of this ordinance to give full effect to this ordinance. The exercise of such authority by the local tax administrator shall not be inconsistent with this ordinance and the Act.
- (5) “Village” means the Village of Deer Creek, Illinois.
- (6) “Notice” means each audit notice, collection notice or other similar notice or communication in connection with each of the Village’s locally imposed and administered taxes.
- (7) “Tax Ordinance” means each ordinance adopted by the Village that imposes any locally imposed and administered tax.
- (8) “Taxpayer” means any person required to pay any locally imposed and administered tax and generally includes the person upon whom the legal incidence of such tax is placed and with respect to consumer taxes includes the business or entity required to collect and pay the locally imposed and administered tax to the Village

**Sec. 8.404 Notices:** Unless otherwise provided, whenever notice is required to be given, the notice is

to be in writing mailed not less than seven (7) calendar days prior to the day fixed for any applicable hearing, audit or other scheduled act of the local tax administrator. The notice shall be sent by the local tax administrator as follows:

- (1) First class, Express Mail, or overnight delivery, addressed to the persons concerned at the persons' last known address, or
- (2) Personal service or delivery.

**Sec. 8.405 Late payment:** Any notice, payment, remittance or other filing required to be made to the Village pursuant to any tax ordinance shall be considered late unless it is (a) physically received by the Village on or before the due date, or (b) received in an envelope or other container displaying a valid, readable U.S. Postmark dated on or before the due date, properly addressed to the Village, with adequate postage prepaid.

**Sec. 8.406 Payment:** Any payment or remittance received for a tax period shall be applied in the following order: (1) first to the tax due for the applicable period; (2) second to the interest due for the applicable period; and (3) third to the penalty for the applicable period.

**Sec. 8.407 Certain Credits and Refunds:**

- (a) The Village shall not refund or credit any taxes voluntarily paid without written protest at the time of payment in the event that a locally imposed and administered tax is declared invalidly enacted or unconstitutional by a court of competent jurisdiction. However, a taxpayer shall not be deemed to have paid the tax voluntarily if the taxpayer lacked knowledge of the facts upon which to protest the taxes at the time of payment or if the taxpayer paid the taxes under duress.
- (b) The statute of limitations on a claim for credit or refund shall be four (4) years after the end of the calendar year in which payment in error was made. The Village shall not grant a credit or refund of locally imposed and administered taxes, interest, or penalties to a person who has not paid the amounts directly to the Village.
- (c) The procedure for claiming a credit or refund of locally imposed and administered taxes, interest or penalties paid in error shall be as follows:
  - (A) The taxpayer shall submit to the local tax administrator in writing a claim for credit or refund together with a statement specifying:
    - (i) the name of the locally imposed and administered tax subject to the claim;
    - (ii) the tax period for the locally imposed and administered tax subject to the claim;
    - (iii) the date of the tax payment subject to the claim and the cancelled check or receipt for the payment;
    - (iv) the taxpayer's recalculation, accompanied by an amended or revised tax return, in connection with the claim; and
    - (v) a request for either a refund or a credit in connection with the claim to be applied to the amount of tax, interest and penalties overpaid, and, as applicable, related interest on the amount overpaid; provided, however, that there shall be no refund and only a credit given in the event the taxpayer owes any monies to the Village.
  - (B) Within twenty-one (21) days of the receipt by the local tax administrator of any claim for a refund or credit, the local tax administrator shall either:
    - (i) grant the claim; or
    - (ii) deny the claim, in whole or in part, together with a statement as to the reason for the denial or the partial grant and denial.
  - (C) In the event the local tax administrator grants, in whole or in part, a claim for refund or credit, the amount of the grant for refund or credit shall bear interest at the rate of five percent (5%) per

annum, based on a year of 365 days and the number of days elapsed, from the date of the overpayment to the date of mailing of a refund check or the grant of a credit.

**Sec. 8.408 Audit Procedure:** Any request for proposed audit pursuant to any local administered tax shall comply with the notice requirements of this ordinance.

(a) Each notice of audit shall contain the following information:

(i) the tax;

(ii) the time period of the audit; and

(iii) a brief description of the books and records to be made available for the auditor.

(b) Any audit shall be conducted during normal business hours and if the date and time selected by the local tax administrator is not agreeable to the taxpayer, another date and time may be requested by the taxpayer within thirty (30) days after the originally designated audit and during normal business hours.

(c) The taxpayer may request an extension of time to have an audit conducted. The audit shall be conducted not less than seven (7) days and no more than thirty (30) days from the date the notice is given, unless the taxpayer and the local tax administrator agreed to some other convenient time. In the event taxpayer is unable to comply with the audit on the date in question, the taxpayer may request another date within the thirty (30) days, approved in writing, that is convenient to the taxpayer and the local tax administrator.

(d) Every taxpayer shall keep accurate books and records of the taxpayer's business or activities, including original source documents and books of entry denoting the transactions which had given rise or may have given rise to any tax liability, exemption or deduction. All books shall be kept in the English language and shall be subject to and available for inspection by the Village.

(e) It is the duty and responsibility of every taxpayer to make available its books and records for inspection by the Village. If the taxpayer fails to provide the documents necessary for audit within the time provided, the local tax administrator may issue a tax determination and assessment based on the tax administrator's determination of the best estimate of the taxpayer's tax liability.

(f) If an audit determines there has been an overpayment of a locally imposed and administered tax as a result of the audit, written notice of the amount of overpayment shall be given to the taxpayer within thirty (30) days of the Village's final determination of the amount of overpayment.

(g) In the event a tax payment was submitted to the incorrect local governmental entity, the local tax administrator shall notify the local governmental entity imposing such tax.

**Sec. 8.409 Appeal:**

(a) The local tax administrator shall send written notice to a taxpayer upon the local tax administrator's issuance of a protestable notice of tax due, a bill, a claim denial, or a notice of claim reduction regarding any tax. The notice shall include the following information:

(i) the reason for the assessment;

(ii) the amount of the tax liability proposed;

(iii) the procedure for appealing the assessment; and

(iv) the obligations of the Village during the audit, appeal, refund and collection process.

(b) A taxpayer who receives written notice from the local tax administrator of a determination of tax due or assessment may file with the local tax administrator a written protest and petition for hearing, setting forth the basis of the taxpayer's request for a hearing. The written protest and petition for hearing must be filed with the local tax administrator within forty-five (45)

days of receipt of the written notice of the tax determination and assessment.

(c) If a timely written notice and petition for hearing is filed, the local tax administrator shall fix the time and place for hearing and shall give written notice to the taxpayer. The hearing shall be scheduled for a date within fourteen (14) days of receipt of the written protest and petition for hearing, unless the taxpayer requests a later date convenient to all parties.

(d) If a written protest and petition for hearing is not filed within the forty-five (45) day period, the tax determination, audit or assessment shall become a final bill due and owing without further notice.

(e) Upon the showing of reasonable cause by the taxpayer and the full payment of the contested tax liability along with interest accrued as of the due date of the tax, the local tax administrator may reopen or extend the time for filing a written protest and petition for hearing. In no event shall the time for filing a written protest and petition for hearing be reopened or extended for more than ninety (90) days after the expiration of the forty-five day period.

**Sec. 8.410 Hearing:**

(a) Whenever a taxpayer or a tax collector has filed a timely written protest and petition for hearing under section nine, above, the local tax administrator shall conduct a hearing regarding any appeal.

(b) No continuances shall be granted except in cases where a continuance is absolutely necessary to protect the rights of the taxpayer. Lack of preparation shall not be grounds for a continuance. Any continuance granted shall not exceed fourteen (14) days.

(c) At the hearing the local tax administrator shall preside and shall hear testimony and accept any evidence relevant to the tax determination, audit or assessment. The strict rules of evidence applicable to judicial proceedings shall not apply.

(d) At the conclusion of the hearing, the local tax administrator shall make a written determination on the basis of the evidence presented at the hearing. The taxpayer or tax collector shall be provided with a copy of the written decision.

**Sec. 8.411 Interest and Penalties:** In the event a determination has been made that a tax is due and owing, through audit, assessment or other bill sent, the tax must be paid within the time frame otherwise indicated.

(a) Interest. The Village hereby provides for the amount of interest to be assessed on a late payment, underpayment, or nonpayment of the tax, to be eighteen percent (18%) per annum, based on a year of 365 days and the number of days elapsed.

(b) Late Filing and Payment Penalties. If a tax return is not filed within the time and manner provided by the controlling tax ordinance, a late filing penalty, of five percent (5%) of the amount of tax required to be shown as due on a return shall be imposed; and a late payment penalty of five percent (5%) of the tax due shall be imposed. If no return is filed within the time or manner provided by the controlling tax ordinance and prior to the Village issuing a notice of tax delinquency or notice of tax liability, then a failure to file penalty shall be assessed equal to twenty-five percent (25%) of the total tax due for the applicable reporting period for which the return was required to be filed. A late filing or payment penalty shall not apply if a failure to file penalty is imposed by the controlling ordinance.

**Sec. 8.412 Abatement:** The local tax administrator shall have the authority to waive or abate any late filing penalty, late payment penalty or failure to file penalty if the local tax administrator shall determine reasonable cause exists for delay or failure to make a filing.

**Sec. 8.413 Installment Contracts:** The Village may enter into an installment contract with the

taxpayer for the payment of taxes under the controlling tax ordinance. The local tax administrator may not cancel any installment contract so entered unless the taxpayer fails to pay any amount due and owing. Upon written notice by the local tax administrator that the payment is thirty (30) days delinquent, the taxpayer shall have fourteen (14) working days to cure any delinquency. If the taxpayer fails to cure the delinquency within the fourteen (14) day period or fails to demonstrate good faith in restructuring the installment contract with the local administrator, the installment contract shall be canceled without further notice to the taxpayer.

**Sec. 8.414 Statute of Limitations:** The Village, through the local tax administrator, shall review all tax returns in a prompt and timely manner and inform taxpayers of any amounts due and owing. The taxpayer shall have forty-five (45) days after receiving notice of the reviewed tax returns to make any request for refund or provide any tax still due and owing.

(a) No determination of tax due and owing may be issued more than 4 years maximum after the end of the calendar year for which the return for the applicable period was filed or for the calendar year in which the return for the applicable period was due, whichever occurs later.

(b) If any tax return is not filed or if during any 4-year period for which a notice of tax determination or assessment may be issued by the Village, the tax paid was less than 75% of the tax due, the statute of limitations shall be six (6) years maximum after the end of the calendar year in which return for the applicable period was due or end of the calendar year in which the return for the applicable period was filed.

(c) No statute of limitations shall apply if a fraudulent tax return was filed by the taxpayer.

**Sec. 8.415 Voluntary Disclosure:** For any locally imposed and administered tax for which a taxpayer has not received a written notice of an audit, investigation, or assessment from the local tax administrator, a taxpayer is entitled to file an application with the local tax administrator for a voluntary disclosure of the tax due. A taxpayer filing a voluntary disclosure application must agree to pay the amount of tax due, along with interest of one percent (1%) per month, for all periods prior to the filing of the application but not more than four (4) years before the date of filing the application. A taxpayer filing a valid voluntary disclosure application may not be liable for any additional tax, interest, or penalty for any period before the date the application was filed. However, if the taxpayer incorrectly determined and underpaid the amount of tax due, the taxpayer is liable for the underpaid tax along with applicable interest on the underpaid tax, unless the underpayment was the result of fraud on the part of the taxpayer, in which case the application shall be deemed invalid and void. The payment of tax and interest must be made by no later than ninety (90) days after the filing of the voluntary disclosure application or the date agreed to by the local tax administrator. However, any additional amounts owed as a result of an underpayment of tax and interest previously paid under this Section must be paid within ninety (90) days after a final determination and the exhaustion of all appeals of the additional amount owed or the date agreed to by the local tax administrator, whichever is longer.

**Sec. 8.416 Publication of Tax Ordinances:** Any locally administered tax ordinance shall be published via normal or standard publishing requirements. The posting of a tax ordinance on the Internet shall satisfy the publication requirements. Copies of all tax ordinances shall be made available to the public upon request at the Village Clerk's office.

**Sec. 8.417 Internal Review:** The local tax administrator shall establish an internal review procedure regarding any liens filed against any taxpayers for unpaid taxes. Upon a determination by the local tax administrator that the lien is valid, the lien shall remain in full force and effect. If the lien is determined to be improper, the local tax administrator shall:

(i) timely remove the lien at the Village's expense;

- (ii) correct the taxpayer's credit record; and
- (iii) correct any public disclosure of the improperly imposed lien.

**Sec. 8.417 Application:** This ordinance shall be liberally construed and administered to supplement all of the Village's tax ordinances. To the extent that any tax ordinance is in conflict with or inconsistent with this ordinance, this ordinance shall be controlling.

*Revised: February 2001 Ord. #465*

## **Article 5 – Identity Theft Policy**

**Sec. 8.501 Background:** The Fair and Accurate Credit Transactions Act of 2003 defines "creditor" to include municipalities that furnish water and sewer service. The Village furnishes water and sewer service. Further, the Fair and Accurate Credit Transactions Act of 2003 defines account that are used for personal, family or household purposes. The Village has considered the size and complexity of the Village operations of the Village, the nature and scope of the Village activities and the prior history of the lack of any attempt to obtain confidential records. Further, the Village has taken into consideration the fact that it is a small municipality with limited funds, limited staff, located in a rural area in central Illinois and in general has not been a target of identity theft. The program that is adopted through this policy is appropriate to the small size of the Village, the lack of complexity of the Village itself and takes into consideration the nature of the Village operations. The Federal Trade Commission has specifically authorized municipalities to adopt flexible rules. Village personnel are encouraged to use common sense when securing confidential information. The Village has performed an initial risk assessment to determine whether there are any accounts that are subject to the Fair and Accurate Credit Transactions Act of 2003. The Village has determined that the only accounts that the Village maintains that are subject to this Act are water and sewer billing accounts. The Village has also considered the methods that it currently uses to open accounts, the methods that it uses to access accounts and its previous experience with identity theft. The Village has never even experienced an attempt of identity theft.

### **Sec. 8.502 Program Purpose and Definitions**

- A. Fulfilling requirement of the Red Flag Rule: Relevant warning signs for possible Identity Theft shall be called "Red Flags" for purposes of this Policy and under the Fair and Accurate Credit Transactions Act of 2003. Under the Red Flag Rule, every municipality that furnishes water and or sewer services is required to establish an "Identity Theft Prevention Program" tailored to its size, complexity and the nature of its operation. Each program must contain reasonable policies and procedures to:
  - 1. Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the Program;
  - 2. Detect Red Flags that have been incorporated into the Program;
  - 3. Respond appropriately to any Red Flags that are detected to prevent and mitigate Identity Theft; and
  - 4. Ensure the Program is updated periodically, to reflect changes in risks to customers or to the safety and soundness of the creditor from Identity Theft.
  
- B. Red Flag Rule definitions used in this Policy: The Red Flag Rule defines "Identity Theft" as "fraud committed using the identifying information of another person: and a "Red Flag" as a pattern, practice, or specific activity that indicates the possible existence of Identity Theft. All of the Village water and sewer accounts shall be governed by this program. Although the Village has water and sewer accounts that are not used for personal, family or household purposes, the Village has determined that it is appropriate to subject all water and sewer

accounts to the provisions of this program. Some of the Village water and sewer accounts are for commercial and/or education purposes. "Identifying information" is defined under the Rule and Policy as "any name or number that may be used, alone or in conjunction with any other information, to identify a specific person," including: name, address, telephone number, Social Security number, date of birth, government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, unique electronic identification number, computer's Internet Protocol address, or routing code.

**Sec. 8.503 Identification of Red Flags:** In order to identify relevant Red Flags, the Village considers the types of accounts that it offers and maintains, the methods it provides to open its accounts, the methods it provides to access its accounts, and its previous experiences with Identity Theft. The Village identifies the following red flags, in each of the listed categories:

- A. Notifications and Warnings from Credit Reporting Agencies: None. The Village does not subscribe to a Credit Reporting service.
- B. Suspicious Documents:
  - 1. Identification document or card that appears to be forged, altered or inauthentic;
  - 2. Identification document or card on which a person's photograph or physical description is not consistent with the person presenting the document;
  - 3. Other document with information that is not consistent with existing customer information (such as if a person's signature on a check appears forged); and
  - 4. Application for service that appears to have been altered or forged.
- C. Suspicious Personal identifying Information:
  - 1. Identifying information presented that is inconsistent with other information the customer provides (example: inconsistent birth dates);
  - 2. Identifying information presented that is inconsistent with other sources of information (for instance, an address not matching an address on file with the Village);
  - 3. Identifying information presented that is the same as information shown on other applications that were found to be fraudulent;
  - 4. Identifying information presented that is consistent with fraudulent activity (such as invalid phone number or fictitious billing address);
  - 5. Social Security number presented that is the same as one given by another customer; An address or phone number presented that is the same as that of another person;
  - 6. A person fails to provide complete personal identifying information on an application when reminded to do so (however, by law social security numbers must not be required); and
  - 7. A person's identifying information is not consistent with the information that is on file for the customer.
- D. Suspicious Account Activity or Unusual Use of Account
  - 1. Change of address for an account followed by a request to change the account holder's name;
  - 2. Payments stop on an otherwise consistently up-to-date account;
  - 3. Account used in a way that is not consistent with prior use (example: very high activity);
  - 4. Mail sent to the account holder is repeatedly returned as undeliverable;
  - 5. Notice to the Village that a customer is not receiving mail sent by the Village;
  - 6. Notice to the Village that an account has unauthorized activity;
  - 7. Breach in the Village's computer system security; and
  - 8. Unauthorized access to or use of customer account information.

- E. Alerts from Others: Notice to the Village from a customer, identity theft victim, law enforcement or other person that it has opened or is maintaining a fraudulent account for a person engaged in Identity Theft.

**Sec. 8.504 Detecting Red Flags:**

- A. New Accounts: In order to detect any of the Red Flags identified above associated with the opening of a new account, Village personnel will take the following steps to obtain and verify the identity of the person opening the account:
  - 1. Require certain identifying information such as name, date of birth, residential or business address, principal place of business for an entity, driver's license or other identification;
  - 2. Verify the customer's identity (for instance, review a driver's license or other identification card);
  - 3. Review documentation showing the existence of a business entity; and
  - 4. Require a photocopy of a State issued Drivers License or Identification card to be made for the applicant that desires to open an account. If a State issued Drivers License or Identification card is not available, then other appropriate photo identifications shall be furnished to the Village and a copy of such identification shall be maintained for Village records.
- B. Existing Accounts: In order to detect any of the Red Flags identified above for and existing account, Village personnel will take the following steps to monitor transactions with an account:
  - 1. Verify the identification of customers if they request information (in person, via telephone, via facsimile, via email);
  - 2. Verify the validity of requests to change billing addresses; and
  - 3. Verify changes in banking information given for billing and payment purposes.

**Sec. 8.505 Preventing and Mitigating Identity Theft:** In the event Village personnel detect any identified Red Flags, such personnel shall take one or more of the following steps, depending on the degree of risk posed by the Red Flag:

- A. Prevent and Mitigate:
  - 1. Continue to monitor an account for evidence of Identity Theft;
  - 2. Contact the customer;
  - 3. Change any passwords or other security devices that permit access to accounts;
  - 4. Not open a new account;
  - 5. Close an existing account;
  - 6. Reopen an account with a new number;
  - 7. Notify the Program Administrator for determination of the appropriate step(s) to take;
  - 8. Notify law enforcement; or
  - 9. Determine that no response is warranted under the particular circumstances.
- B. Protect customer identifying information: In order to further prevent the likelihood of identity theft occurring with respect to Village accounts, the Village will take the following steps with respect to its internal operating procedures to protect customer identifying information:
  - 1. Ensure that its website is secure or provide clear notice that the website is not secure;
  - 2. Ensure complete and secure destruction of paper documents and computer files containing customer information;
  - 3. Ensure that office computers are password protected and that computer screens lock after a set period of time;
  - 4. Keep offices clear of papers containing customer information;

5. Request only the last 4 digits of social security numbers (if any);
6. Ensure computer virus protection is up to date; and
7. Require and keep only the kinds of customer information that is necessary for Village purposes.

**Sec. 8.506 Program Updates:** This program will be periodically reviewed and updated to reflect changes in risks to customers of the Village and the soundness of the Village from Identity Theft. At least one time per year the Program Administrator will consider the Village's experiences with Identity Theft situations, changes in Identity Theft methods, changes in Identity Theft detection and prevention methods, changes in types of accounts the Village maintains and changes in the Village's business arrangements with other entities. After considering these factors, the Program Administrator will determine whether changes to the Program, including the listing of Red Flags, are warranted. If the Program Administrator believes that it is advisable, the Program administrator will recommend updates to the Program to the Village. A written report shall be submitted by the Program Administrator each year concerning the review by the Program Administrator of this Program. This report shall be furnished to the Village by, on or before the last day of December 2009 and each year thereafter.

**Sec. 8.507 Program Administration:**

- A. Oversight: Responsibility for developing, implementing and updating this Program lies with and Identity Theft Administrator for the Village. The initial Identity Theft Administrator shall be Scott Eidenmiller. By adopting this policy, the Board of Trustees hereby appoints Scott Eidenmiller as the Identity Theft Administrator. Thereafter, the Village Board may appoint some other person to serve as the Identity theft Administrator. The Program Administrator will be responsible for the Program administration, for ensuring appropriate training of Village Staff on the Program, for reviewing any staff reports regarding the detection of Red Flags and the steps for preventing and mitigating Identity Theft, determining which steps of prevention and mitigation should be taken in particular circumstances and considering periodic changes to the Program. The employees of the Village that interact directly with the customers on a day-to-day basis shall have the initial responsibility for monitoring the information and documentation provided by the customer and any third-party service provider in connection with the opening of new accounts and the modification of or access to existing accounts and the detection of any Red Flags that might arise. The Program Administrator shall take all steps necessary so that employees who might be called on to assist new customers with the opening of a new account, modification of an existing account or otherwise accessing accounts, be properly trained such that they have a working familiarity with the relevant Red Flags identified within the Program so as to be able to recognize and Red Flags that might surface in connection with the transaction. The Program Administrator shall be responsible for making any final decisions on any unresolved Red Flags. In the event that an employee has any question concerning Red Flags or this Program, at any time, the employee should immediately contact the Program Administrator.
- B. Staff Training and Reports: Village staff responsible for implementing the Program shall be trained either by or under the direction of the Program Administrator in the detection of Red Flags, and the responsive steps to be taken when a Red Flag is detected.
- C. Service Provider Arrangements: In the event the Village engages a service provider to perform an activity in connection with one or more accounts, the Village will take the following steps to ensure the service provider performs its activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft.

1. Require, by contract, that service providers have such policies and procedures in place; and
2. Require, by contract, that service providers review the Village's Program and report any Red Flags to the Program Administrator.

**Sec. 8.508 Specific Program Elements and Confidentiality:** For the effectiveness of Identity Theft Prevention Programs, the Red Flag Rule envisions a degree of confidentiality regarding the Village's specific practices relating to Identity Theft detection, prevention and mitigation. Therefore, under this Program, knowledge of such specific practices are to be limited to the Village President, those employees who need to know them for purposes of preventing Identity Theft and the Identity Theft Administrator. Because this Program is to be adopted by a public body and thus publicly available, it would be counterproductive to list these specific practices here. Therefore, only the Program's general Red Flag detection, implementation and prevention practices are listed in this document.

*Revised May 2009 Ordinance #544*