

CODIFIED ORDINANCES OF ELBURN

PART EIGHT - BUSINESS REGULATION AND TAXATION CODE

TITLE TWO - Business Regulation

- Chap. 802. Licenses and Permits in General.
- Chap. 804. Alcoholic Beverage Sales.
- Chap. 806. Amusements.
- Chap. 808. Athletic Exhibitions.
- Chap. 810. Billiard and Pool Tables.
- Chap. 812. Bowling Alleys.
- Chap. 818. Cable Telecommunications Franchise Regulations.
- Chap. 830. Handbills.
- Chap. 838. Itinerant Merchants.
- Chap. 846. Kennels, Pet Shops and Animal Shelters, Pounds and Hospitals.
- Chap. 850. Massage Establishments and Therapists. (Repealed)
- Chap. 852. Mechanical and Electronic Amusement Devices.
- Chap. 856. Motion Picture Theaters.
- Chap. 866. Raffles.
- Chap. 870. Scavengers.
- Chap. 872. Skating Rinks.
- Chap. 874. Solicitors.
- Chap. 878. Table Games.
- Chap. 880. Tattoo and Body Piercing Establishments.
- Chap. 882. Second-Hand Articles Drop-Off Containers.
- Chap. 884. Towing Services.
- Chap. 886. Cable and Video Customer Protection.
- Chap. 888. Video Gaming Act.

TITLE FOUR - Taxation

- Chap. 890. Municipal Retailers Occupation Tax.
- Chap. 892. Municipal Service Occupation Tax.
- Chap. 894. Municipal Utility Tax.
- Chap. 895. Simplified Municipal Telecommunications Tax.
- Chap. 898. Cable/Video Service Provider Fee and PEG Access Support Fee.

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CHAPTER 802

Licenses and Permits in General

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| 802.01 Application of chapter. | 802.08 Nuisances. |
| 802.02 License and permit applications. | 802.09 Inspections; providing samples of commodities, etc., for analysis; revocation of licenses. |
| 802.03 Investigations. | 802.10 Revocation of licenses and permits. |
| 802.04 License and permit fees. | 802.11 Posting of licenses. |
| 802.05 Termination of licenses. | 802.99 Penalty. |
| 802.06 Compliance with other applicable ordinances required. | |
| 802.07 Transfer; change of location. | |

CROSS REFERENCES

Power to provide for issuance and revocation of licenses - see Ill. R.S.

Ch. 24, Sec. 11-60-1

Authority of Chief of Police - see ADM. 248.02(b)(2)

Licensing of motor vehicles - see TRAF. Ch. 462

Building permits - see B. & H. Ch. 1442

Licensing of mobile home parks - see B. & H. 1470.02 et seq.

802.01 APPLICATION OF CHAPTER.

This chapter shall govern the licensing of the various trades, businesses and professions regulated in this Business Regulation and Taxation Code, except to the extent that the same are governed by other provisions in this Code.

802.02 LICENSE AND PERMIT APPLICATIONS.

(a) Applications for all licenses and permits required by this Business Regulation and Taxation Code shall be made in writing to the Village Clerk, in the absence of a provision to the contrary. Each application shall state the name of the applicant, the permit or licenses desired, the location to be used, if any, the time covered and the fee to be paid. Each application shall contain such additional information as may be needed for the proper guidance of the Village officials in the issuing of the permit or license applied for.

(b) Forms for all licenses and permits, and all applications therefor, may be prepared and kept on file by the Village Clerk.

(c) Each license or permit issued shall bear the signatures of the Village Clerk and the Village President, in the absence of a provision to the contrary.
(Ord. 76-20. Passed 9-7-76.)

802.03 INVESTIGATIONS.

Upon receipt of the application for a license or permit, where the ordinances of the Village necessitate an inspection or investigation before the issuance of such permit or license, the Village Clerk shall refer such application to the proper officer for making such investigation within forty-eight hours of the time of such receipt. The officer charged with the duty of making the investigation or inspection shall make a report thereon, favorable or otherwise, within ten days after receiving the application or a copy thereof.
(Ord. 76-20. Passed 9-7-76.)

802.04 LICENSE AND PERMIT FEES.

In the absence of a provision to the contrary, all fees and charges for licenses and permits shall be paid in advance, at the time an application therefor is made, to the Village Clerk. When application for an annual license is made after the expiration of six months of the current license year, the license for the remainder of the year shall be issued upon the payment of one-half the annual fee, unless otherwise provided in this chapter. (Ord. 76-20. Passed 9-7-76.)

802.05 TERMINATION OF LICENSES.

(a) All annual licenses shall terminate on the last day of the fiscal year of the Village, where no provision to the contrary is made.

(b) The Village Clerk shall mail to all licensees of the Village a statement of the time of expiration of the license held by the licensee, provided that a failure to send out such notice or the failure of the licensee to receive it shall not excuse the licensee from a failure to obtain a new license or a renewal; nor shall it be a defense in an action for operating without a license.

(Ord. 76-20. Passed 9-7-76.)

802.06 COMPLIANCE WITH OTHER APPLICABLE ORDINANCES
REQUIRED.

No license shall be issued for the conduct of any business, and no permit shall be issued for any thing or act, if the premises and/or building to be used for the purpose do not fully comply with the requirements of the ordinances of the Village. No such license or permit shall be issued for the conduct of any business or the performance of any act which would involve a violation of the Zoning Code.

(Ord. 76-20. Passed 9-7-76.)

802.07 TRANSFER; CHANGE OF LOCATION.

(a) Licenses issued may be transferred by the original licensee, provided that written notice thereof is given to the Village ten days before the transfer is made, but no more than one transfer of any license shall be made within any license year. No person shall transfer any peddler's, itinerant merchant's, chauffeur's or liquor dealer's license, and any attempted transfer of such license shall have no effect.

(b) The location of any licensed business or occupation, or of any permitted act, may be changed, provided that ten days notice thereof is given to the Village Clerk in the absence of a provision to the contrary. In all cases, the building and zoning requirements of the Village shall be complied with.

(Ord. 76-20. Passed 9-7-76.)

802.08 NUISANCES.

No business, licensed or not, shall be conducted or operated so as to amount to a nuisance in fact.

(Ord. 76-20. Passed 9-7-76.)

802.09 INSPECTIONS; PROVIDING SAMPLES OF COMMODITIES, ETC.,
FOR ANALYSIS; REVOCATION OF LICENSES.

(a) Whenever inspection of the premises used for or in connection with the operation of a licensed business or occupation is provided for or required by ordinance, or is reasonably necessary to secure compliance with any ordinance provision or to detect violations thereof, it shall be the duty of the licensee, or the person in charge of the premises to be inspected, to admit thereto for the purpose of making such inspection any officer or employee of the Village who is authorized or directed to make such inspection at any reasonable time that admission is required.

(b) Whenever an analysis of any commodity or material is reasonably necessary to secure conformance with any ordinance provision or to detect violations thereof, it shall be the duty of the licensee of the Municipality whose business is governed by such provisions to give to any authorized officer or employee of the municipality requesting the same sufficient samples of such material or commodity for such analysis upon request.

(c) In addition to any other penalty which may be provided, the Board of Trustees may revoke the license of any licensed proprietor of any licensed business in the Village who refuses to permit entry to or to cooperate with any such officer or employee who is authorized to make such inspection, or who refuses to take such samples to make the inspection, or to take an adequate sample of the desired commodity, or who interferes with such officer or employee while in the performance of his or her duty in making such inspection. However, no license shall be revoked for such cause unless written demand is made upon the licensee or person in charge of the premises, in the name of the Village, stating that such inspection or sample is desired at the time it is sought to make the inspection or obtain the sample.

(Ord. 76-20. Passed 9-7-76.)

802.10 REVOCATION OF LICENSES AND PERMITS.

Any license or permit issued for a limited time may be revoked by the Board of Trustees at any time during the life of such license or permit for any violation by the licensee or permittee of the ordinance provision relating to the license or permit, the subject matter of the license or permit, or of the premises occupied. Such revocation may be in addition to any fine imposed.

(Ord. 76-20. Passed 9-7-76.)

802.11 POSTING OF LICENSES.

It shall be the duty of any person conducting a licensed business in the Village to keep the license posted in a prominent place on the premises used for such business, at all times.

(Ord. 76-20. Passed 9-7-76.)

802.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 804
Alcoholic Beverage Sales

<p>804.01 Definitions.</p> <p>804.02 Local Liquor Control Commissioner.</p> <p>804.03 License requirements.</p> <p>804.04 Classification of licenses; fees and number of licenses.</p> <p>804.05 Terms; transfer; renewal; termination.</p> <p>804.06 Location restrictions.</p> <p>804.07 Hours of operation.</p> <p>804.08 Visibility from street required; interior lighting.</p> <p>804.09 Sales to minors; provisions relating to minors.</p>	<p>804.10 Sales to intoxicated persons, habitual drunkards, etc.</p> <p>804.11 Miscellaneous regulations.</p> <p>804.12 Failure to notify police of peace disturbances.</p> <p>804.125 General prohibitions in places where alcoholic beverages are sold.</p> <p>804.13 License revocation and/or suspension.</p> <p>804.99 Penalty.</p>
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CROSS REFERENCES

Soliciting purchase of alcoholic beverages - see Ill. R.S. Ch. 38, Secs. 26.1-2 et seq.

Power to license retail sale of alcoholic liquor - see Ill. R.S. Ch. 43, Sec. 110

General liquor control provisions - see Ill. R.S. Ch. 43, Secs. 119 et seq.

Liquor control - see GEN. OFF. Ch. 630

Local Liquor Control Commissioner - see B.R. & T. 804.02

804.01 DEFINITIONS.

As used in this chapter:

- (a) "Alcoholic liquor" includes alcohol, spirits, wine and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being.

- (b) "Applicant" means one who makes application for a liquor license in accordance with the provisions of this chapter. An applicant may be a person, partnership, nonprofit association or a corporation.
- (c) "Bar" means a counter at which alcoholic drinks are served to customers.
- (d) "Club" means a corporation, organized under the laws of this State, not for pecuniary profit and solely for the promotion of some common object other than the sale and consumption of alcoholic liquor.
- (e) "Original package" means any container whatsoever used, corked or capped, sealed and labeled by a manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor.
- (f) "Restaurant" means any public place kept, used, maintained, advertised and held out to the public where meals are served, and where meals actually are served and regularly served, without sleeping accommodations, which place is provided with adequate and sanitary kitchen and dining room equipment and capacity and has employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. Further, no restaurant licensed as such shall sell alcoholic liquor except with meals.
- (g) "Retail sales" means the sale for use or consumption and not for resale.
- (h) "Wine" means any alcoholic liquor or beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such liquors or beverages when fortified by the addition of alcohol or spirits, provided that the alcohol content thereof does not exceed twenty-four percent of alcohol by volume.
(Ord. 85-10. Passed 1-20-86.)

804.02 LOCAL LIQUOR CONTROL COMMISSIONER.

(a) Commissioner Defined; Appointive Powers. The Village President shall be the Local Liquor Control Commissioner of the Village. The Commissioner may appoint, with the advice and consent of the Board of Trustees, a person or persons to assist him or her in the exercise of the powers and the performance of the duties herein provided for such Local Liquor Control Commissioner.

When in this chapter the Local Liquor Control Commissioner is referred to, it shall include any committee or other agency appointed by such Commissioner.

(b) Licensing Duties. With respect to his or her powers, functions and duties concerning licenses, the Local Liquor Control Commissioner shall:

- (1) Grant and revoke for cause all local licenses issued to persons for premises within the jurisdiction of the Commissioner;

- (2) Enter, or authorize any law enforcement officer to enter, at any time, upon any premises licensed hereunder, to determine whether any of the provisions of the State law "Relating to Alcoholic Liquor," or any rules and regulations adopted pursuant thereto, or of the provisions of this chapter or Chapter 630 of the General Offenses Code have been or are being violated, and act upon such complaints in the manner hereinafter provided;
- (3) Receive local license fees and pay the same forthwith to the Village Clerk;
- (4) Have the right to examine or cause to be examined, under oath, any applicant for a local license or renewal thereof, or any licensee upon whom notice of revocation has been served in the manner hereinafter provided, and to examine or cause to be examined, the books and records of any such applicant or licensee and to hear testimony and take proof for his or her information in the performance of his or her duties, and for any such purpose to issue subpoenas which shall be effective in any part of this State. For the purpose of obtaining any of the information desired under this section, he or she may authorize his or her agent to act on his or her behalf; and
- (5) Keep or cause to be kept a complete record of all such licenses issued by him or her, and furnish the Village Clerk, Village Treasurer and the Chief of Police with copies thereof. Upon the issuance of any new licenses or the revocation of an old license, the Village President shall give written notice of such action to each of these officers within forty-eight hours of such action.

(Ord. 85-10. Passed 1-20-86; Ord. 87-9. Passed 5-4-87.)

804.03 LICENSE REQUIREMENTS.

(a) License Required. It shall be unlawful to sell or offer for sale in the Village any alcoholic beverage without having a liquor license. It shall likewise be unlawful to violate the terms of a liquor license or the provisions of this chapter or Chapter 630 of the General Offenses Code.

(b) Applications. Applications for the license required in subsection (a) hereof, or for temporary permits, shall be made to the Local Liquor Control Commissioner on forms provided by the Village Clerk. The application shall be signed by the applicant or applicants. If the applicant is a partnership, the application shall be signed by all the general partners. If the applicant is a corporation or a nonprofit association, the application shall be signed by the president and secretary of such corporation or association, and a resolution authorizing the making of said application shall be presented with the application. All such applications shall be verified under oath and shall contain the following information, if applicable:

- (1) The name, age and address of the applicant or applicants, or in the case of a partnership, the names and addresses of the partners, or, in the case of a corporation or a nonprofit association, the names and addresses of the officers and directors, and if five percent or more of the stock of such corporation is owned by one person or his or her nominee, the name and address of such person. In the case of a corporation or a nonprofit association, a copy of the organization's articles of incorporation or charter, and a copy of its bylaws, shall be presented;
- (2) A statement that, if a partnership, all members of the partnership are qualified to obtain a license;
- (3) A statement that, if a corporation, all officers and directors and any shareholder with five percent or more of the stock are eligible to receive a license hereunder for every reason other than residence;
- (4) The citizenship of the applicant, his or her place of birth and, if a naturalized citizen, the time and place of his or her naturalization;
- (5) The character of the business of the applicant;
- (6) The length of time said applicant has been in a business of that character or, in the case of a corporation or nonprofit association, the date when its certificate of incorporation or charter was issued;
- (7) A statement that the applicant does beneficially own the premises for which a license is sought, or does have a lease thereon for the full period for which the license is to be issued. A copy of the applicant's title, contract to purchase or lease shall also be submitted;
- (8) A statement that the applicant is not a law enforcement official, the Village President or a Village Trustee of the Village, and that no such official has any direct interest regarding the applicant's proposed business;
- (9) A statement that the applicant has not been convicted of being a keeper of, or of keeping, a house of ill fame, and that he or she has not been convicted of pandering or another crime or misdemeanor opposed to decency or morality;
- (10) A statement, if the business is to be conducted by a manager or agent, that said manager or agent possesses the same qualifications required of the licensee;
- (11) A statement that the business premises are not within 100 feet of any church, school, hospital, home for the aged or indigent persons or for veterans or their wives or children, or any military station or undertaking establishment;

- (12) A statement that a majority of the customers are not or will not be minors, and that the principal business does not consist of selling school books, supplies, food, lunches or drinks for such minors;
- (13) The location and description of the premises or place of business which is to be operated under such license;
- (14) A statement as to whether the applicant has made application for a similar or other license on the premises other than those described in the application, and the status of such application;
- (15) A statement that the applicant has never been convicted of a felony and that the applicant is not disqualified to receive a license by reason of any matter or thing contained in this chapter, or in other ordinances of this Village or laws of this State;
- (16) A statement as to whether any prior liquor license held by the applicant has ever been revoked or suspended, and the reasons therefor;
- (17) A statement that the applicant will not violate any of the laws of the United States, the State of Illinois and the Village in the conduct of his or her business; and (Ord. 85-10. Passed 1-20-86.)
- (18) Proof of dram shop insurance coverage for the period to be covered by the license, together with proof that the premium for said insurance has been paid for the license period.
(Ord. 91-14. Passed 7-15-91.)

(c) Restrictions on Licenses and Authorized Licenses. The restrictions contained herein shall be applicable to any applicant for a liquor license, and said restrictions shall continue to be applicable during the term of the license, if granted. The term "person," when used in this chapter, shall be defined to include an individual if the applicant is an individual; the general partners if the applicant is a partnership; the officers, directors and shareholders owing five percent or more of the stock if the applicant is a corporation; and a majority of the members if the applicant is a nonprofit association.

No such license shall be issued to:

- (1) An applicant who is not a resident of the Village. If the applicant is a partnership, at least one of the general partners must be a resident of the Village. If the applicant is a corporation, its principal place of business must be within the Village. If the applicant is a nonprofit association, a majority of its members must be residents of the Village;
- (2) A person who is not of good character and reputation in the community in which he or she resides;

- (3) A person who is not a citizen of the United States;
- (4) A person who has been convicted of a felony under any Federal or State law;
- (5) A person who has been convicted of being a keeper of, or of keeping, a house of ill fame;
- (6) A person who has been convicted of pandering or of any other crime or misdemeanor opposed to decency and morality;
- (7) A person or applicant whose license issued under this chapter has been revoked for cause;
- (8) A person or applicant who, at the time of application for renewal of any license hereunder, would not be eligible for such license under a first application;
- (9) A partnership, unless all of the partners of such partnership are qualified to obtain a license, except as provided for in paragraph (c)(1) hereof;
- (10) A corporation, if any officer, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than five percent of the stock of such corporation, would not be eligible to receive a license hereunder for any reason other than citizenship and residency within the Village;
- (11) Any person or applicant whose place of business is conducted by a manager or agent, unless said manager or agent possesses the same qualifications required of the licensee;
- (12) A person who has been convicted of a violation of any State or Federal law concerning the manufacture, possession or sale of alcoholic liquor, or who has forfeited his or her bond to appear in court to answer charges for any such violation;
- (13) A person or applicant who does not own the premises for which a license is sought or does not have a lease thereon for the full period for which the license is issued;
- (14) Any Village law enforcement official, the Village President or a Village Trustee; or
- (15) Any person or applicant not eligible for a State retail liquor dealer's license.
(Ord. 85-10. Passed 1-20-86.)

(d) Investigative Report. No license shall be issued hereunder until the applicant shall have been investigated by the Local Liquor Control Commissioner and a report filed in the records of said Commissioner approving the issuance of such license. As a part of such investigation, the Local Liquor Control Commissioner shall require fingerprints of all new applicants and shall have the right to require fingerprints of any applicant for renewal thereof. As used in this section, the term "applicant" or "applicants" shall mean any individual who applies for a liquor license, all partners and/or officers of any partnership which applies for a liquor license and all officers of any corporation which applies for a liquor license. For purposes of obtaining fingerprints under this section, the Local Liquor Commissioner shall collect

a fee and forward the fee to the Illinois Department of State Police and the Federal Bureau of Investigation. A copy of fingerprints shall be held on record by the Liquor Control Commissioner showing compliance with the prohibitions as stated in this section. (Ord. 2000-3. Passed 3-6-00.)

(e) Time Limit on Applications. The Liquor Control Commissioner shall have sixty days in which to review the application. (Ord. 87-9. Passed 5-4-87; Ord. 2009-15. Passed 7-20-09.)

804.04 CLASSIFICATION OF LICENSES; FEES AND NUMBER OF LICENSES.

(a) Licenses for the retail sale of alcoholic liquor shall be divided into the following classes:

- (1) Class "A" - on/off-site licenses.
 - A. Class "A" licenses shall permit the retail sale of alcoholic liquor for consumption on or off the premises where it is sold. The resale of alcoholic liquor so purchased is not permitted.
 - B. The annual fee for such licenses shall be one thousand dollars (\$1,000.00).
 - C. The total number of Class "A" licenses issued and in force at any one time in any year shall not exceed two licenses for the first 2,500 persons residing within the Village, and one license for each additional 1,250 persons residing in the Village, or fraction thereof, as determined by the most recent U.S. census.
- (2) Class "B-1" - off-site licenses generally. Class "B-1" licenses shall only permit the retail sale of alcoholic liquor in original packages, but not for consumption on the premises where it is sold.
- (3) Class "B-2" - off-site licenses for beer and wine only. Class "B-2" licenses shall only permit the retail sale of beer and wine in original packages, but not for consumption on the premises where they are sold.
- (4) Class "C" - temporary permits.
 - A. Class "C" temporary permits shall permit the retail sale of alcoholic liquor for consumption only on the premises where it is sold and not for resale in any form. A Class "C" temporary permit is to be issued for temporary stands, booths and counters, such as those used at picnics, celebrations and the like. The said Class "C" temporary permit shall be valid only on the day for which said permit is issued, and only during the hours of said day during which alcoholic liquor may be sold within the Village.
 - B. The number of Class "C" temporary permits which may be issued to any one applicant in any license year shall be limited to four for the sale of alcoholic liquor of any kind, and six for the sale of beer only.

The Local Liquor Control Commissioner may, with the consent of the Board of Trustees of the Village, grant additional Class "C" temporary permits on such terms and conditions as are acceptable to the Board of Trustees.

- (5) Class "D" - club licenses.
 - A. Class "D" licenses shall permit the retail sale of alcoholic liquor for consumption only on the premises where it is sold, to be issued to a regularly organized club, as defined in Section 804.01, such sales to be made only to members of the club and their guests.
 - B. No Class "D" license shall be issued until the Local Liquor Control Commissioner has satisfied himself or herself that the club applying for the license was actually and in fact organized for some purpose or object other than the sale or consumption of alcoholic liquor.
- (6) Class "E-1" - restaurant license, with no bar.
 - A. Class "E-1" licenses shall permit the retail sale of alcoholic liquor for consumption only on the premises where it is sold, and are to be issued to a restaurant, as defined in Section 804.01. Such sales shall be limited to those persons who order, use or consume alcoholic liquor in connection with their meals. No bar shall be permitted within the restaurant.
 - B. No Class "E-1" license shall be issued until the Local Liquor Control Commissioner has satisfied himself or herself that the restaurant applying for the license was actually and in fact organized for the principal purpose of providing food service to its patrons, and not for the object of selling alcoholic liquors. The receipts from the sale of alcoholic liquor shall not total more than 50% of the gross dollar sales of the restaurant.
- (7) Class "E-2" - restaurants, beer and wine only.
 - A. Class "E-2" licenses shall permit the retail sale of beer and wine for consumption only on the premises where such beer and wine are sold, by the glass or pitcher, and such licenses are to be issued to a restaurant, as defined in Section 804.01. Such sales shall be limited to those persons who order beer and wine in connection with their meals. The sale of alcoholic liquor other than beer and wine shall not be permitted. There shall be no bar within the restaurant.
 - B. No Class "E-2" license shall be issued until the Local Liquor Control Commissioner has satisfied himself or herself that the restaurant applying for the license is in fact organized for the principal purpose of providing food service to its patrons, and not for the object of selling alcoholic liquors. Receipts from the sale of alcoholic liquor shall not total more than 50% of the gross dollar sales of the restaurant.

- (8) Class "E-3" - restaurant with cocktail lounge.
- A. Class "E-3" licenses shall permit the retail sale of alcoholic liquor for consumption on the premises only, provided that the sale of alcoholic liquor shall only be made in connection with and in adjunct to a restaurant, as defined in Section 804.01, owned and operated by licensees and located upon the premises. Further, "cocktail lounge" shall mean, for the purposes of this section, an area within the premises and in conjunction with the restaurant dining area in which there is seating (tables and chairs) for patrons not greater than the seating provided in the restaurant dining area, and provided, further, that said restaurant and cocktail lounge utilize a common door for public ingress and egress.
 - B. No Class "E-3" license shall be issued until the Local Liquor Control Commissioner has satisfied himself or herself that the restaurant applying for the license was actually and in fact organized for the principal purpose of providing food service to its patrons, and not for the object of selling alcoholic liquors. Receipts from the sale of alcoholic liquor shall not total more than 50% of the gross dollar sales of the restaurant.
- (9) Class "F" - golf course on-site license.
- A. Class "F" licenses shall permit the retail sale of alcoholic liquor for consumption only on the premises where it is sold, to be issued to private and public golf course establishments. Said alcoholic liquor may be served and consumed inside said establishment with meals that may be served by the establishment, inside the establishment's club room, if any, and outside on the golf course proper. Sale of packaged liquor shall not be permitted.
 - B. No Class "F" license shall be issued until the Local Liquor Control Commissioner has satisfied himself or herself that the establishment applying for the license is in fact organized for the principal purpose of a golf course. Receipts from the sale of alcoholic liquor shall not total more than 50% of the gross dollar sales of the golf course establishment.
- (10) Class "T" - taste sampling license.
- A. Class "T" licenses shall permit taste sampling on premises that possess Class B-1, B-2, D, E-1, E-2, and E-3 licenses in the Village.
 - B. A Class "T" license shall permit up to three samples, consisting of no more than one-quarter ounce of distilled spirits, one ounce of wine, or two ounces of beer, to be served to a consumer in one day.
 - C. A Class "T" license shall permit free taste sampling for five consecutive days.
 - D. A Class "T" license shall be conspicuously posted at the event.

(11) Endorsements of outdoor retail sales of alcoholic liquor.

- A. Purpose. The purpose of this division (a)(11) is to establish regulations and controls for the temporary or recurring retail sale, and dispensing of alcoholic liquor on the premises from an outdoor location. It is the intent that such regulations and controls be established to permit licensees' limited outdoor sales of such alcoholic beverages while providing certain protections to adjoining or surrounding property owners or occupants.
- B. Endorsement required. It shall be unlawful for any licensee or person, firm, corporation, partnership or club, to sell, or offer to sell, any alcoholic liquor from an outdoor location of the premises without first:
1. Obtaining an endorsement as provided in this section; and
 2. Being a license holder in good standing with a Class A, C, D, E-1, E-2, or E-3 liquor license under this chapter.

The outdoor endorsement shall not increase the privileges associated with the primary license issued under this section. Any licensee that is permitted to sell beer or wine only shall not be allowed to sell hard liquor under the terms of an outdoor endorsement.

The Local Liquor Control Commissioner may, in his sole discretion and as designated in any license, impose such other and further conditions, as the local liquor control commissioner deems necessary for the public's health, safety, peace and comfort.

- D. Restrictions:
1. It shall be unlawful to sell or otherwise dispense from any outdoor location any alcoholic liquor without first obtaining an endorsement under this section.
 2. It shall be unlawful for any holder of an outdoor liquor endorsement to sell or otherwise dispense alcoholic liquor from an outdoor location on premises except during the following hours upon the following days of the week:

Sunday	12:00 noon to 1:00 a.m.
Monday through Thursday	10:00 a.m. to 1:00 a.m.
Friday through Saturday	10:00 a.m. to 2:00 a.m.
 3. It shall be unlawful for any holder of an outdoor liquor endorsement to play or cause to play amplified music or cause to have performed such other forms of entertainment outdoor by means or use of electronic amplification with a maximum of 90 decibels daytime; 80 decibels nighttime (after 10:00 p.m.) except during the following hours upon the following days of the week.

Sunday through Thursday	12:00 noon to 10:00 p.m.
Friday through Saturday	12:00 noon to 11:30 p.m.
 4. It shall be the affirmative duty of the license holder, as a condition of such endorsement, to maintain and perform the following requirements:

- a. Any outdoor area where alcoholic liquors are sold or consumed shall be cordoned off by use of a permanent fence structure, which shall be not less than four feet in height nor more than six feet in height. If a temporary event is being held, a temporary fence may be constructed not less than four feet in height nor more than six feet in height, for a maximum of three days, and it must come down within 48 hours of the event.
- b. Any outdoor area shall have designated entrance and exit points for patrons.
- c. During the hours of operations, each point of ingress or egress to the outdoor area from a public right-of-way, must have a minimum of one person over the age of 21 years acting as an agent of the license holder to identify persons under the age of 21 years.
- d. Last call for alcoholic liquor shall be announced at least 45 minutes prior to the designated closing time. Dispensing of alcoholic liquor shall cease 30 minutes prior to the designated closing time.

E. Application:

1. Application for permission to conduct such outdoor retail sale of alcoholic liquor shall be in writing, signed by the license holder of a Class A, C, D, E-1, E-2, or E-3 liquor license under this chapter, verified under oath, and shall contain the following information:
 - a. The name and address of the applicant.
 - b. The dates, starting and ending times requested for the license.
 - c. A diagram, showing all dimensions, entrances, exits and locations of seating or standing areas of the outdoor area upon which the sale and consumption of alcoholic liquor will be sold or consumed.
2. Applicants shall be required, from time to time, upon request of the Local Liquor Control Commissioner, his designee or any sworn police officer, to provide proof that any person who sells or serves alcoholic liquor has been licensed by either "TIPS" (Training for Intervention Procedures by Servers of Alcohol) or "BASSET" (Beverage Alcohol Sellers and Servers Education Training).

(b) Fees. The annual fee for licenses shall be as follows:

Class A	\$1,000.00
Class B-1	1,000.00
Class B-2	1,000.00

Class C	\$25.00 per day
Class D	50.00
Class E-1	1,000.00
Class E-2	750.00
Class E-3	1,000.00
Class F	1,000.00
Class T	20.00 per event

(c) Disposition of fees.

- (1) All fees for the licenses described in this section shall be paid to the Local Liquor Control Commissioner at the time application for such a license is made, and shall forthwith be turned over to the Village Clerk. In the event the license applied for is denied, the fee shall be returned to the applicant, less the actual cost of processing the application. If the license is granted, then the balance of the fee shall be deposited in the General Corporate Fund or in such other fund as shall have been designated by the Board of Trustees by proper action.
- (2) A refund shall be made for that portion of the fee paid for any period in which the licensee is prevented from operating under such license in accordance with the provisions of Section 804.05(b).

(d) The number of licenses for each class shall be as follows:

Class A	3
Class B-1	4
Class B-2	0
Class C	No limit
Class D	2
Class E-1	0
Class E-2	0
Class E-3	1
Class F	1
Class T	No limit

(Ord. 98-9. Passed 6-1-98; Ord. 2003-02. Passed 1-20-03; Ord. 2003-06. Passed 3-17-03; Ord. 2003-09. Passed 5-9-03; Ord. 2003-14. Passed 7-21-03; Ord. 2004-03. Passed 4-19-04; Ord. 2007-02. Passed 4-2-07; Ord. 2007-07. Passed 5-21-07; Ord. 2008-07. Passed 5-5-08; Ord. 2009-12. Passed 6-15-09; Ord. 2009-14. Passed 7-20-09; Ord. 2009-15. Passed 7-20-09; Ord. 2010-09. Passed 2-22-10; Ord. 2011-19. Passed 7-11-11; Ord. 2011-22. Passed 8-1-11; Ord. 2012-02. Passed 2-6-12.)

804.05 TERMS; TRANSFER; RENEWAL; TERMINATION.

(a) Terms of Licenses. All licenses issued under the provisions of this chapter shall be for a term of one year, on May 1 and ending on April 30 of each year, provided that where application is made after the expiration of any portion of any license year, a license may be issued for the remainder thereof.

(b) Transfer of Licenses. A license shall be a purely personal privilege, and shall be good for a period not to exceed one year after issuance unless sooner revoked. Said license shall not constitute property. The license shall not be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, either voluntarily or involuntarily, or encumbered or hypothecated. Such license shall cease to be valid upon the death of the licensee and shall not descend by the laws intestacy or by will. The executors or administrators of the estate of any deceased licensee, and the trustee of any bankrupt licensee, when such estate consists in part of an alcoholic liquor business, may continue the business pursuant to an order of court, and may exercise the privileges of the deceased or bankrupt licensee after the death of such decedent or bankrupt, until the expiration of such license, but in no event longer than six months after the date of death or bankruptcy.

(c) Renewal of Licenses. Any licensee may renew his or her license at its expiration, provided the licensee is qualified to receive a license, and provided further that the premises for which said renewal license sought is suitable for such purpose. Further, the renewal privilege herein provided for shall not be construed as a vested right. The Local Liquor Control Commissioner has the right, from time to time, to decrease the number of licenses to be issued within the Village.

(d) Termination of Licenses.

- (1) In the event a licensee hereunder permanently ceases doing business, his or her license shall be deemed to have terminated and he or she shall, as soon as possible thereafter, surrender his or her license to the Local Liquor Control Commissioner, who shall advise the Board of Trustees of such surrender at the next regular meeting of the Board. Said licensee shall, commencing with the surrender of the license, be entitled to a refund of the license fee for that period of the license term during which the licensee shall not operate under such license.
- (2) In the event a licensee hereunder ceases doing business for a period of fifteen consecutive days, he or she shall thereby be considered to have permanently terminated his or her business. Upon the expiration of said fifteen-day period, he or she shall surrender his or her license to the Local Liquor Control Commissioner. The Local Liquor Control Commissioner shall advise the Village Board of such surrender at the next regular meeting of the Board, and arrangements shall be made for a prorata refund of the license fee. In the event any licensee desires to request an extension of the

fifteen-day period, he or she shall advise the Local Liquor Control Commissioner of such desire in writing, prior to the expiration of such fifteen-day period. The Local Liquor Control Commissioner may, in his or her discretion, grant extensions of time, with the consent of the Village Board, during which extension said license shall not terminate.
(Ord. 85-10. Passed 1-20-86.)

804.06 LOCATION RESTRICTIONS.

(a) General Restrictions. No license shall be issued for the sale at retail of any alcoholic liquor within 100 feet of any church, school, hospital, home for the aged, home for indigent persons, home for veterans or veterans' wives and children, military installation or base, undertaking establishment or mortuary.

(b) Liquor Zone. Establishments licensed under the provisions of this chapter shall be permitted only in Zoning District Classifications B1 and B2 as defined in the Zoning Code (Ordinance 74-24, passed November 18, 1974).
(Ord. 85-10. Passed 1-20-86.)

(c) Change of Location. Except as provided by Section 804.04(a)(4), a license issued hereunder shall permit the sale of alcoholic liquor only in the premises described in the license. Such location may be changed only when permitted by the Local Liquor Control Commissioner. Such permission shall be in writing. No change of location shall be permitted unless the proposed new location is in compliance with the provisions and regulations of this chapter and the Zoning Code.
(Ord. 87-9. Passed 5-4-87; Ord. 2009-15. Passed 7-20-09.)

804.07 HOURS OF OPERATION.

(a) Licensees may conduct business operations in accordance with this chapter and the laws of the State on Monday through Thursday between the hours of 10:00 a.m. and 1:00 a.m. of the following day, and on Friday and Saturday between the hours of 10:00 a.m. and 2:00 a.m. of the following day, and on Sundays between the hours of 12:00 noon and 1:00 a.m. of the following day.

(b) In addition to and notwithstanding the foregoing:

- (1) Licensees possessing a Class "F" golf course on-site license may conduct business operations on Saturdays and Sundays commencing at 8:00 a.m., and on Mondays through Fridays commencing at 9:00 a.m.
- (2) Licensees possessing a Class "B-1" off-site license or Class "B-2" off-site license for beer and wine only may conduct business operations Mondays through Sundays commencing at 8:00 a.m.
- (3) Licensees possessing a class "A" on/off-site license may conduct business operations on Sundays commencing at 11:00 a.m.

(c) No person shall sell or offer for sale, at retail, or give away, any alcoholic liquor, or admit the public to, or permit the public to remain within, or permit the consumption of alcoholic liquor in or upon, a licensed premises at times other than as above specified. A violation of this provision shall constitute cause for suspension or revocation of licenses issued pursuant to this chapter.

(Ord. 95-18. Passed 4-3-95; Ord. 2008-16. Passed 12-1-08; Ord. 2010-23. Passed 8-16-10; Ord. 2011-20. Passed 8-1-11; Ord. 2011-25. Passed 8-3-11.)

804.08 VISIBILITY FROM STREET REQUIRED; INTERIOR LIGHTING.

In establishments which are licensed for the sale of alcoholic liquor for consumption on the premises (other than a restaurant, hotel or club), no screen, blind, partition or other obstruction shall be permitted in the windows or upon the doors of such premises which shall prevent a clear view into the interior of such licensed premises from the street, road and sidewalk, and no booth, screen, blind, partition or other obstruction, nor any arrangement of lights or lighting, shall be permitted in or about the interior of such premises which shall prevent a clear view of the entire interior from the street, road and sidewalk. All rooms where liquor is sold for consumption on the premises shall be continuously lighted during business hours by natural light or artificial white light so that all parts of the interior of the premises shall be clearly visible. In case the view into any such licensed premises is willfully obstructed by the licensee, or if such licensee willfully permits an obstruction, then such license shall be subject to revocation. In order to enforce the provisions of this section, the Local Liquor Control Commissioner shall have the right to require the filing of plans, drawings and photographs depicting the interior design and layout of all such establishments.

(Ord. 85-10. Passed 1-20-86.)

804.09 SALES TO MINORS; PROVISIONS RELATING TO MINORS.

(a) No person engaged in the retail sale of alcoholic liquor, or any other person, shall sell, give or deliver alcoholic liquor to any person under the age of 21 years. No person under 21 years of age shall purchase, accept delivery of, attempt to purchase or accept delivery of, or have possession of, any alcoholic liquor in the Village. No person who is the owner or occupant of any premises located within the Village shall knowingly allow a minor to remain on such premises while in the possession of alcoholic liquor or while consuming alcoholic liquor. No parent or guardian shall knowingly suffer or permit any minor child, or whom he or she may be the parent or guardian, to violate any provision of this chapter.

(b) No person who is the holder of a retail liquor license, or his or her agent or employee, shall allow any person under the age of 21 years to be on the licensed premises. This subsection shall not apply to any minor who is accompanied by his or her parent or guardian or to any licensed premises having as its principal business the sale of food. Further, this subsection shall not apply to retail establishments possessing a class B-1 or B-2 license that contain more than 10,000 square feet of licensed premises, provided the majority of revenue from said retail establishments is not from alcoholic beverage sales.

(c) No person under the age of 21 years shall misrepresent his or her age for the purpose of purchasing, attempting to purchase, or otherwise procuring or attempting to procure, or obtaining, alcoholic liquor in any tavern or in any other place in the Village where alcoholic liquor is sold.

(d) In every tavern or other place in the Village where alcoholic liquor is sold, there shall be displayed at all times in a prominent place a printed card which shall be supplied by the Village Clerk and which shall read substantially as follows:

WARNING TO MINORS

You are subject to a fine up to \$200.00 under the Liquor Control Ordinance of the Village of Elburn if you purchase alcoholic liquor or misrepresent your age for the purpose of purchasing or obtaining alcoholic liquor.

(e) No minor under the age of 21 years shall tend bar or be issued a liquor license.

(f) No minor under the age of 21 years shall draw, pour or mix any alcoholic liquor in any licensed premises.

(g) In addition to all other fines and penalties herein provided, the Local Liquor Control Commissioner may suspend or revoke the license of any licensee for any violation of this section.

(h) No parent or guardian shall permit his or her child to violate any of the provisions of this section.

(i) No person shall sell, give or deliver alcoholic liquor to any person under 21 years of age.

(Ord. 85-10. Passed 1-20-86; Ord. 2007-07. Passed 5-21-07; Ord. 2009-15. Passed 7-20-09; Ord. 2010-08. Passed 2-22-10.)

804.10 SALES TO INTOXICATED PERSONS, HABITUAL DRUNKARDS, ETC.

No holder of a liquor license shall sell, deliver or give any alcoholic liquor to any intoxicated person or to any person known to him or her to be an habitual drunkard, a spendthrift, or a person who is insane, mentally ill, mentally deficient or in need of mental treatment.

(Ord. 85-10. Passed 1-20-86.)

804.11 MISCELLANEOUS REGULATIONS.

(a) Refusal to Permit Entry. It shall be unlawful to refuse to grant admittance to the premises for which a liquor license has been issued, at any time, upon the verbal request of any police officer authorized by the Local Liquor Control Commissioner for the purpose of making an inspection of such premises, or any part thereof.

(b) Records. The Village Clerk shall keep a complete record of all liquor licenses issued and shall furnish the Chief of Police with a copy thereof. Upon revocation or suspension of any license, the Village Clerk shall immediately give written notice thereof to the Chief of Police.

(c) Insurance Required. No license shall be issued hereunder unless the applicant shall file, with his or her application, a certificate by an insurance company authorized to do business in the State of Illinois certifying that the applicant has in force and effect the insurance required by statute.

(d) State License. When a licensee has obtained a local license, he or she must make application to the Illinois Liquor Commission in conformity with the act of the General Assembly of the State of Illinois entitled "Liquor Control Act."

(e) Compliance With State and Federal Statutes. All licensees under the terms hereof shall at all times fully comply with the provisions of all applicable Federal and State laws and statutes.

(Ord. 85-10. Passed 1-20-86.)

804.12 FAILURE TO NOTIFY POLICE OF PEACE DISTURBANCES.

Failure of a licensee to report to the police any case where public peace or safety is likely to be endangered shall be cause for suspension and/or revocation of a liquor license.

(Ord. 85-10. Passed 1-20-86.)

804.125 GENERAL PROHIBITIONS IN PLACES WHERE ALCOHOLIC BEVERAGES ARE SOLD.

(a) Designated Dancing Area. Dancing shall be limited to one area designated for such purposes in the diagram which accompanies the application for a liquor license. A licensee shall not permit dancing other than in the area so designated.

(b) Sound Amplification. No licensee shall permit or allow any noise or sound to be amplified outside the bounds of a structure on the premises if a residence is within 500 feet of the premises.

(c) Harboring Criminals. No licensee shall harbor, conceal, aid or assist any fugitive from justice.

(d) Free Dispensing. Free dispensing of alcoholic liquor by any licensee is prohibited at all times in all areas of any licensed premises unless a Class "T" taste sampling license is first obtained.

(e) Prostitution and Lewdness.

(1) No licensee hereunder shall allow or permit any soliciting for prostitution or lewdness on the licensed premises.

(2) The following kinds of conduct are hereby prohibited:

A. The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts.

B. The actual or simulated touching, caressing or fondling of the breast, buttocks, anus or genitals.

C. The actual or simulated displaying of the breasts, buttocks, pubic hair, anus, vulva or genitals. The aforesaid body parts shall be covered by opaque material which does not permit viewing of said body parts.

D. The permitting, by a licensee, of any person to remain in or upon the licensed premises who exposes to public view his or her breast or genitals, vulva or anus.

E. The displaying of moving pictures or photographic slide presentations depicting acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual act.

F. Employees shall not have bodily contact with patrons and patrons shall not be permitted to purchase alcoholic beverages for employees. For purposes of this section, the term "employees" shall include independent contractors performing services on the licensed premises and employees of any independent contractors performing services on the licensed premises.

(Ord. 2000-3. Passed 3-6-00; Ord. 2007-07. Passed 5-21-07.)

804.13 LICENSE REVOCATION AND/OR SUSPENSION.

(a) Generally. The Local Liquor Control Commissioner may suspend, for not more than thirty days, or revoke for cause, any liquor license for any violation of the law of the State of Illinois pertaining to the sale of alcoholic liquor or for a violation of the provisions of this chapter or of Chapter 630 of the General Offenses Code.

(Ord. 87-9. Passed 5-4-87.)

(b) Suspension. If the Local Liquor Control Commissioner has reason to believe that any continued operation of a premises or business will immediately threaten the welfare of the community, he or she may, upon the issuance of a written order stating the reason for such conclusion, and without notice or hearing, order the licensed premises closed for not more than seven days, giving the licensee an opportunity to be heard during that period. If such licensee shall also be engaged in the conduct of another business or businesses on the licensed premises, such order shall not be applicable to such other business or businesses.

(c) Hearing. No license shall be revoked or suspended except after a public hearing by the Local Liquor Control Commissioner. A five-day written notice shall be given to the licensee, notifying him or her of said hearing and of his or her right to appear and defend. If the Local Liquor Control Commissioner determines after such hearing that the license should be revoked or suspended, he or she shall serve a copy of the written order of suspension or revocation upon the licensee within five days of the hearing. Said order shall state the reasons for the revocation or suspension.

(d) Complaints by Village Residents. Any five residents of the Village shall have the right to file a complaint with the Local Liquor Control Commissioner stating that any licensee, subject to the jurisdiction of the Local Liquor Control Commissioner, has been or is violating the provisions of the Illinois Liquor Control Act, or the rules and regulations issued pursuant thereto, or violating any of the provisions of this chapter or of Chapter 630 of the General Offenses Code. Such complaints shall be in writing in the form prescribed by the Local Liquor Control Commissioner and shall be signed and sworn to by the parties complaining. The complaint shall contain a detailed description of the alleged violation. If the Local Liquor Control Commissioner is satisfied that the complaint substantially charges a violation and that, from the facts alleged, there is a reasonable cause for such belief, he or she shall set the matter for hearing. Notice of said hearing shall be served upon the licensee, notifying him or her of the time and place of such hearing and of the matters alleged in the complaint. (Ord. 85-10. Passed 1-20-86.)

804.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 806
Amusements

- 806.01 Application of chapter.
 806.02 Licenses.
 806.03 Peace disturbances; crowding.
 806.04 Amusements causing or promoting riots prohibited.
 806.05 Inspections by Police and Fire Departments.
 806.06 Exit lights.
 806.07 Conformity of premises with Codified Ordinances required.
 806.08 Use of public streets, sidewalks or other public places.
 806.99 Penalty.

CROSS REFERENCES

- Billiard and pool tables - see B. R. & T. Ch. 810
 Bowling alleys - see B.R. & T. Ch 812
 Mechanical or electronic devices - see B.R. & T. Ch. 852
 Motion picture theaters - see B.R. & T. Ch. 856
 Table games - see B.R. & T. Ch. 878
 Games on streets and sidewalks - see S.U. & P.S. 1020.04(g)
 Playgrounds in mobile home parks - see B. & H. 1470.12(n)

806.01 APPLICATION OF CHAPTER.

The provisions of this chapter, except as to licensing fees, shall apply alike to all public shows, theatricals, circuses and other amusements in the Village whether licensed specifically in another chapter or not.

(Ord. 76-20. Passed 9-7-76.)

806.02 LICENSES.

(a) Required. No person shall conduct or operate any amusement which is open to the public, and for admission to which a fee is charged, without having first secured a license therefor. However, the provisions of this section shall not be held to apply to those amusements which are specifically licensed by another chapter.

(b) Applications and Fees. Applications for such licenses shall be made to the Village Clerk and shall comply with the general provisions of these Codified Ordinances relating to applications. For such licenses the following fees shall be paid:

Exhibitions of inanimate objects	\$ 5.00 per day
Menageries	5.00 per day
Carnivals	20.00 per day
Other public amusements not specifically licensed	5.00 per day

(c) Carnival Permits. No permit for a carnival shall be issued except on the order of the Board of Trustees.

(d) Waiver of Requirements. The Board of Trustees may waive license and license fee requirements for outside dances and concerts. However, such waivers will not void the Village's right to terminate such dances and/or concerts if they become a nuisance. (Ord. 76-20. Passed 9-7-76.)

806.03 PEACE DISTURBANCES; CROWDING.

(a) The audience of any amusement, show or theatrical must be orderly and quiet at all times, and no person shall attend such amusement, show or theatrical to create a disturbance in the audience.

(b) It shall be unlawful to permit or gather such a crowd to witness any such amusement or show as to create a dangerous condition because of fire or other risks. (Ord. 76-20. Passed 9-7-76.)

806.04 AMUSEMENTS CAUSING OR PROMOTING RIOTS PROHIBITED.

No person shall present any public amusement or show of any kind which tends to or is calculated to cause or promote any riot or public disturbance. (Ord. 76-20. Passed 9-7-76.)

806.05 INSPECTIONS BY POLICE AND FIRE DEPARTMENTS.

It shall be the duty of the Chief of Police, the Chief of the Elburn and Countryside Fire Prevention District and the Ambulance Administrator each to see that every exhibition, amusement, theatrical or other public show or amusement is inspected by a member of the Police and the Fire Departments, to ensure conformity with the provisions concerning such amusements.

806.06 EXIT LIGHTS.

It shall be the duty of the owner or occupant in charge of any building or hall, which building or hall is used as an assembly hall with accommodations for 100 persons or more in which theatricals, shows, amusements, lectures and other entertainment is offered, operated or presented, to provide and place a lighted sign, on which the word "EXIT" appears in letters at least six inches high, over every door or other opening from such hall to every means of egress therefrom.

(Ord. 76-20. Passed 9-7-76.)

806.07 CONFORMITY OF PREMISES WITH CODIFIED ORDINANCES
REQUIRED.

No person shall operate or permit the operation of any amusement licensed under this chapter unless the premises in which such amusement is operated or permitted to be operated conform with all the provisions or requirements of these Codified Ordinances relating to public buildings and public gatherings.

(Ord. 76-20. Passed 9-7-76.)

806.08 USE OF PUBLIC STREETS, SIDEWALKS OR OTHER PUBLIC
PLACES.

No license shall be issued for any carnival, circus, exhibition, show or other amusement to be given on any public street or sidewalk, or in such a place that the only main accommodations for the audience will be in or on such public place, except on order of the Board of Trustees.

(Ord. 76-20. Passed 9-7-76.)

806.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 808
Athletic Exhibitions

- 808.01 License required.
- 808.02 Reporting of gross receipts; payment of percentage thereof.
- 808.03 Police monitoring; inspection of records of gross receipts.
- 808.99 Penalty.

CROSS REFERENCES

- Police Department - see ADM. Ch. 248
- Unlawful assemblages - see GEN. OFF. 656.02, 656.03
- Disturbing lawful assemblages - see GEN. OFF. 656.04
- Licenses and permits in general - see B.R. & T. Ch. 802
- Bowling alleys - see B.R. & T. Ch. 812
- Skating rinks - see B.R. & T. Ch. 872

808.01 LICENSE REQUIRED.

No person shall conduct, operate or exhibit any race between persons, animals or vehicles, or any baseball game, boxing or wrestling match or any other athletic contest, for admission to which a fee is charged, without having first secured a license therefor. (Ord. 76-20. Passed 9-7-76.)

808.02 REPORTING OF GROSS RECEIPTS; PAYMENT OF PERCENTAGE THEREOF.

The proprietor of each such exhibition as described in Section 808.01 shall submit to the Village Clerk a statement, verified under oath, of the gross receipts of each contest, game, race or exhibition, within one week after such exhibition. At the same time, the proprietor or person exhibiting or operating such exhibition shall pay to the Village Clerk a sum equal to one and one-half percent of the gross receipts. (Ord. 76-20. Passed 9-7-76.)

808.03 POLICE MONITORING; INSPECTION OF RECORDS OF GROSS RECEIPTS.

Sufficient numbers of Village police shall be admitted, free of charge, to all such exhibitions as described in Section 808.01 for the purpose of preserving and maintaining order. The Village Clerk, upon demand, may post a person or any number of persons at the box office of such performance and such person or persons or the Village Clerk may examine all the books, pertaining to such performance, showing or tending to show the gross receipts, at any reasonable time.

(Ord. 76-20. Passed 9-7-76.)

808.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 810
Billiard and Pool Tables

- 810.01 License required.
- 810.02 License applications.
- 810.03 License fees; issuance.
- 810.04 Minors.

- 810.05 Termination of license; revocation.
- 810.06 Hours of operation.
- 810.99 Penalty.

CROSS REFERENCES

Licensing of billiard and pool rooms - see Ill. R.S. Ch. 24,
Sec. 11-42.2

Licenses and permits in general - see B.R. & T. Ch. 802

Amusements - see B.R. & T. Ch. 806

Bowling alleys - see B.R. & T. Ch. 812

Mechanical and electronic amusement devices - see B.R. & T. Ch.
852

Table games - see B.R. & T. Ch. 878

810.01 LICENSE REQUIRED.

No person, firm or corporation shall have or keep for use, or suffer or permit to be used, for a fee or for profit, any billiard, pool or other like table, without first obtaining a license therefor as herein provided.

(Ord. 76-20. Passed 9-7-76.)

810.02 LICENSE APPLICATIONS.

Any person, firm or corporation desiring to be licensed under the provisions of this chapter shall make written application for such license to the Village President, setting forth in such application:

(a) The address of the premises at or in which such billiard, pool or other like table is to be kept, used or operated;

(b) The full name of the applicant; whether the applicant is a partnership and, if so, the names and addresses of all partners; or whether the applicant is a corporation and, if so, the name and address of the registered agent of said corporation and the names and addresses of the officers and directors of said corporation;

(c) A statement, under oath, signed by the applicant if an individual, all partners if a partnership, or the president if a corporation, disclosing whether the applicant, if an individual, any of the partners, if the applicant is a partnership, or any of the officers, directors or shareholders holding more than ten percent of the stock of the corporation, if the applicant is a corporation, have:

- (1) Ever been convicted of a felony;
- (2) Ever been licensed under this chapter or a similar ordinance in any other city, village or municipality and been a respondent in any proceedings brought to revoke such license.

(Ord. 76-20. Passed 9-7-76.)

810.03 LICENSE FEES; ISSUANCE.

If the answers to the questions set forth in Section 810.02(c)(1) and (2) are negative, and upon payment by the applicant to the Village Clerk of a license fee of ten dollars (\$10.00) for the first billiard, pool or other like table and five dollars (\$5.00) for each table thereafter, which the applicant desires to keep, use or operate, the Village President shall issue or cause to be issued to such applicant a license, attested to by the Village Clerk, authorizing the keeping, conducting or operating of such billiard, pool or other like table or tables at the place described in such application, for and during the term of such license and subject to the conditions and limitations set forth in this chapter.

(Ord. 76-20. Passed 9-7-76.)

810.04 MINORS.

No licensee, as provided herein, shall allow or permit:

- (a) The supervision of the operation of said billiard, pool or other like table, except by a responsible individual twenty-one years of age or older; and
- (b) Any minor who has not attained the age of fourteen years to remain in or frequent the licensed premises.

(Ord. 76-20. Passed 9-7-76.)

810.05 TERMINATION OF LICENSE; REVOCATION.

(a) Any license issued under this chapter shall terminate one year after issuance.

(b) Any license issued under this chapter shall be revoked by the Village President upon the holder of such license being convicted of any violation of this chapter.

(Ord. 76-20. Passed 9-7-76.)

810.06 HOURS OF OPERATION.

No licensee licensed under this chapter shall stay open for business, or allow the public to remain on the licensed premises, except during the hours of 7:00 a.m. to 11:00 p.m. on every Monday through Saturday, and except during the hours of 12:00 noon to 11:00 p.m. on every Sunday and every legal holiday, unless the said premises are being operated in accordance with a valid liquor license, in which case the said billiard, pool or other like tables may be used at all times during which the said premises are allowed to remain open for business in accordance with the said liquor license.

(Ord. 76-20. Passed 9-7-76.)

810.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 812
Bowling Alleys

- 812.01 License required.
- 812.02 License fees.
- 812.03 Hours of operation.
- 812.99 Penalty.

CROSS REFERENCES

- Power to license amusement - see Ill. R.S. Ch. 24, Sec. 11-42-5
- Definition of public place of accommodation or amusement - see Ill. R.S. Ch. 38, Sec. 13-1
- Minors prohibited in certain kinds of amusement places - see Ill. R.S. Ch. 48, Sec. 31.7
- Licenses and permits in general - see B.R. & T. Ch. 802
- Amusements - see B.R. & T. Ch. 806
- Billiard and pool tables - see B.R. & T. Ch. 810

812.01 LICENSE REQUIRED.

No person, firm or corporation shall operate, maintain or conduct for profit within the Village any bowling alley or pin or ball alley without having first obtained a license therefor, as is herein provided.
(Ord. 76-20. Passed 9-7-76.)

812.02 LICENSE FEES.

The annual license fee for any such license shall be ten dollars (\$10.00) for the first alley and ten dollars (\$10.00) for each additional alley.
(Ord. 76-20. Passed 9-7-76.)

812.03 HOURS OF OPERATION.

Licensees may conduct business operations in accordance with this chapter on Monday through Thursday between the hours of 10:00 a.m. and 1:00 a.m., only, on the following day, and on Friday and Saturday between the hours of 10:00 a.m. and 2:00 a.m. on the following day, and on Sunday between the hours of 12:00 noon and 1:00 a.m. on the following day.
(Ord. 76-20. Passed 9-7-76.)

812.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 818
Cable Telecommunications Franchises

- 818.01 Title.
- 818.02 Purposes.
- 818.03 Authority.
- 818.04 Definitions.
- 818.05 Franchises generally.
- 818.06 Notice to grantee; right to hearing.
- 818.07 Modification of franchise.
- 818.08 Evaluation of grantees performance.
- 818.09 Franchise renewals.
- 818.10 Sale, transfer, delegation and assignment of franchise.
- 818.11 Revocation of franchise.
- 818.12 Continuation of franchise.
- 818.13 Franchise fees.
- 818.14 Maintenance of books and records.
- 818.15 Technical requirements.
- 818.16 System construction.
- 818.17 Indemnification and insurance.
- 818.18 Service to residents and businesses in franchise area.
- 818.19 Rates and fees.
- 818.20 Programming.
- 818.21 Consumer protection and customer service standards.
- 818.22 Service to public facilities.
- 818.23 Prohibited subscriber acts.
- 818.24 Hearings; notice to comply.
- 818.25 Reservation of powers to Village.
- 818.26 Consumer privacy.
- 818.27 Publication costs.
- 818.28 Equal employment opportunity.
- 818.29 Rules and regulations.
- 818.30 Waiver.
- 818.31 Validity of franchise.
- 818.32 Time of the essence.
- 818.33 Force majeure.
- 818.34 Delegation of Village powers.
- 818.35 Nonwaiver of rights.
- 818.99 Penalty; equitable remedies.

CROSS REFERENCES

Community antenna television systems - see 65 ILCS 5/11-42-11

818.01 TITLE.

This chapter shall be known and may be cited as the "Village of Elburn Cable Ordinance". (Ord. 99-15. Passed 6-21-99.)

818.02 PURPOSES.

The purposes of this chapter are:

- (a) To enable the Village of Elburn to franchise and regulate cable television systems operating within its corporate boundaries.
- (b) To enable the formation of Municipal policies and procedures regarding cable television services and operations.
- (c) To establish standards and procedures which support the immediate and future development of cable television systems within the Village of Elburn.
- (d) To ensure that franchise grantees operating cable television systems are understanding of community needs and interests, and that the community is served by a cable system embodying the highest quality of cable television signal transmission possible.
- (e) To protect the public welfare and public interest through the establishment of consumer protection provisions as they concern cable system construction, maintenance, and general operation.
- (f) To establish cable television as a means of encouraging communications by and between the citizens of Elburn, their institutions, businesses, organizations, and neighboring communities.
- (g) To allow for the payment of compensation to the Village for the use of municipal property, right-of-ways, easements, and other public lands by the cable system operator in his or her construction, operation and maintenance of the cable system, and to compensate the Village of Elburn for costs directly attributable and incidental to the award and implementation of any and all cable television franchises.
- (h) To provide for remedies and ordain penalties for violations of this chapter and for the cable television systems granted hereunder.
- (i) To enable the regulation of rates and fees charged by a cable system franchise grantee operating under the provisions of this chapter..

(Ord. 99-15. Passed 6-21-99.)

818.03 AUTHORITY.

This chapter shall be governed by the Communications Act of 1934, as amended, the Cable Communication Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as now or hereinafter amended. This chapter shall also be governed by provisions of Illinois Compiled Statutes Chapter 65, Section 5/11-42-11 et. seq., as now or hereinafter may be amended.
(Ord. 99-15. Passed 6-21-99.)

818.04 DEFINITIONS.

For the purposes of this section, the following phrases, terms, words, and their derivations shall have the meaning as stated herein. When not inconsistent with the context, words in the present tense shall include the future, words indicating a plural number shall include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory, and not directory. The word “may” is permissive. Words not defined shall be given their common and ordinary meaning. Unless a section provides otherwise, references to statutory enactments shall include any and all amendments thereto and any successor provisions. All capitalized words defined herein, and all other capitalized words utilized within this chapter, shall have the meaning ascribed to them in the Cable Act unless said terms are not defined in the Cable Act, whereupon the definition shall be controlled by this chapter. In the event of conflict between this chapter and the Cable Act, the Cable Act definition shall control. For the purpose of a franchise agreement granted subject to this chapter, the terms in the franchise agreement shall prevail where there is a conflict between this chapter and the franchise agreement. Where the franchise agreement is silent, the terms of this chapter and the Cable Act shall control.

(1) ACT: The Communications Act of 1934, the Telecommunications Act of 1996, the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 (47 U.S.C. 521 et. seq.), as now or hereinafter amended.

(2) BASIC CABLE SERVICE: Any service tier which includes the retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. basic cable service shall not be inconsistent with 47 U.S.C. 543(b)(7)(1993).

(3) CABLE OPERATOR: Any person who provides cable services over a cable system and directly or through one or more affiliates, owns a significant interest in such cable system, or otherwise controls, or is responsible for, through any arrangement, the management and operation of such cable system.

(4) CABLE SERVICE:

A. The one-way transmission to subscribers of (I) video programming or (II) other programming service, and

B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(5) CABLE SYSTEM: A facility, consisting of a set of closed transmission paths, and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include a facility that serves only to retransmit the television

signals of one or more television broadcast stations; a facility that serves subscribers without using any public right-of-way; a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of this title) to the extent that such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; an open video system that complies with Section 653 of the Cable Act; or any facilities of any electric utility used solely for operating its electric utility systems.

(6) CHANNEL: A portion of the electromagnetic frequency which is used in a cable system and which is capable of delivering a television or data channel.

(7) COMMUNITY ACCESS CHANNEL: A channel or channels set aside and so designated for the use of schools and related educational institutions, units of local government, and the public, which may include facilities and equipment for the use of such channel, all as agreed to in the franchise agreement.

(8) CONVERTER: A device provided by the cable operator to subscribers for the purpose of decoding video and audio signals, or changing the frequency of midband, superband, or hyperband signals to a suitable channel or channels which the television receiver is able to deliver at designated dial locations.

(9) DWELLING UNIT: Any single-family or multiple-family residential place of occupancy, or business place of occupancy.

(10) FCC: The Federal Communications Commission and any legally constituted regulatory body, or agency, or successor.

(11) FRANCHISE: An initial authorization or renewal thereof, including a renewal of an authorization which has been granted subject to Section 626 of the Cable Act, issued by the Village of Elburn, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorized the construction or operation of a cable system within the corporate boundaries of the Village of Elburn.

(12) FRANCHISE AREA: The area within the corporate boundaries or jurisdiction of the Village of Elburn which is subject to the terms and conditions granted under the Village's cable television franchise.

(13) FRANCHISE FEE: Any tax, fee, or assessment of any kind imposed by the Village or other governmental entity on the grantee or cable subscriber, or both, solely because of its status as such. A franchise fee shall not include any tax, fee, or assessment of general applicability including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their services but not including a tax, fee, or assessment which is unduly

discriminatory against the grantee or subscribers; payments which are required by the franchise to be made by the grantee during the term of such franchise for, or in support of the use of public, educational, or governmental access facilities, capital costs which are required by the franchise to be incurred by the grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, or any fee imposed under Title 17, U.S. Code.

(14) **FRANCHISING AUTHORITY:** The Village Board and any administrative staff which the Village Board designates to have responsibility over the supervision of the Village's cable television franchise.

(15) **GRANTEE:** Any person or persons, including corporations, partnerships, associations, joint ventures, or organizations of any type granted a franchise hereunder, and its agents, employees, subsidiaries, assignees, transferees or lawful successors.

(16) **GRANTOR:** The Village of Elburn, Illinois.

(17) **GROSS REVENUES:** All revenues collected, earned, or accrued by the grantee or its affiliates, which are derived from or which are attributable to the operation of the grantee's cable system to provide cable services within the franchise area. Gross revenues shall include, without limitation, revenues from or attributable to subscribers, for basic cable service, expanded basic additional tiers, premium services, and pay-per-view services; franchise fees as permissible by law; internet services carried over the cable system which are cable services as defined by Title VI of the Cable Act; and charges related for any equipment; installation, disconnection, and reconnection fees; service call fees, program guides, game channel fees, and auxiliary channel equipment lease, rental, or sales fees, remote controls, converter boxes, additional outlets, and other customer premises equipment, fees for the provision of cable services; late fees or administrative fees; studio rental and all fees received from commercial production contracts solely within the franchise area; advertising revenues, including infomercials, and home shopping channels. Advertising revenues, home shopping revenues, or other revenue not specifically identified with a particular subscriber may be pro-rated based upon the proportion of subscribers in the franchise area to the total number of subscribers served by the grantee in the area from which advertising, home shopping, and other non-subscriber specific revenues were derived. This sum shall not include any taxes on services furnished by the grantee herein imposed directly upon any subscriber by the State of Illinois, Kane County, municipal or other governmental unit and collected by the grantee on behalf of said governmental unit.

(18) **HEADEND:** The control center of a cable television system, where incoming signals are amplified, converted, processed, and combined into a common cable along with any origination cablecasting, for transmission to subscribers. System usually includes antennas, preamplifiers, frequency converters, demodulators, processors, and other related equipment.

(19) **INSTALLATION:** The connection between the ground block on the exterior of a dwelling unit to a subscriber's television set.

(20) **INTERACTIVE ON-DEMAND SERVICES:** A service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

(21) **LEASED ACCESS CHANNEL:** A cable television channel or channels, specifically designated for broadcasting which is provided by means of a lease arrangement for cablecast airtime between the cable operator and the lessee, and shall include, without limitation, all use pursuant to Section 612 of the Act (47 U.S.C. 532).

(22) **MODIFICATION:** Any modification, modification agreement, or amendment to the franchise agreement entered into and between the grantee and the Village and made a part of the franchise agreement.

(23) **ORDINANCE:** The Village of Elburn Cable Ordinance, as may be amended from time to time.

(24) **PERSON:** Any individual, firm, corporation, company, partnership, association, joint venture, trust, or organization of any kind and the lawful trustee, successor, transferee, assignee, or personal representative thereof.

(25) **PUBLIC STREET:** The surface and the space above and below the surface of any public street, road, highway, lane, path, alley, court, boulevard, drive, avenue, parkway, driveway, or bridge, now or hereafter held by the Village which shall entitle the Village and the grantee to the use thereof for the purpose of erecting, installing, and maintaining the grantee's cable system.

(26) **PUBLIC WAY:** The surface and the space above and below the surface of any conduit, tunnel, park, square, waterways, utility easements, or other public right-of-way now or hereafter held by the Village which shall entitle the Village and the grantee to the use thereof for the purpose of erecting, installing, and maintaining the grantee's cable system.

(27) **SCHOOLS:** Any public or private elementary school, secondary schools, junior college, or university facility which conducts classes or provides instruction services which has been granted a certificate of recognition by the Illinois State Board of Education.

(28) **SERVICE CALLS:** Calls to the grantee regarding outages, poor picture and sound quality, billing problems which result in an adjustment to the subscriber's account, and installation and maintenance practices.

(29) **SUBSCRIBER:** Any person who legally receives cable service.

(30) SUBSCRIBER DROP: A cable which connects the ground block on the subscriber's residence to the nearest feeder cable of the cable system.

(31) VILLAGE: The Village of Elburn, State of Illinois, and all the territory within its present and future corporate boundaries and including any area over which the Village exercises its jurisdiction.

(32) VILLAGE BOARD: The Village President and the Board of Trustees.
(Ord. 99-15. Passed 6-21-99.)

818.05 FRANCHISES GENERALLY.

(a) Franchise Required. No person, firm, company, corporation, joint venture, partnership, trust, organization or association of any kind shall construct, install, maintain, or operate a cable television system within the Village of Elburn or within any other public property of the Village unless a franchise has first been granted by the Village pursuant to the provisions of this chapter, and unless such franchise is in full force and effect. Such franchise shall not take the place of any other license or permit which may be legally required of the grantee in order to conduct such a business.

(b) Franchise Term. The term of any new franchise, and all rights, privileges, obligations, and restrictions pertaining thereto shall be as established in the franchise agreement between the grantee and the Village, unless terminated sooner as hereinafter provided.

(c) Non-Exclusivity of Franchise. Any franchise granted by the Village under the terms and conditions of this chapter shall be non-exclusive. The Village specifically reserves the right to grant, at any time, such additional franchises for a cable television system to use and occupy the public streets and public ways of the Village for cable television or any other purpose as the Village deems appropriate. A second franchise granted by the City shall follow the terms and conditions of 65 ILCS 5/11-42-11 and be granted under substantially the same substantive terms and conditions as the initial franchise.

(d) Franchise Area. The Village may grant a franchise for the area within the corporate boundaries of the Village. The franchise agreement shall indicate the specific boundaries for the franchise area.

(e) Obligation to Provide Services. Upon issuance of a non-exclusive, revocable franchise by the Village for construction, installation, maintenance, and operation of a cable system within a designated franchise area, the grantee shall be obligated to provide the services of a cable system as required herein, and in accordance with the terms and conditions of the franchise agreement.

(f) Initial Franchise Applications. The Village Board shall require the submission of applications for a franchise under this chapter from any person not holding a franchise as of the effective date of this chapter. Initial applications for a franchise shall include at a minimum:

(1) A clear and precise description of the identity of the applicant, including, but not limited to, the name of the applicant, the address of the applicant, a description of the type of business entity which characterizes the applicant, the names and addresses of those persons who hold ownership of more than five percent of the stock of the business entity of the applicant, a description of the major activities of the business entity of the applicant, and evidence of the compliance of the business entity of the applicant with all applicable Federal, State, and local laws applicable thereto.

(2) Plans and specifications relating to all aspects of the applicant's proposed cable system, as are applicable to the building and zoning laws of the Village.

(3) A map or maps of a scale of not less than one inch equaling 1,000 feet showing the precise geographic area for which applicant seeks a franchise (franchise area);

(4) Projected financial pro forma for system revenue, expenditures, debt servicing, and operation for a period of no less than ten years, and evidence of financial responsibility in the form specified by this chapter.

(5) Written documentation of financial support from a financial institution for issuance of any loans, bonds, notes, or other related instruments to the applicant for the purpose of defraying the costs of cable system construction or operation.

(6) A non-refundable application fee shall be paid to the Village in an amount to be determined by the Village Board by resolution to cover the costs of initial application review as to form only, and which may be used by the franchising authority solely to offset direct expenses incurred in the evaluation and awarding of the franchise sought by said application.

(7) Detailed plans and specifications for the cable system which are proposed by the applicant showing the routing of trunk and feeder cables reflected by the maps provided pursuant to paragraph (f)(3) hereof, and a schedule for cable system construction.

(8) A statement of applicant's technical service and repair capabilities within the Village, and customer service operations for the community.

(9) A listing of all franchises wholly or partially owned by the applicant or applicant's business entity within the State of Illinois, and date of expiration for each such franchise.

(10) A statement by the applicant indicating if a Franchise held by the applicant or applicant's business entity has been revoked or denied renewal.

Such statement shall also include representations that the owners, partners, operating officers, principals, or principal stockholders owning more than five percent of the applicant's business entity have not been convicted of a crime, or have been placed under investigation or indictment for alleged illegal or improper activities by any state investigative agency, or federal investigative or regulatory agency, including, but not limited to, the U.S. Department of Justice, Federal Communications Commission, Securities and Exchange Commission, or the Federal Trade Commission.

(11) Any information or facts requested by the Franchising Authority which are not included in the above subsections that are pertinent and appropriate to the evaluation and awarding of a cable television franchise. (Ord. 99-15. Passed 6-21-99.)

818.06 NOTICE TO GRANTEE; RIGHT TO HEARING.

Except as provided in Section 818.08(a), the Village shall not take any final action with regard to the evaluation, modification, renewal, revocation, or termination of the grantee's franchise unless the Village has first provided the grantee with written notice of the cause for evaluation, modification, renewal, revocation, or termination and allowed the grantee thirty days, or a specified and reasonable amount of time to cure any violations or provide adequate assurance of performance, and, if the violation is not cured within thirty days or the specified period of time, or if the grantee did not undertake curative action, then the Village shall:

- (a) Call a meeting for the purpose of taking such action as specified above;
- (b) Comply with the public notice provisions of the Open Meetings Act (5 ILCS 120/1 et. seq.);
- (c) Advise the grantee in writing by either certified United States Mail or delivery by hand, at least thirty days prior to such meeting as to its time, place, and purpose;
- (d) Publish a notice at least once, ten days before the meeting in a local newspaper of general circulation within the Village, and
- (e) Give the grantee and any interested person an opportunity to be heard at such meeting. (Ord. 99-15. Passed 6-21-99.)

818.07 MODIFICATION OF FRANCHISE.

(a) Application Required. The Franchising Authority shall require the grantee to file a letter of application in such form as the Franchising Authority deems appropriate, for modification of the franchise agreement. The Franchising Authority shall review such application for modification based on the terms and conditions set forth in Section 625 of the Cable Communications Policy Act of 1984, as now or hereinafter amended, or any successor provision. The Franchising Authority may, based upon the findings of its review, approve the grantee's request for modification.

(b) Justification; Commercial Impracticability. The application for modification to the franchise agreement shall state the grantee's reasons for such proposed modifications. The grantee shall indicate all projected technical, financial, and service impacts which such proposed modifications intend to remedy. Where the grantee has indicated commercial impracticability as a reason for modification, the grantee shall show any changes in conditions arising since the enactment of the Franchise Agreement, that such change in conditions was not foreseeable at the time of enactment of the Franchise Agreement, and that such change in conditions was beyond the control of the grantee. The burden of proof to justify a claim of commercial impracticability shall be borne by the grantee.

(c) Modification of Public, Educational and Governmental Access Prohibited. The Franchising Authority shall prohibit award of any proposed modification to the franchise pertaining to provision of services relating to public, educational, or governmental access.

(d) Negotiations. Upon completion of review of the application for modification of the franchise by the Franchising Authority, and before the Franchising Authority has made a final determination regarding the merit of the requested modifications, the grantee may request negotiations with Franchising Authority for modification of service requirements in accordance with Section 625 of the Cable Communications Policy Act of 1984, as now or hereinafter amended. The Franchising Authority shall permit such negotiations to proceed only in such cases where the grantee agrees to maintain mix, quality, and level of services originally required by the franchise at the time at which the franchise was granted.

(e) Procedures for Approval or Denial.

(1) Upon receipt of the request for modifications by the grantee, the Franchising Authority shall indicate its decision to grant or deny the grantee's request for modifications within 120 days of its receipt of the modification request. The grantee and the Franchising Authority may mutually agree to extend said 120-day time period. The Franchising Authority shall state its decision for approval or denial of the request for modifications at a public meeting of the Village Board.

(2) If the Franchising Authority denies the grantee's request for modifications, the grantee may commence an action for judicial review of the Franchising Authority's determination in accordance with the process set forth in Section 625(b)(2) and (b)(3) of the Cable Communications Policy Act of 1984, as now or hereinafter amended, or any successor provision. (Ord. 99-15. Passed 6-21-99.)

818.08 EVALUATION OF GRANTEE'S PERFORMANCE.

(a) Schedule for Evaluation. The Franchising Authority shall evaluate performance of the grantee for purposes of determining compliance with this chapter and the franchise agreement, and to provide for consideration of technological changes in the state of the art of cable television. The Franchising Authority and the grantee shall hold performance evaluation sessions within ninety days of the third, fifth, seventh, and ninth annual anniversary dates of the grantee's award of the franchise and as required by State and Federal law. Evaluation meetings shall be open to the public. The Franchising Authority shall be responsible for notifying the grantee in writing, at least sixty days in advance, of each of the specified performance evaluation sessions. The Franchising Authority may hold special evaluation sessions at any time during the term of the Franchise at the request of the Franchising Authority or the grantee.

(b) Information Required of Grantee for Evaluation. Upon request by the Franchising Authority during the evaluation of the grantee's performance, the grantee shall cooperate with the Franchising Authority and provide such reasonable documents, records, schedules, logs, reports, memoranda, ledgers, and other pertinent information which the Franchising Authority may request in order that a reasonable review of the cable system can be performed.

(c) Topics for Discussion During the Evaluation Process. Topics which may be discussed during the evaluation process or at evaluation sessions shall include, but not be limited to the following: Service rate structures, free services, discounted services, franchise fees, penalties, applications of new technologies, repair and maintenance services, billing procedures, service provided by customer service representatives, system performance, programming offered, programming desired by subscribers, subscriber complaints, rights of privacy, above and below-ground extension of cables and equipment, modifications to the franchise, rulings and decisions of the Federal Communications Commission, Federal and State Courts of Law affecting cable service, and the grantee or Village rules. The Franchising Authority shall provide the grantee with a listing of topics for discussion twenty-one days prior to the date of a scheduled evaluation session.

(d) **Public Notice.** Franchise evaluation sessions and meetings shall be conducted in accordance with the Illinois Open Meetings Act and shall be in accordance with provisions established in Section 818.06. In addition to the notice provision of Section 818.06, the grantee shall, upon request, notify its subscribers of all evaluation meetings or sessions on the cable system. The Franchising Authority may place a notice on a Community Access Channel for a period of time to be determined by the Franchising Authority preceding the meeting or session.

(e) **Franchise Evaluation; Cable System Testing.** In the event that the evaluation of the grantee's performance under the franchise reveals evidence indicating inadequate performance of the cable system which seems to constitute a violation of FCC technical requirements, the Franchising Authority may require the grantee to conduct tests and assessments to locate the source of system deficiencies and to specify remedies to correct such deficiencies. The grantee shall reasonably cooperate with the Franchising Authority in performing such testing and shall prepare results and a report if requested within thirty days after such request. Such report shall include the following:

- (1) A statement of the problem, complaint, or suspected deficiency which prompted the need for testing and assessment;
- (2) The system component or components that were tested;
- (3) The date, place, and time where such testing took place;
- (4) Equipment used in the testing and procedures employed to carry out such tests or assessments;
- (5) Methods used to remedy identified problems, deficiencies, or suspected violations of FCC technical standards, and the status of resolution of such problems, deficiencies, or suspected violations;

The Franchising Authority may utilize an independent consultant with experience and knowledge of cable television systems engineering who has no affiliation with the grantee, to supervise the grantee in conducting tests and assessments of the cable system. The consultant shall sign all records of tests and assessments conducted upon the cable system, develop a report based on the findings of such tests and assessments, and provide the Village Board with a report interpreting the results of the tests and assessments to include recommendations of actions which would remedy problems or deficiencies uncovered during the course of such testing and assessments.

Where said testing determines that problems, deficiencies, or violations of the franchise exist, the Franchising Authority shall provide the grantee with notice of said problems, deficiencies, or franchise violations and provide an appropriate time period, which shall not be less than thirty days, for the grantee to cure said problem, deficiency, or violation. The Franchising Authority's rights under this section shall be

limited to requiring tests, assessments, and reports concerning subjects and characteristics based on complaints, suspected deficiencies, or other evidence when and under such circumstances as the Franchising Authority has reasonable grounds to believe that such complaints, suspected deficiencies, or other evidence require that tests be performed to protect cable system subscribers against substandard cable service.

(f) **Costs Related to Franchise Performance Evaluation.** Unless otherwise stated in a franchise agreement, the costs of conducting franchise performance evaluation sessions shall be equally divided between the Franchising Authority and the grantee as stated within the franchise agreement. Such costs may include, but not be limited to, staff time and resources, reasonable fees for professional cable television consultants, engineering personnel, accountants, and legal assistance. Where testing of the cable system has been conducted by the grantee and a consultant selected by the Franchising Authority, and the results of such tests and assessments indicate that the grantee did not follow proper testing procedures as prescribed by the FCC or the cable industry, or indicated that faults uncovered by repeated tests and assessments were caused by the grantee, then the costs of such repeated tests and supervisory consulting shall be borne entirely by the grantee. (Ord. 99-15. Passed 6-21-99.)

818.09 FRANCHISE RENEWALS.

(a) **Initiation of Proceedings by Franchising Authority.** The Franchising Authority may, at its discretion, commence renewal proceedings during the six-month period beginning with the thirty-sixth month before the expiration date of the franchise. Should the Franchising Authority seek to initiate renewal proceedings, the Franchising Authority shall notify the grantee in writing, with delivery by certified United States Mail, of its desire to commence proceedings which affords the public residing in the Franchise Area the opportunity to identify future cable-related needs and interests, and to review the performance of the grantee during the franchise term. Said notification shall not be made any later than the end of the thirtieth month prior to the expiration date of the franchise.

(b) **Initiation of Proceedings by Grantee.** Unless a request for franchise renewal proceedings is initiated by the Franchising Authority, the grantee shall be responsible for providing notification, in writing, to the Franchising Authority, delivered by United States Mail, that it requests consideration of renewal of the franchise. Notwithstanding any other provision of law or this chapter, such notification shall be deemed received by the recipient thereof only when said notification is actually received in the office of the recipient. If the grantee formally requests renewal of the franchise, in writing, in accordance with the provision for franchise renewal under Section 626(a)(1) of the Cable Act, such written notification shall be sent no sooner

than the beginning of the thirty-sixth month prior to the expiration date of the franchise and not any later than the end of the thirtieth month prior to the expiration date of the franchise. This section shall not prohibit the grantee from requesting franchise renewal before the beginning of the thirty-sixth month prior to the expiration date of the franchise, nor shall this section prohibit the Franchising Authority and the grantee from engaging in an informal renewal process.

(c) **Application Fee for Renewal.** The grantee shall provide to the Franchising Authority with the request to initiate franchise renewal proceedings, a non-refundable fee of two thousand, five hundred dollars (\$2,500) or an amount otherwise agreed to in a franchise agreement which shall be applied by the Franchising Authority to defray costs incurred by the Franchising Authority during renewal procedures as outlined by Section 626 of the Cable Communications Policy Act of 1984, as now or hereinafter amended, or any successor provision.

(d) **Review Proceedings.**

(1) The Franchising Authority shall conduct a series of public meetings and hearings which shall address the following objectives:

A. Determining the community's cable-related needs and interests for the future beyond the existing expiration date of the franchise.

B. Assessing the performance of the grantee under the franchise during the then current franchise term.

(2) If the grantee has formally requested consideration of renewal of the franchise in accordance with the conditions established in subsection (b) hereof, such public meetings and hearings shall be commenced not later than six months after such notice of request has been submitted to the Franchising Authority.

(3) During the course of such meetings and hearings, the Franchising Authority shall receive comments and testimony from the public with regard to the performance of the cable system, and the extent to which community cable-related needs and interests were met. At any time during these proceedings, the Franchising Authority may determine whether or not the grantee was in reasonable compliance with the requirements set forth in the Franchise Ordinance or Agreement. The Franchising Authority may also seek an outside independent evaluation of the physical state of the cable system, and a separate independent evaluation of the payment of franchise fees in accordance with the terms and conditions of the franchise agreement, as a part of its overall assessment of the performance of the grantee.

(4) Upon completion of the public meetings and hearings which have been called by the Franchising Authority, the Franchising Authority shall request the grantee to respond to a Request For Proposal for renewal of the cable system franchise by a specified date. The grantee shall cause the proposal to be delivered to the Franchising Authority by United States Mail with a number of copies of the proposal to be provided as set forth in the Request For Proposal. Notwithstanding any other provision of law or this chapter, such proposal shall be deemed received by the recipient thereof only when said proposal is actually received in the office of the recipient.

(5) The proposal submitted by the grantee shall, to the extent allowed by Section 624 of the Cable Communication Policy Act of 1984, as now or hereinafter amended, or any successor provision, provide such material as required by the Franchising Authority, including, but not limited to, improvements in the cable system, services to be provided, and technical specifications to be met.

(6) Upon receipt of the proposal, the Franchising Authority shall provide notice to the public that the proposal has been received, and that a copy of the proposal shall be available for public review at Village Hall.

(7) The Franchising Authority shall, during the 120-day period from the date of the receipt of the grantee's proposal, determine whether the franchise shall be renewed, or based on a preliminary assessment, that the grantee's request for renewal of the franchise be denied. The Franchising Authority shall take into consideration the extent to which it believes the grantee to be in substantial compliance with the terms and conditions of this chapter and the Agreement, and the degree to which the grantee has addressed cable-related community needs and interests for the present and future in its proposal.

Based on its review during the 120-day review period, the Franchising Authority shall decide to renew the grantee's franchise and enter into negotiations with the grantee to determine terms and conditions for a new franchise agreement.

(8) Should the Franchising Authority issue a preliminary assessment that the franchise should not be renewed, the Franchising Authority shall commence an administrative proceeding, subject to the notice provisions as set forth in Section 818.06. Such administrative proceeding shall be subject to the procedures and criteria as established by Section 626 of the Cable Communications Policy Act of 1984, as now or hereinafter amended, or any successor provision.

(9) Notwithstanding any provision of this section, the Village Board may suspend, by majority vote at a regularly scheduled meeting any of the renewal provisions contained herein, and direct the Village Administrator, his designated employee, or independent contractor to

negotiate the terms and conditions of a renewal franchise agreement with the grantee. Such suspension of renewal provisions shall be subject to such terms, conditions, and limitations as the Board may impose at the time of adoption of said resolution, and by those terms, conditions, and limitations set forth by the Cable Act.

(Ord. 99-15. Passed 6-21-99.)

818.10 SALE, TRANSFER, DELEGATION AND ASSIGNMENT OF FRANCHISE.

(a) Consent Required. No cable system shall be sold, transferred, mortgaged, pledged, leased, sublet, sold and leased back, or otherwise encumbered for any purpose whatsoever, nor shall title thereto, either legal or equitable, or any right or interest therein, pass through transfer, assignment, or delegation to any party without the prior written consent of the Village, which consent shall not be unreasonably denied. Approval shall not be required where the grantee grants a security interest in the assets of its cable system in order to secure an indebtedness. In the absence of extraordinary circumstances, the Village shall not approve the transfer, delegation, or assignment of ownership of the cable system prior to substantial completion of construction or upgrade of the proposed system.

(b) Standards for Review. No such sale, transfer, delegation, or assignment shall be approved unless the proposed buyer, transferee, delegee, or assignee is found by the Franchising Authority to possess the legal, financial, and technical capabilities and experience, and other criteria allowed by State or Federal law or regulations in order to hold a cable system franchise.

(c) Notice of Sale, Transfer, Delegation, or Assignment by Grantee. Unless otherwise agreed to in a franchise agreement, in the event of a proposed sale, transfer, delegation, or assignment of ownership of more than five percent of the ownership of the cable system to a person or group of persons as defined herein, none of whom owned or controlled five percent or more of such right of control, singularly or collectively, on the effective date of this chapter, the grantee shall, not less than thirty days prior to such proposed sale, transfer, delegation, or assignment, file with the Village Clerk FCC Form 394 or its successor form. Franchising Authority and grantee shall have 120 calendar days from the filing of the FCC 394 form to review said FCC 394 form unless the grantee and the Franchising Authority agree to an extension of time.

(d) Period of Review. Upon notification by the grantee of a proposed sale, transfer, delegation, or assignment of ownership of the cable system, the Franchising Authority shall have 120 days from the date of receipt of such notice to act upon any

request for approval of such sale, transfer, delegation, or assignment that contains or is accompanied by such information as is required by the Franchising Authority in accordance with this chapter, and as required by the FCC in accordance with its regulations. If the Franchising Authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the Franchising Authority agree to an extension of time. Such additional time for review shall be allowed upon agreement of a specific extension period by the Franchising Authority and the grantee. In the event that there is a finding or pending proceeding against the grantee pertaining to a franchise violation, such finding or proceeding must be concluded prior to action on said request. If the period of review is changed by Federal law or regulation, the Franchising Authority shall adopt the period of time established by the change in law or regulation as that number of days from the date of receipt of such notice to act upon any request for approval of sale, transfer, delegation, or assignment of the cable system.

(e) **Payment Required.** No such approval of any agreement to sell, transfer, delegate, or assign shall be granted by the Franchising Authority unless all monies accruing to the Village as of the date of sale, transfer, delegation, or assignment, whether by ways of fees, penalties, damages, or otherwise, have first been paid in full, provided, grantee has been previously notified of same and the Franchising Authority's right to collect has been established.

(f) **Information Required.** After a sale, transfer, delegation, or assignment has been announced, the proposed buyer, transferee, delegee, or assignee of the Cable System shall file with the Village Clerk FCC Form 394 and the following information for the Village Board to review:

- (1) A listing of the proposed buyer, transferee, delegee, or assignee, and the names of principals, investors, and shareholders with an interest of more than five percent in the entity which seeks to obtain the franchise.
- (2) A description of ownership qualifications.
- (3) A description of cable system operation experience.
- (4) Information regarding the professional character of the person or group of Persons seeking control of the cable system through this request.
- (5) Corporate or business formation documents.
- (6) Documentary evidence of corporate financing or partnership financing.
- (7) Historical financial statements including balance sheets and profit and loss statements for three prior years.
- (8) Pro forma financial statements.
- (9) A time frame and basis for such time frame proposed to conclude sale, transfer, delegation, or assignment and any proposed refinancing or restructuring of debt.

(10) No such sale, transfer, delegation, or assignment shall be approved unless the proposed buyer, transferee, delegee, or assignee shall have agreed in writing to comply with all of the provisions of this chapter, as amended, as well as the applicable franchise agreement.

(11) Any additional information pertaining to the proposed transaction as may be reasonably required by the Village.

(g) **Reservation of Rights of Village.** The Village reserves the right, during the transfer process, to ensure through negotiations that all rights, including those which would contemplate the transfer in light of cable-related community needs and interests, and benefits as set forth in an existing franchise agreement and in applicable State and Federal law, are fully preserved in the context of the franchise being held by the new transferee.

(h) **Rights Not Waived.** The consent of the Village to any sale, transfer, lease, trust, mortgage, or other instrument of hypothecation shall not constitute a waiver or release of any rights of the Village under this chapter and the franchise.

(i) **Rejection of Buyer, Transferee, Delegee or Assignee.** In the event that the Franchising Authority rejects the application for transfer of the franchise agreement to a proposed buyer, transferee, delegee, or assignee, the grantee may sell, transfer, delegate, or assign its rights under the franchise agreement notwithstanding said rejection, except that the grantee shall remain obligated to perform, cause the performance of or guarantee the performance of all obligations of the buyer, transferee, delegee, or assignee so identified. (Ord. 99-15. Passed 6-21-99.)

818.11 REVOCATION OF FRANCHISE.

(a) **Causes for Revocation.** The franchise may be revoked and all rights and privileges afforded to the grantee herein and within the franchise may be revoked in the event that the grantee commits any or all of the following infractions:

(1) Fails to complete construction or upgrade of the cable system as specified by the franchise after failure to respond after repeated notices and opportunities to cure;

(2) Breaches or violates any material provision of this chapter or other valid and enforceable ordinances or regulations of the Village pertinent to the operation, maintenance, construction, or installation of the cable system;

(3) Practices fraud or deception upon the Village, its elected officials, employees, agents, or its citizens which actions may include any attempt to willfully evade or avoid any of the provisions of this chapter;

(4) Declares bankruptcy, has a receiver appointed for it, makes an assignment for the benefit of creditors or has any of its property sold under execution or other legal process or seized by creditors;

(5) Selling, transferring, or delegating any portion of the cable system to another person or group of persons without first complying with the approval process for such sale, transfer, or delegation provided for in Section 818.10.

(6) Failure to pay franchise fees or any other monies required for payment by the grantee as a part of the terms and conditions of this chapter or the franchise.

(7) With respect to the cable system within the franchise area, three material violations by the grantee of any orders, rulings, or judgments of any local, State, or Federal regulatory agency or body within any consecutive twelve-month period.

(b) Notice, Time to Correct and Hearing. In the event that the Franchising Authority believes that grounds for revocation exist or have existed, the Franchising Authority shall notify the grantee, in writing setting forth the nature and facts of such noncompliance. If, within thirty days following such written notification, the grantee has not furnished reasonably satisfactory evidence that corrective action has been taken or is being actively and expeditiously pursued, or that alleged violations did not occur, or that the alleged violations were beyond the grantee's direct control, the Franchising Authority may, following notice of the grounds for revocation pursuant to Section 818.06 and Section 818.99, and a hearing pursuant to Section 818.23, revoke a franchise pursuant to subsection (a) hereof.

(c) Option of Village to Acquire Cable System.

(1) In the event that a franchise has been revoked by the Village, the Village shall, to the extent then permitted by existing law, have the option to acquire all the assets of the grantee's operations within the Village in accordance with the terms and conditions of Section 627 of the Cable Act (47 U.S.C. 547). Upon determination by the Village that it intends to purchase the assets of the grantee's cable system, the Village shall notify the grantee by Certified United States Mail of its desire and intent to acquire the assets of the cables system from the grantee.

(2) Where the Village has elected to purchase ownership of the assets of the grantee's operations in the franchise area, the Village shall, unless the grantee shall agree to some other terms, pay, in cash to the grantee, the price of such assets. Title to the cable system or its designated assets shall pass to the grantor upon such payment. Concurrently with payment, grantee shall assign to Village all its easements and contracts and execute such documents of conveyance and transfer as may be required.

(d) Option of Village to Require Sale of Cable System. In the event that a franchise has been revoked by the Village, the Village may acquire the cable system or effect transfer to another person. Such acquisition or transfer shall be in accordance with the terms and conditions of 47 U.S.C. 627(b).

(e) Removal of Cable System Plant and Equipment. If, upon revocation of grantee's franchise, the Village does not elect to purchase the cable system, and no sale of the cable system is made to a successor grantee, including the Village, then the Village shall require that the grantee terminate and dismantle and remove the cable system, including its wiring, equipment, headend facilities, if located within the Village limits, and related appurtenances. Upon completion of termination and dismantling and removal of the cable system, the grantee shall, upon direction by Village, restore any property, public or private, to the condition in which it existed prior to erection or construction of the cable system, including any improvements made to such property subsequent to construction of the system. Restoring of Village property, including all public ways as defined herein, easements, parks, parkways, and other public lands, shall be in accordance with the directions and specifications of the Village and all applicable laws. The grantee shall restore said public ways and properties at its expense. Where the grantee does not restore said public ways and properties, the grantee shall relinquish its performance bond to the Village so that the Village may restore public ways and properties. (Ord. 99-15. Passed 6-21-99.)

818.12 CONTINUATION OF FRANCHISE.

(a) Continued Provision of Service. In the event of revocation of the franchise, expiration of the franchise, or transfer of the franchise between the existing grantee and a successor grantee, the existing grantee shall continue to provide cable service to its subscribers in the same manner and with the same programming, customer service, and repair capabilities as it provided prior to the change in status of the franchise. The right of the grantee to operate the cable system in the event of revocation, expiration, or transfer of the franchise shall be considered by the Franchising Authority to be granted on a day-to-day basis until the transfer or sale of the franchise to a successor grantee is completed and approved by the Village.

(b) Consent Required for Changes in Service. After the filing of FCC Form 394 as provided for in Section 818.10(b), the grantee shall not change any or all of its video programming services, without first having provided the Franchising Authority with thirty days advance written notice of any change in channel assignment or in the video programming service provided over any such channel and having informed subscribers via written notice that comments on programming and channel position changes are being recorded by a designated office of the Village. (Ord. 99-15. Passed 6-21-99.)

818.13 BUSINESS REGULATION AND TAXATION CODE 36T

818.13 FRANCHISE FEES.

(a) Amount, Payment and Required Information. During the term of each franchise, the grantee shall pay to Village an amount equal to the maximum percent per year of the grantee's annual gross revenues permitted by law. To the extent permitted by law, and in accordance therewith, increases in franchise fees may be levied by the Village after sixty days written notice is given to the grantee. Franchise fees shall be paid quarterly and delivered to the Village Clerk either by hand or by certified United States Mail. The grantee shall file within sixty days after the expiration of the grantee's fiscal quarters, a written statement signed by the comptroller of the grantee identifying in detail sources and amounts of gross revenues received by the grantee during the preceding quarter for which payment is made. Such sources and amounts shall include, but not be limited to, the following items:

- (1) Revenues from basic cable services
- (2) Revenues from expanded basic services
- (3) Revenues from interactive on-demand services, pay-per-view and video on-demand services
- (4) Revenues from premium channel services
- (5) Internet or data services
- (6) Other revenues which may include, but not be limited to, installations, disconnections, trip charges, other repair services, converter boxes, remote control units, cable modems, and other related equipment, advertising sources and published materials, home shopping channels, leased access channels, and infomercials.

The grantee may credit gross revenues for bad debts and refunds made to subscribers. The statement shall include information regarding the number of subscribers on each service tier, the rate charged for each tier, the number of total subscribers, the total number of newly connected subscribers, and the total number of disconnected subscribers.

(b) Filing of Annual Financial Statement Required.

(1) Where the grantee is organized as a partnership, the grantee shall file with the Village Clerk within four months after the end of its fiscal year, a statement disclosing the gross revenues derived from the cable system and subscribers in the franchise area for the previous fiscal year. Such statement shall be prepared by the Chief Financial Officer or Comptroller of the grantee, and shall be sworn to him or her to be true, correct, and complete to the best of his or her personal knowledge.

(2) Where the grantee is organized as a corporation, the grantee shall file with the Village Clerk, within four months after the end of its fiscal year, a copy of its published or publicly filed annual report to shareholders, along with a separate statement disclosing the gross

revenues derived from the cable system and subscribers in the franchise area for the previous fiscal year. Such financial statement shall be prepared by the Chief Financial Officer, the Comptroller of the grantee, or an officer of the grantee having responsibility for the financial operations of the grantee in the franchise area and shall be sworn by him or her to be true, correct and complete to the best of his or her personal knowledge.

(c) **Audit of Franchise Fees.** The Franchising Authority shall have the right to inspect the grantee's income records, worksheets, notes, journals, ledgers and other such appropriate and relevant financial records for this franchise area required to assure proper payment of franchise fees. Where the grantee seeks to protect the confidentiality of its information, upon request by the grantee, the Franchising Authority or its agent shall enter into a confidentiality agreement with the grantee. The Franchising Authority shall have the right of audit and agreed-upon procedures, and the right to require recomputation of any amounts determined to be payable under this section.

The Franchising Authority shall provide the grantee with no less than twenty-one calendar days notice of the Franchising Authority's intent to conduct an inspection of the grantee's financial records. The grantee shall comply with the request of the Franchising Authority and make available all such records as are reasonably required at a mutually-agreed upon location.

In the event that certain necessary records or documents cannot be made available at the mutually agreed upon location, Franchising Authority may, at its option, send its designee to the location where the grantee has stored such records. Where the grantee has stored its records more than 200 miles from the Village, the grantee shall pay for all reasonable travel expenses incurred by the Franchising Authority or its designee. Any additional amount due as a result of such audit or agreed-upon procedures shall be paid within thirty days following written notice to the grantee by the Franchising Authority which notice shall include a copy of the audit report or agreed-upon procedures report. The cost of said audit or agreed-upon procedures shall be borne by the grantee if it is properly determined by an independent auditor chosen by the Franchising Authority and the grantee, if necessary, that the grantee's annual payment due to the Village for the preceding year is increased by more than five percent; otherwise, such costs shall be borne by the Franchising Authority.

(d) **Delinquency Charge.** In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at a monthly rate of one and one-half percent.

(e) **Statement Due Upon Expiration or Revocation.** In the event that the franchise is revoked or expires, the grantee shall file with the Franchising Authority within thirty days of such revocation or expiration, a statement clearly indicating the gross revenues received by the grantee since the end of the previous fiscal quarter. The grantee shall pay the franchise fees for the period from the end of the previous fiscal quarter prior to revocation or expiration, to the date upon which final transfer or sale of the system occurs within thirty days of the date of final transfer or sale. The grantee shall submit such documentation with the final franchise fee payment as is set forth in subsection (a) hereof. The grantee shall not be responsible for payment of franchise fees from the date upon which services provided by the grantee have ceased.

(f) **No Limitation of Liability.** Nothing in this franchise shall be construed to limit the liability of the grantee for all applicable Federal, State, and local taxes. Payment of the franchise fee by the grantee to the Village shall not be considered in the nature of a tax or assessment, but shall be in addition to any and all taxes and assessments which are now or hereinafter required to be paid by any law to the Village. (Ord. 99-15. Passed 6-21-99.)

818.14 MAINTENANCE OF BOOKS AND RECORDS.

(a) Requirement to Maintain Specific Books and Records.

(1) The grantee shall maintain all records pertaining to the operation of the cable system necessary to the enforcement of the franchise agreement and this chapter in a manner such that material relevant to the Franchise Area can be obtained. The grantee shall not maintain its only records concerning the cable system within the franchise area in aggregate form which commingles such records with those of cable systems in other communities to the extent that the grantee's records for the franchise area cannot be separately distinguished.

(2) Where the grantee is unable to locate books and records specific to the franchise area at a location which is either within the Village of Elburn, or within the 200 mile restriction, the grantee may locate such books and records at a remote location which is set forth by the grantee with the provision that in the event that the Franchising Authority, or its designee requests to inspect such records, the Franchising Authority shall provide no less than ten calendar days notice to the grantee to inspect such records.

(b) **Records Required of Grantee.** Unless otherwise stated in a franchise agreement, the grantee shall provide records regarding certain aspects of its operations, including, but not limited to, subscriber complaints regarding delivery and reception of cable service, subscriber requests for installations and disconnections, partial and total system outages and their causes, Cumulative Leakage Index (CLI)

testing records, headend equipment proof-of-performance certificates and equipment testing results in accordance with FCC technical standards, usage of and programming from public, educational, and governmental access facilities, notifications of rate or fee increases, rules, regulations, and conditions established for the construction, operation, administration, and maintenance of the cable system, and other such records which are relevant to assessment of the grantee's performance under the franchise agreement and this chapter.

(c) Records to be Provided to Village. Unless otherwise stated in a franchise agreement, the grantee shall provide the Franchising Authority with the following:

(1) A monthly summary of service calls tendered by subscribers to the grantee. Such summary record shall include the number of service calls received, an identification of the substance of the service calls, the method or methods by which the service call was resolved, and the date of resolution.

(2) A monthly report on telephone statistics for all telephone lines serving the franchise area. Said reports shall contain the number of calls received from the franchise area, abandoned calls, and the time for which any subscriber call was initially placed on hold.

(3) A monthly summary of system outages affecting more than three subscribers and requests for repairs. Said reports shall indicate the date upon which the outage occurred, the duration and cause of the outage, and the date and time of resolution.

(4) Upon request, an annual listing of all reports, petitions, applications, and correspondence pertaining directly to its franchise with the Village, generated from its regional and local office filed with the FCC, which are not a part of the grantee's public inspection file, the United States Securities and Exchange Commission, the United States Federal Trade Commission, or any other Federal agency which has jurisdiction over the operation of the grantee's cable system. Such listing shall be filed with the Franchising Authority no later than thirty days following the close of the calendar year.

The Franchising Authority may request a copy of any of the documents referred hereto at such time that the Franchising Authority determines that such documents would be of benefit to the Village's understanding of the operation of the cable system.

(5) The Village and the grantee shall collect and disclose subscriber information within the limitations established by Section 631 of the Cable Communications Policy Act of 1984, as or now hereinafter amended, or any successor provision.

(d) Duration of Maintenance of Records. The grantee shall maintain the following records for the amount of time as specified hereunder:

(1) Public files as required by the FCC shall be kept for no less than five years.

(2) Gross revenue logs and supporting information, signal leakage measurement logs, and complaint call logs, shall be kept for no less than one year. (Ord. 99-15. Passed 6-21-99.)

818.15 TECHNICAL REQUIREMENTS.

(a) Channel Capacity and Activation. The grantee shall operate a 550 megahertz cable system having a channel capacity of, at minimum, seventy-five NTSC uncompressed video programming channels. If applicable, the grantee shall provide said channels within the time frame specified in a franchise agreement. The grantee shall provide the Franchising Authority with a plan for implementation of additional channels not less than three months prior to the completion date of any cable system constructed or to be constructed pursuant to the franchise agreement. The grantee shall provide in the franchise agreement, a general timetable for construction or reconstruction of the cable system which is applicable to the facts and circumstances of the grantee.

(b) FCC Technical Requirements.

(1) The grantee shall, at a minimum, comply with the cable television technical standards as set forth by the FCC, effective July 1, 1992, as contained in Title 47, Section 76, Subpart K. of the United States Code of Federal Regulations. Upon request, the grantee shall provide to the Village within thirty days after the end of the calendar year, written reports of the grantee's biannual proof of performance tests conducted pursuant to FCC standards and requirements.

(2) If allowed to do so by law or regulation, the Village reserves the right to adopt such technical standards which exceed those enacted by the FCC. Technical standards adopted by the Village shall be amended to this chapter.

(c) Adherence to Electrical and Safety Codes. The construction, installation, activation, re-activation, and operation of any portion of the grantee's signal origination or signal processing or signal distribution system and equipment, including, but not limited to, the towers, antennae, headend, studio, trunk, and distribution system, drops, and fixed or portable equipment located on or off subscriber-occupied property shall comply with all requirements of each of the following publications:

(1) The National Electrical Code published by the National Fire Protection Association (currently ANSI/NFPA 70-1997 and replaced by subsequently adopted editions);

(2) The National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers, Inc. (currently ANSI C2-1996 and replaced by subsequently adopted editions).

(3) Building codes established by Kane County and the Village of Elburn.

The grantee shall at all times comply with all other appropriate Federal, State, and local regulations and codes and other ordinances of the Village.

(d) Parental Lock-Out Device. The grantee's cable system shall include remote control and converter box devices which have the capacity to enable the subscriber to lock out a single channel or multiple channels at the choice of the subscriber. The grantee may impose a reasonable charge for parental lockout capacity or installation of such capacity on a remote control device or converter box.

(e) Auxiliary Power. Unless otherwise agreed to in a franchise agreement, the grantee's cable system shall be equipped with sources of auxiliary power at the headend and at optical node locations for the purpose of continuation of service in the event of repairs, maintenance, power interruptions or power outages in accordance with the grantee's design. Such auxiliary power units shall be designed to provide at least three hours of continuous service to subscribers.

(f) Grounding of System Equipment and Service Connections. The grantee shall properly ground all cable wiring and service connections in accordance with the most current version of the National Electrical Safety Code and the National Electrical Code. The grantee shall also comply with any local ordinance pertaining to the establishment of electrical grounding standards, and with any additional grounding standards established by electric or telephone companies if the grantee has arranged to lease pole space from said companies. If the grantee has erected wiring and related appurtenances upon poles owned by private parties other than electric or telephone companies, the grantee shall comply with safety provisions established by the National Electrical Code.

(g) Emergency Override.

(1) The grantee shall comply with the FCC rules and regulations regarding the Emergency Alert System (EAS) in accordance with 47 U.S.C. 11, as may be amended from time to time. In accordance with 47 U.S.C. 11, the grantee shall configure the cable system to enable carriage of audio emergency override cablecasting over all channels of the cable system. Said emergency override capability shall be designed to allow the Village President of Elburn, or his or her designee to activate the emergency override.

(2) The grantee shall provide its EAS procedures for emergency broadcast to the Village, and to Blackberry and Campton Townships, and the Elburn and Countryside Fire Protection Districts.

(h) **Interference With Non-Subscriber and Public Safety Transmissions.** The grantee shall comply with all applicable laws regarding non-interference with other transmissions. Other transmissions shall include audio or off-air television broadcast signals, cellular or portable telephone signals, amateur radio signals, and radio signal communications transmitted by public safety units of the Village of Elburn, Elburn and Countryside Fire Protection Districts, Blackberry and Campton Townships, Kane County, or the State of Illinois.

(i) **System Testing.** The grantee shall comply with all cable system testing regulations as specified in Title 47, Section 76, Subpart K, of the United States Code of Federal Regulations as may be amended from time to time.

(j) **Service Interruptions.** The grantee may interrupt service, when necessary, to cable subscribers for the purposes of alteration, maintenance, repair or emergencies. The grantee shall create such interruptions at such time as will cause the least amount of inconvenience to its subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give written notice to the Village of interruptions which affect subscribers for a period in excess of four hours.

(k) **Antenna Switch.** The grantee, upon request of any subscriber, shall install at a reasonable charge, a switching device so as to permit a subscriber to continue to utilize his own television antenna if he so chooses.

(l) **Service and Repair Calls.**

(1) The grantee shall establish a maintenance service capable of identifying, locating, and correcting system malfunctions in an expeditious manner. Said service shall be available on a twenty-four hour basis, seven days per week to restore service of the cable system to subscribers.

(2) The grantee shall provide to subscribers a listed local or toll-free telephone number for service and repair calls. The telephone number may be the same as that required by Section 818.21(c)(1).

(Ord. 99-15. Passed 6-21-99.)

818.16 SYSTEM CONSTRUCTION.

(a) **Reporting Requirements.** Upon acceptance of a new franchise, the grantee shall, within ninety days, file such documents as are required for all necessary local, State, and Federal licenses, permits, and authorizations as required for the operation of the cable system. The grantee shall submit monthly reports to the Village Board on progress in receiving such permits, licenses, and authorizations until all have been received by the grantee. Failure to pursue all necessary steps to secure the aforementioned documents with due diligence shall constitute a violation of this section.

(b) Construction/Re-Construction Schedule.

(1) Franchise applications shall include a schedule for construction or, in the case of a franchise which is being considered for renewal, a schedule for upgrade, including a timetable for commencement or enhancement of cable services to subscribers. Said schedule shall be incorporated into the franchise agreement and shall be enforceable by the Franchising Authority against the grantee under the provisions of this chapter.

(2) Within nine months after acceptance of an initial franchise, the grantee shall furnish the Franchising Authority with a copy of preliminary engineering drawings and an operating construction schedule setting forth target dates by area for construction activity. If substantial changes become necessary, the grantee shall modify such drawings and schedule to accurately reflect any substantial changes.

(3) Upon request, the grantee shall furnish the Franchising Authority progress reports on construction or upgrade of the cable system at intervals not to exceed thirty days. Said report shall indicate the time when construction will be completed and when service will be activated.

(c) As-Built Drawings Required. The grantee shall provide the Franchising Authority with as-built drawings as the system is constructed or upgraded, not to exceed ninety days from the completion of construction or upgrade. As a complement to said as-built drawings, the grantee shall provide a map indicating the location of the cable system trunk lines throughout the franchise area on an official map issued by the Village of Elburn Village Clerk's Office.

(d) Authority for Use of Public Ways. For the purpose of operating and maintaining a cable system within the franchise area, the grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, across and along the public streets and public ways within such Village lines, cables, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the cable system, provided that all applicable permits are applied for and granted, all fees paid and all other Village codes and ordinances otherwise complied with. No rights hereunder may be transferred by the grantee to any other entity other than the grantee's subcontractors.

(e) Compliance With Construction Standards. The grantee shall design, engineer, construct, install, operate, and maintain its system in a manner which follows construction standards and technical standards as established by local, State, or Federal laws, ordinances, or regulations. The grantee shall adhere to any such construction and technical standards which were submitted as a part of the

application for franchise, or for franchise renewal. Construction, installation, and maintenance of the cable system shall be performed by the grantee in a workmanlike manner, in accordance with current construction, engineering, and other related technical standards. Where possible, cables and wires shall be buried underground and within the same easement as electric and telephone utility wiring. Cabling, amplifiers, and related appurtenances which are connected overhead on utility poles shall be erected and maintained in accordance with National Electrical Code and National Electrical Safety Code requirements as referenced herein. The grantee shall follow easement lines as indicated by appropriate drawings, maps, plats, and plan documents. With respect to any cables, wires, and other like facilities constructed and installed by the grantee aboveground, the grantee shall, at its sole expense, reconstruct and reinstall cables, wires or other facilities underground pursuant to any project under which the cables, wires, or other facilities of all like utilities are placed underground within an area.

(f) Right of Village to Examine Plans and Inspect Construction. For the purpose of permit issuance, prior to construction, upgrade, installation, or erection of towers, poles, conduits, or fixtures related to the operation or maintenance of the cable system, the grantee shall submit plans and maps detailing proposed facility construction, upgrade, installation, or erection to the Village for its examination. Upon approval by the Village Engineer, the grantee may proceed with implementation of its proposed plans and activities. The Village shall not unreasonably withhold such approval of the grantee's plans. Notwithstanding such approval, Village shall have the right to inspect all construction or installation work performed subject to the provisions of local laws and ordinances.

(g) Erection of Poles.

(1) No franchise shall be deemed to expressly or implicitly authorize the grantee to construct or install poles or wire-holding structures within public streets for the purpose of placing cables, lines, wires or otherwise, without the prior approval of the Village. Such consent shall be given upon such terms and conditions as the Village may prescribe which shall include a requirement that the grantee perform, at its sole expense, all tree trimming required to maintain the poles clear of obstructions. Consent shall not be unreasonably withheld but shall be subject to reasonable and necessary limitations to protect public health, safety, and welfare.

(2) The Franchising Authority shall permit relocation of poles up to a distance of twenty feet or less without a permit.

(3) The Franchising Authority may require relocation of any of the grantee's poles for any legitimate municipal purpose.

(4) Paragraphs (g)(1), (2) and (3) shall not apply to any poles installed prior to the effective date of this chapter.

(h) **Contractor Qualifications.** Any contractor performing work for the grantee with respect to construction, upgrade, installation, repair or maintenance of the cable system shall be properly and currently licensed under laws of the State of Illinois, and under ordinances of the Village of Elburn, provided that the State of Illinois or the Village of Elburn requires a license.

(i) **Safety Compliance.** The grantee shall comply with the standards of the Occupational Safety and Health Administration, and safety standards established by the Department of Labor of the State of Illinois in maintaining its operational facilities, working conditions, and work procedures utilized as a part of the construction, upgrade, installation, repair and maintenance of the cable system.

(j) **Permits Required.** No construction, upgrade, or relocation of the cable system or its components within the public streets or the public ways of the Village shall be initiated without approval by means of permit issued by the Village. In issuing such permit, the Village may, at its option, impose such conditions, restrictions, or regulations as are needed for protection of public property, private property, buildings, structures, and public utilities, for maintaining the safety of the public, and the unimpeded flow of traffic by pedestrians and vehicles. Upon receipt of such permit, the grantee shall provide the Village fourteen days notice prior to the start of construction. However, such notice may be waived by the Village Administrator or his or her designee in the event that construction, upgrade, or relocation of the cable system or its components is necessitated by emergency conditions.

(k) **Movement of Buildings or Other Structures.** The grantee shall, upon request by any person holding a building moving permit or other approval by the Village, temporarily remove, raise or lower its wires to permit the movement of buildings or other structures. The expense of such removal, raising or lowering shall be paid by the person requesting same, and the grantee shall be authorized to receive such payment in advance. The grantee shall be given not less than thirty days written notice to arrange for such temporary wire changes.

(l) **Removal of Vegetation.** The grantee shall not remove any tree, shrub, plant, or vegetation on public property without first receiving written permission from the Village. Any such work shall be performed at the grantee's expense and shall be subject to supervision by the Village. Any cutting or removal of trees, shrubs, plants, or vegetation on private property by the grantee shall not be performed without first receiving the written permission of the property owner. The grantee shall be responsible for, shall indemnify, defend and hold harmless the Village, its officers, agents, and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation, or of any injury to any tree or trees proximately caused by the grantee or its officers, agents, employees, contractors or subcontractors.

(m) Restoration of Property.

(1) Upon completion of construction, upgrade, installation, maintenance or repair of components of the cable system on public or private property, the grantee shall promptly restore said property to its original condition in a workmanlike and professional manner. In the event that said property is not restored to its original condition, the property owner shall have the right to restore said property and to assess the expense of restoration to the grantee. Where areas of grass have been disturbed, the grantee shall replace said affected grassy areas with sod or seed as soon as is feasible. The grantee shall be responsible for the initial maintenance of the sod or seed, including fertilization, and shall inform the property owner, in writing, of the proper care of the sod or seed and the owner's responsibility for ongoing maintenance of the sod or seed. In the event that the grass dies before the end of the first season, the grantee shall repair the grass one time or replace the grass one time at its expense.

(2) In the event that a subscriber requests the grantee to remove cable home wiring from subscriber's residence, the grantee shall pay for any damage caused as a result of the grantee's negligent installation or removal of wiring. The grantee shall not be responsible for repairing damage to exterior or interior walls, floors, paneling or siding. The grantee shall comply with the provisions of Title 47, Section 76.802 of the U.S. Code of Federal Regulations concerning the disposition of cable home wiring.

(n) Street Occupancy.

(1) The grantee's cable system, including its poles, lines, equipment, structures, and appurtenances shall be so located as to cause minimum interference with the proper use of public streets and other public ways and the rights and reasonable conveniences of property owners who adjoin any of said public streets or public ways. The grantee's cable system shall not obstruct or interfere with the installation of any electric, telephone, gas, water, or sewer facilities located within the Village. The location of any portion of the cable system as described in this section shall be placed as to not endanger or interfere with the health, safety or lives of persons, and shall not interfere with improvements which the Village of Elburn, Blackberry or Campton Townships, Kane County, or the State of Illinois may deem proper to make.

(2) In case of disturbance of any public street or public way, the grantee shall, at its sole cost and expense, and in a manner approved by the Village, promptly replace and restore such area in as good as a condition as before the work involving such disturbance was done.

(3) Aerial cable which is placed over public streets or public ways, shall be hanged at a height which is in accordance with the National Electrical Safety Code as referred to herein.

(4) Underground cable, as such exists now or in the future, shall be buried at depths for trunk and feeder cable, and service drops in accordance with guidelines established by the National Electrical Safety Code as referred to herein.

(o) Construction Bond.

(1) Upon grant of a franchise upon which initial construction of a cable system is proposed, the grantee shall file and maintain with the Village a construction bond in an amount either specified hereinbelow, or in an amount otherwise specified in the franchise agreement.

(2) Upon grant of a franchise upon which reconstruction or upgrade of the cable system is proposed, the grantee shall maintain with the Village a labor and material bond in an amount so specified in the franchise agreement.

(3) Upon certification to the Village that construction, reconstruction, or upgrade of the cable system has been completed, the Village shall release the bond to the grantee.

(4) For any period of time other than reconstruction or upgrade of the cable system, an annual blanket bond in the amount of ten thousand dollars (\$10,000) shall be filed and maintained with the Village. Such blanket bond is to cover any excavation, demolition, or cutting into by the grantee any public street or public way in the Village for that calendar year in such form as the Village may determine.

(p) Construction Delays. At such time where the grantee is delayed in completing construction required pursuant to a franchise agreement, the grantee shall notify the Franchising Authority of said delay within ten calendar days from the occurrence of the delay, and shall indicate the cause or causes for the delay.

Upon receipt of notification by the grantee of the delay of service, the Franchising Authority and the grantee shall agree to establish a date by which the delay shall end and construction or service shall resume. In the event that the delay continues beyond the control of the grantee, and extends beyond the agreed-upon date, the Franchising Authority and the grantee may agree to establish a new date for resumption of construction or service. Delays in construction or service which extend beyond a final date agreed upon by the grantee and the Franchising Authority shall constitute a violation of the franchise.

(q) JULIE Compliance. Upon conducting excavations within the franchise area, the grantee shall comply with the provisions of the Joint Utility Location and Information Service for Excavators (JULIE), including: 1) notifying JULIE no less than forty-eight hours in advance prior to conducting excavations, and 2) identifying all existing underground lines, feeds, and other buried equipment upon receipt of a JULIE request.

(r) Failures of Performance. In the case of a failure to perform within the material provisions of this section, the Franchising Authority shall consider such failures to perform as a material violation of the franchise. The Franchising Authority shall provide the grantee with reasonable notice and opportunity, of not less than thirty days, to cure such violations. However, if the grantee fails to cure such violations after reasonable notice and opportunity have been provided, the Franchising Authority may proceed in accordance with Section 818.06 herein and consider appropriate sanctions, which may include revocation of the franchise.

(Ord. 99-15. Passed 6-21-99.)

818.17 INDEMNIFICATION AND INSURANCE.

(a) The grantee, shall at its sole expense, fully indemnify, defend, and hold harmless the Village of Elburn, the officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability and judgments for damages or otherwise:

(1) For actual or alleged injury to persons or property, including loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through acts or omissions of the grantee or its officers, agents, employees or contractors or those to which acts or omissions of the grantee or its officers, agents, employees or contractors to the extent to which they contribute;

(2) Arising out of or alleged to arise out of any claim for damages for the grantee's invasion of the right of privacy, defamation of any person, firm or corporation, or violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm, or corporation.

(3) Arising out of or alleged to arise out of the grantee's failure to comply with provisions of any statute, regulation, or ordinance of the United States, State of Illinois, Kane County, or Village of Elburn applicable to the grantee in its business.

(4) The grantee shall not be required to indemnify the grantor for damages or injury arising from the negligence or misconduct on the part of the grantor or its officials, boards, commissions, agents, or employees. The grantor shall hold the grantee harmless, subject to the limitations in Illinois Statutes, for any damage resulting from and proximately caused from the negligence or misconduct of the grantor

or its officials, boards, commissions, agents, or employees in utilizing any public, educational, or governmental access channels, equipment, or facilities and for any such damage resulting from negligence or misconduct by the grantor in connection with work performed by the grantor and permitted by the Agreement, on or adjacent to the cable system.

(b) Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in defense of any litigation by their own counsel at their sole expense. Such participation shall not under any circumstances relieve the grantee from its duties of defense against liability or of paying any judgment entered against such indemnified party.

In order for the grantor to assert its rights to be indemnified, defended, and held harmless, the grantor must, with respect to each claim:

(1) Promptly notify the grantee in writing of any claim or legal proceeding which gives rise to such right;

(2) Afford the grantee the opportunity to participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding; and

(3) Fully cooperate with reasonable request of the grantee, at the grantee's expense, in its participation in and compromise, settlement, or resolution or other disposition of such claim or proceedings subject to the provisions herein.

(c) The grantee shall obtain, effective from the date of execution of the franchise agreement and thereafter maintain in full force and effect throughout the term of the agreement and any extension thereof, an acceptable policy or policies of general comprehensive liability insurance, products/completed operations liability insurance, personal injury liability insurance, owners and contractors protected liability insurance, broad form property damage insurance, contractual liability insurance, automobile liability (owned, non-owned and hired automobiles), workers compensation, and employers liability. Unless otherwise stated in a franchise agreement, said policy or policies shall name the Village of Elburn as an additional insured. Policies of insurance shall be in the minimum single limit amount of five million dollars (\$5,000,000) per occurrence. Said insurance policy or policies shall ensure against the types of liabilities covered by indemnification and hold harmless provisions stated herein.

(d) A copy of Certificates of Insurance identifying the policy or policies, coverages, and named insureds and naming the Village as an additional named insured shall be sent to Village as provided for in the franchise agreement, and a certificate of insurance shall be sent to Village no later than ninety days after the start of the grantee's succeeding policy year.

(e) The grantee shall be responsible for the payment of all premiums on said policy or policies. In the event that grantee intends not to renew said policy or policies, not to replace the same, or to materially alter or change the same, the grantee shall provide at least sixty days written notice of its intentions to be delivered by certified United States Mail.

(f) All policies of insurance required hereunder must be underwritten by sureties qualified to do business in the State of Illinois and must be rated not lower than "B + " by Best Insurance Rating Services.

(g) The Village shall retain the right to re-examine insurance policy coverage limits and where necessary, after consultation with the grantee, increase the coverage limits at any time during the life of the Franchise Agreement or any extension thereto. (Ord. 99-15. Passed 6-21-99.)

818.18 SERVICE TO RESIDENTS AND BUSINESSES IN FRANCHISE AREA.

(a) Line Extension to Residences. Unless a franchise agreement provides otherwise, a grantee must make cable service available to every dwelling unit within the franchise service area. Where the franchise service area is the entire Village, the grantee shall extend service to any annexed areas according to the following schedule: 1) For areas of territory annexed to the Village of five acres or more, the grantee shall extend service to such areas within twelve months of the date of annexation; or (2) For those areas of less than five acres, the grantee shall extend service to such annexed areas within twelve months of the date of annexation, provided, however, that the grantee is not required to extend service in areas where the cable would pass fewer than twenty homes per cable mile.

(b) Line Extension to Businesses. The grantee shall make available the services of the cable system to local businesses. Where a building housing one or more businesses, or multiple buildings housing businesses, are not contiguous to residential dwelling units, the grantee shall provide service to such building or buildings if they are located 125 feet or less from a terminating point along a trunk or feeder of the cable system. If said building or buildings are located more than 125 feet from a terminating point along a cable system trunk line or feeder, the grantee may voluntarily provide service to a business or businesses for an amount not to exceed fifty percent of the cost of construction of said portion of the system.

(Ord. 99-15. Passed 6-21-99.)

818.19 RATES AND FEES.

(a) **Uniformity of Rates.** Rates for cable service and charges for equipment necessary for the reception of cable service shall be uniform throughout the franchise area. The grantee may establish different rates for tiers of programming, and may establish a rate schedule appropriate to commercial enterprises which differ from such rates provided to residential dwelling units. The grantee may also establish separate rates for subscribers residing in congregate dwelling units for which bulk billing rates may be established.

(b) **Non-Discrimination in Application of Rates and Fees.** The grantee shall not discriminate in the assessment, levy, charge, imposition or collection of rates and fees on the basis of age, race, creed, color, religion, national origin, gender, marital or veteran status, or disability. This section shall not prohibit a grantee from offering a senior citizen discount rate for cable service.

(c) **Filing of Rate Schedule With Village.** The grantee shall file a full schedule of all subscriber and user rates and all other fees or charges, including, but not limited to, standard pay-per-view services, late fees, installation fees, trip and repair charges, disconnect fees, reconnect fees, additional outlet charges, name changes, VCR hookups, service upgrades, swaps of pay services, installation of A/B switches, cable guide subscriptions, and burial of drop cables. Said schedule shall be filed at such time as changes are announced by the grantee in the levels of rates, fees, or other charges.

(d) **Promotional Campaigns.** The grantee may reduce, suspend, or waive Installation fees or rates for programming in a non-discriminatory manner for the purpose of marketing cable services through promotional campaigns as a means of attracting subscribers.

(e) **Payment for Service in Advance.** Subject to promotional offers and security requirements for previously delinquent subscribers, the grantee shall not require subscribers to pay for cable service more than one month in advance. The grantee shall require no other advancement of payment for basic cable service, provided, however, that nothing herein shall be construed to prohibit an advancement of payment for installation of cable services. This section shall not prohibit a subscriber from voluntarily paying for more than one month of cable service in advance.

(f) **Refusal of Service.** The grantee may refuse to offer service to any person because of past due accounts owed by such person to the grantee.

(g) **Rates For Devices Serving Disabled Subscribers.** Rates for equipment or devices serving subscribers experiencing visual impairment, hearing impairment, or ambulatory impairment disabilities, shall not be discriminatorily applied between disabled and non-disabled subscribers. The grantee may offer the disabled subscriber the option to purchase said device or equipment at the grantee's cost plus actual cost of delivery.

(h) Reservation of Rights to Regulate Cable Services.

(1) Upon certification with the FCC, the Village reserves the right to regulate rates for basic cable service and equipment of the grantee as allowed by the FCC. The Village shall notify the grantee of its intention to file a request for certification with the FCC. Upon receipt of said certification, the Village shall adopt by separate ordinance, in accordance with Title 47, Section 76.910 of the United States Code of Federal Regulations, such regulations consistent with the FCC regulations governing the basic tier of cable service. Where the grantee adjusts the number of channels provided on the cable system to subscribers, the grantee shall, in accordance with FCC regulations as now or hereafter amended, adjust its rates to subscribers accordingly.

(2) The Village shall, within 120 days of the effective date of certification:

A. Exercise its rights to regulate basic cable service rates, and provide reasonable opportunity for consideration of the views of interested parties, and;

B. Notify the cable operator that the Village has been certified to regulate basic cable service rates and;

C. Adopt regulations as required by Title 47, Section 76.910 (e)(1), of the United States Code of Federal Regulations.

(i) Village's Right to Impose and Collect Taxes, Fees or Assessments.

(1) The Village reserves the right to impose and collect a Municipal occupation tax on the grantee's business of transmitting messages by means of radiomagnetic waves, electricity or fiber optics as allowed by Chapter 65, Section 5, Paragraph 8-11-2, of the Illinois Compiled Statutes. Said occupation tax shall not exceed an amount of five percent of the gross receipts of the grantee's business operations originating within the corporate limits of the Village.

(2) The Village reserves the right to impose and collect user fees or assessments consistent with State and Federal law from the grantee. Prior to the authorization of said user fee, or assessment, the method of collection and the payment of the collected user fee, or assessment shall be determined jointly between the Village and the grantee.

(j) Rate Discounts. The grantee may offer discounts in rates to senior citizens and other persons who are economically disadvantaged in accordance with Section 623 (e)(1) of the provisions of the Cable Television Consumer Protection and Competition Act of 1992 as referenced in Title Section 543 of the United States Code of Federal Regulations. (Ord. 99-15. Passed 6-21-99.)

818.20 PROGRAMMING.

(a) Categories of Service to be Provided. The grantee shall provide on the cable system all over-the-air broadcast stations required to be carried by Federal law or FCC regulations. The grantee shall provide a wide range and diversity of programming for subscribers residing within the franchise area. Categories of programming comparable in quality, mix, and level to be provided by the grantee to subscribers shall include, but not be limited to, the following:

(1) Local, regional, national, and international news, sports, and weather programs

(2) Music video and concert programs

(3) Educational programming

(4) Public affairs and public service programming

(5) Classic and contemporary movies

(6) General entertainment programming

(7) Cultural and literary-related programming

(8) Children's programming

(9) Financial and business-related programming

(10) Over-the-air broadcast stations serving the Chicago metropolitan area. Where a broadcaster providing over-the-air broadcast service to the grantee has not reached an agreement with the grantee for carriage of the broadcaster's signal by the deadline established by the FCC for consent to transmit said broadcaster's signal ("Retransmission Consent"), the grantee shall not be obligated pursuant to this chapter to carry said signal until such agreement has been finalized.

(b) Obscene Programming. The grantee and all other persons as defined herein using or making use of the cable system shall comply with all Federal, State, and local laws and regulations concerning the cablecasting of obscene or indecent programming.

(c) Community and Educational Access Channels.

(1) Unless otherwise agreed to in a franchise agreement, the grantee shall provide at least one channel for public and governmental access programming. This channel shall be known as the Community Access Channel. Said channel shall be available to units of government serving the franchise area, and to the public on a first-come, first-served basis. The Franchising Authority shall have the responsibility of scheduling on the Community Access Channel and to provide the ultimate decision-making authority in the event of a scheduling dispute. Facilities and equipment for the programming of the Community Access Channel to be provided by the grantee, or the provision by the grantee of financial support in lieu of facilities and equipment, along with policies for operation and expansion of the channel shall be determined in a franchise agreement.

(2) The grantee shall provide at least one channel for educational access programming. This channel shall be known as the Educational Access Channel. Said channel shall be available to Waubensee Community College and other schools serving the franchise area. The Franchising Authority shall serve to settle scheduling conflicts between schools offering programming serving the franchise area.

(Ord. 99-15. Passed 6-21-99.)

818.21 CONSUMER PROTECTION AND CUSTOMER SERVICE STANDARDS.

(a) Communications to Subscribers. The grantee shall provide at the time of installation, at least annually, when there is a change to information provided subscribers, and upon request by a subscriber, information concerning the following:

- (1) Products and services offered;
- (2) Prices for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system;
- (6) Billing and complaint procedures, including the address and telephone number of the Franchising Authority.

(b) Notification of Changes in Rates, Programming, or Channel Positions. The grantee shall notify subscribers of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to the Franchising Authority thirty days in advance and to subscribers at a minimum of thirty days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify the Franchising Authority and subscribers thirty days in advance of any significant changes in the other information required in subsection (a) hereof.

(c) Telephone Service.

(1) The grantee shall maintain a local, toll-free, or collect call telephone access line which is available to subscribers twenty-four hours per day, seven days per week. Said telephone service shall be staffed by trained customer service representatives who shall be available to respond to customer telephone inquiries during the grantee's hours of business operation as determined by the provisions of paragraph (c)(2) hereof. Upon request of the Franchising Authority, the grantee shall provide verification of the training of its customer service representatives.

(2) After the hours of the grantee's business operation, the telephone access line may, at the grantee's option, be answered by a service or automated response system. With the exception of requests for

restoring cable service in the event of an outage, inquiries received after the grantee's hours of business operation shall be forwarded and responded to by a customer service representative of the grantee on the next business day.

(3) The grantee shall, under normal operating conditions as defined by Title 47, Section 76.309 (c)(4)(ii) of the U.S. Code of Federal Regulations, answer telephones staffed by customer service representatives, or through a service or automated response system, within thirty seconds, including wait time, from when the connection is made. If the call needs to be transferred, transfer time shall not exceed ninety seconds. These standards stated herein shall be met no less than ninety percent of the time as measured on a quarterly basis under normal operating conditions.

(4) The grantee shall, under normal operating conditions, assure that the customer obtain a busy signal no less than three percent of the time as measured on a quarterly basis.

(d) Service Response.

(1) Excluding conditions beyond the control of the grantee, the grantee shall begin working on service interruptions promptly, and in no event later than twenty-four hours after the interruption becomes known. The grantee must begin actions to correct other service problems by the next business day after notification of the service problem.

(2) For each repair, service, installation, and installation-related activity call, the grantee shall establish either a specific time for an appointment with the customer, or at maximum, specify a four-hour time block during the grantee's hours of operations. The grantee may, at its discretion, schedule service calls and other installation, or installation-related activities outside of its usual hours of operations for the express convenience of the customer.

(3) The grantee, or its agents or designees, shall not cancel an appointment with a customer after the close of business on the business day prior to the appointment.

(4) A representative of the grantee shall contact a customer in the event that a service repair technician or other representative of the grantee is running late for an appointment and will be unable to keep the scheduled appointment time. The grantee or his or her representative shall reschedule the appointment, as necessary, at a time which is convenient to the customer.

(5) The standards promulgated in this subsection shall be met no less than ninety-five percent of the time measured on a quarterly basis.

(e) Identification of Customer Service Representatives and Technicians.

(1) Upon telephone contact by a customer, customer service representatives of the grantee shall identify themselves by name. Technicians representing the grantee or its subcontractors shall wear a company identification badge prominently displayed on the outermost clothing of the technician or subcontractor.

(2) Technicians of the grantee and its subcontractors shall identify vehicles used for technical service with the name of the grantee or subcontractor of the grantee. Vehicles belonging to the subcontractor shall also be identified with the grantee's name. The type of identification need not be of a permanent nature.

(f) Billing Practices.

(1) The grantee shall send subscribers a monthly statement indicating a date for payment due.

(2) The grantee shall send bills that are clear, concise, and understandable. Such bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(3) All statements shall clearly indicate a date showing when the bill was invoiced, and shall clearly indicate a telephone number for billing inquiries and adjustments.

(4) All statements shall clearly denote the dates of service for which the subscriber is being billed.

(g) Subscriber Complaint Procedure.

(1) Upon receipt by the grantee of a complaint by phone or in writing, the grantee shall document said complaint and, where necessary, investigate or reply to the subscriber's complaint within twenty-four hours of receipt of said complaint.

(2) If the grantee's response to the complaint is not satisfactory to the complainant, the complainant shall be referred to the grantee's appropriate cable system management personnel for further assistance. The grantee's management shall make a good faith effort to reach resolution of the complaint in a manner satisfactory to the complainant within four business days of referral of said complaint. If the grantee's cable system management cannot resolve the complaint to the satisfaction of the complainant, the grantee shall provide the name, address, and telephone number of appropriate management staff at the next level of operations, to include area, regional, or national offices.

(3) The grantee shall respond to written subscriber complaints within fourteen calendar days of receipt of said complaint. The grantee shall make a good faith effort to resolve such complaints within a reasonable period of time, such period of time not to exceed forty-five calendar days after receipt of such correspondence. Complaints which have not been satisfactorily resolved may be brought to the attention of the Franchising Authority by a citizen, subscriber, or by the grantee upon expiration of the forty-five day period.

(4) Failure of the grantee to respond to or acknowledge a complaint from a subscriber or non-subscriber, shall be considered a violation of this chapter and the franchise, and shall be subject to penalty.

(h) Installation of Service.

(1) Standard installations will be performed within seven business days after an order has been placed. Standard installations shall be those that are located up to 125 feet from the existing cable system.

(2) Where the grantee has received a request for a non-standard installation, which shall include, but not be limited to, those installations which are located more than 125 feet from the existing distribution system, or an installation that does not meet general specifications of a standard installation as a result of the requirements of the subscriber, the grantee shall provide said non-standard installation within thirty calendar days of the receipt of the request provided that the grantee has applied for and received all necessary permits, approvals, and/or licenses prior to the scheduled date of installation.

(3) Where installation is to take place in a single-family or multi-family housing unit subdivision, commercial building, or condominium association building or common area, the grantee shall be required to receive approval of construction plans for wiring of subscriber drop cable and rights of entry onto the premises prior to the start of installation work. In the event that the grantee must use an easement for transmission of cable service to a subscriber on property owned by a condominium association, the grantee shall secure said easement in accordance with all applicable local and State laws and regulations.

(4) Unless otherwise agreed to in a franchise agreement, where weather permits, temporary subscriber drops shall be buried within thirty days.

The grantee may take a longer period of time to bury temporary subscriber drops if ground conditions are unsuitable for burial or upon receipt of permission from the Village to postpone burial.

(i) Service Disconnection or Suspension.

(1) A subscriber shall have the ability to terminate service at any time at no charge. Service charges incurred by the subscriber may be pro-rated up to the effective date of termination.

(2) A subscriber may downgrade his service at any time.

(3) A subscriber shall not be disconnected if the status of his or her account is in dispute, and notice is given by the subscriber to the grantee in writing that the status of his or her account is in dispute, and the grantee and the subscriber are working to resolve the amount in dispute. If no resolution is reached within sixty days, the grantee may disconnect the subscriber.

(j) Authority to Investigate Subscriber Complaints. The Franchising Authority shall have the authority to investigate complaints tendered by subscribers upon notification to the Franchising Authority either by telephone or in writing. The Franchising Authority shall keep a documented record of all complaints. The Franchising Authority shall notify the grantee of any complaints received and provide the grantee with notice and opportunity to cure said complaints either within thirty days, or such other time period as may be specified in the notice to the grantee. Upon completion of investigation of a subscriber complaint, if the grantee has not cured the complaint, the Franchising Authority shall have the authority to order the grantee to correct any problem or violation of the Franchise Agreement or this chapter found in the course of such investigation. The Franchising Authority shall have the authority to require the grantee to develop procedures for resolution of complaints as a condition of a franchise agreement.

(k) Promotional Materials. The grantee shall place the Village in its database and on its general mailing list as a basic cable service customer for the purpose of notifying the Village of promotions offered to its subscribers. The Village shall not penalize the grantee for missing the Village in its mailings or for violations of this section. (Ord. 99-15. Passed 6-21-99.)

818.22 SERVICE TO PUBLIC FACILITIES.

(a) The grantee shall provide subscriber drops to all schools, government buildings, and public institutions as identified in the franchise agreement.

(b) The grantee shall provide an adequate number of cable system outlets to each school building in a manner that will allow for cable television reception in classrooms designated by each school, and for provision of reception in non-public areas of each school as so designated by each school. The grantee may charge each school for the actual cost for labor and materials necessary for providing adequate cable system wiring.

(c) The grantee shall provide a number of cable system outlets as agreed to in the franchise agreement at the Village Hall and other government buildings designated by the Village in the franchise agreement. The grantee shall provide all cable system drops free of charge. However, the grantee may charge the Village for the labor and materials cost of any non-standard installation as defined herein to any Village building. (Ord. 99-15. Passed 6-21-99.)

818.23 PROHIBITED SUBSCRIBER ACTS.

(a) Unlawful Use of Equipment, Devices, Computer Hardware and Software. It shall be unlawful for any person to install, attach, wire, program, or connect or to cause to be installed, attached, wired, programmed, or connected any equipment, device, or computer hardware or software which enables the use of cable television signals transmitted by the grantee without compensation to the grantee for said cable television signals. Any person convicted of the unlawful attachment, wiring, programming, or connecting of any device, or computer hardware or software enabling the use of the cable system without compensation to the grantee shall be fined to the maximum extent provided under the Village Code of Ordinances.

(b) Reselling Service Prohibited. No person receiving within the franchise area any cable service, program, or signal transmitted by any grantee operating under a franchise issued by the Franchising Authority shall resell such service, program, or signal without the express, written consent of the grantee. (Ord. 99-15. Passed 6-21-99.)

818.24 HEARINGS; NOTICE TO COMPLY.

(a) If requested by the grantee, or if the Village is not satisfied that sufficient corrective action is being actively and expeditiously pursued by the grantee to remedy the violation, the Village shall schedule a public hearing to hear and determine the issues and to consider whether sufficient cause exists to assess penalties, liquidated damages, or to invoke revocation. The Village shall give the grantee not less than fifteen days written notice specifying the Village's intent to consider the violation, and the date, time, and place of the public hearing to be held before the Village Board of Trustees, or a hearing officer appointed by the Village Board. If a hearing officer has been designated, the hearing officer shall hear the relevant evidence and shall render a record of the administrative hearing and recommended findings and decision to the Village Board.

(b) If the recommended findings and decision in subsection (a) hereof are provided to the Village Board by a hearing officer, the parties shall be entitled to an opportunity to present their respective positions to the Village Board. The Village Board shall hear the relevant evidence, provide the grantee with the opportunity to be heard on said relevant evidence and shall determine whether or not a violation by the grantee has occurred, whether it has been cured or a satisfactory corrective action plan has been submitted and has been actively-and diligently pursued and, where a revocation of the franchise is under consideration, whether cause exists to revoke the

franchise. If the Village Board is persuaded that a violation has occurred, the Village Board shall consider the nature, circumstances, extent, and gravity of the violation, as reflected by the following factors, in considering whether some lesser sanction or cure, if any, should be imposed:

- (1) Whether the conduct was egregious.
- (2) Whether substantial harm resulted.
- (3) Whether the violation was intentional.
- (4) Whether there is a history of prior violations of the same or other

requirements.

- (5) Whether there is a history of overall compliance.

(c) Unless the Village Board indicates to the contrary, any penalty shall be assessed beginning with the date on which the Village sent the notice of the intention to assess penalties and continuing thereafter until such time as the violation ceases, as determined by the Village.

(d) If the Village Board determines that cause exists to revoke the franchise, it may by ordinance declare the grantee's franchise to be terminated and revoked, provided that the Village may grant the grantee an additional period of time to remedy the violation before such ordinance is fully effective.

(e) No provision of this section shall be deemed to bar or otherwise limit the right of the grantee to appeal a decision of the Village Board to an appropriate judicial or administrative body.

(f) Unless otherwise stated in this chapter or in a franchise agreement, the grantee shall comply with the terms and conditions of this chapter or franchise agreement upon notification by the Village or upon the grantee's discovery. For those provisions for which a time period for corrective action is not stated, the Franchising Authority may establish a reasonable time period for compliance not to exceed forty-five calendar days.

(g) The grantee shall designate a person within its management structure who shall have the authority to receive and respond to notifications sent by the Franchising Authority of franchise violations, subscriber complaints, or other concerns relating to the franchise.

(h) Subject to the provisions of this chapter, a grantee shall not be relieved of its obligations to comply with any of the rules, regulations, requirements, or directives as stated within this chapter or the franchise agreement by reason of any failure of the Village or its officers, agents, or employees to enforce prompt compliance, nor shall such be considered a waiver thereof.

(Ord. 99-15. Passed 6-21-99.)

818.25 RESERVATION OF POWERS TO VILLAGE.

Nothing in this chapter or in any franchise agreement shall be construed as an abrogation by the Village of any of its police powers.
(Ord. 99-15. Passed 6-21-99.)

818.26 CONSUMER PRIVACY.

The grantee shall comply with all applicable local and State laws, rules, and regulations concerning consumer privacy, and shall fully comply with Federal laws concerning consumer privacy as expressed in Section 631 et. seq. of the Communications Policy Act of 1934, as or hereinafter amended (47 U.S.C. 551), or any successor provision.
(Ord. 99-15. Passed 6-21-99.)

818.27 PUBLICATION COSTS.

The grantee shall assume any reasonable cost of initial publication of the franchise as such publication is required by law and such is payable upon the grantee's acceptance of franchise.
(Ord. 99-15. Passed 6-21-99.)

818.28 EQUAL EMPLOYMENT OPPORTUNITY.

The grantee shall not refuse to hire, nor discharge from employment, nor discriminate against any person regarding compensation, terms, conditions or privileges of employment because of age, sex, race, color, creed, religion, national origin, or disability. The grantee shall take affirmative action to insure that employees are treated fairly and equally during employment, without regard to their age, sex, race, color, creed, national origin, marital or veteran status, or disability. The grantee will comply with equal employment opportunity requirements as stated in Section 634 et. seq. of the Communications Act of 1934, as now or hereinafter amended, or any successor provision, and with applicable Illinois State statutes.
(Ord. 99-15. Passed 6-21-99.)

818.29 RULES AND REGULATIONS.

The grantee shall have the authority to promulgate such rules, regulations, terms, and conditions of its business as shall be reasonably necessary to enable it to exercise its rights and perform its services under this chapter and the rules of the FCC, and to assure uninterrupted service to each and all of its subscribers. Such rules and regulations shall not be deemed to have the force of law. Upon request, such rules and regulations shall be filed with the Franchising Authority and shall not, unless the Franchising Authority consents in writing to an earlier effective date, take effect until thirty days after such filing.
(Ord. 99-15. Passed 6-21-99.)

818.30 WAIVER.

(a) A grantee or other person may not be excused from complying with any of the terms and conditions of this chapter or a franchise agreement by any failure of the Franchising Authority, upon one or more occasions, to require compliance or performance.

(b) The Franchising Authority may, on its own motion or at the request of an applicant or grantee for good cause shown, waive any requirement of this chapter. (Ord. 99-15. Passed 6-21-99.)

818.31 VALIDITY OF FRANCHISE.

The grantee shall expressly acknowledge that upon accepting the right, privilege, and Franchise granted pursuant to this chapter, it does so relying upon its own investigation and understanding of the power and authority of the Village. By the acceptance of a Franchise, the grantee shall accept the validity of the terms and conditions of this chapter and a franchise agreement, and the grantee shall agree that it will not at any time set up against the Village in any claim or proceeding, any provision, condition, or term of the this chapter or of a franchise agreement as unreasonable, arbitrary, or void or that the Village had no power or authority to make such provision, term, or condition as part of or pursuant to this chapter, except as to those matters preempted by Federal or State law. (Ord. 99-15. Passed 6-21-99.)

818.32 TIME OF THE ESSENCE.

Whenever any provision of this chapter or a franchise agreement shall set forth any time for any act to be performed by a grantee, such time shall be deemed to be of the essence and the grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the Franchising Authority to invoke an appropriate remedy or penalty, including the possible revocation of the franchise agreement. (Ord. 99-15. Passed 6-21-99.)

818.33 FORCE MAJEURE.

Whenever a period of time is provided for in this chapter or the franchise agreement, for either the Village or the grantee to do or perform any act or obligation, neither party shall be liable for any delays due to war, riot, insurrection, rebellion, unavoidable casualty or damage to personnel, materials, or equipment, fire, flood, storm, earthquake, tornado, orders of a court of competent jurisdiction, any act of God, failure of a utility provider to provide pole attachments on reasonable terms or conditions therefore, or any cause beyond the control of said party. In such event, said time period shall be extended for the amount of time said party is so delayed. An act or omission shall not be deemed to be beyond a Grantee's control if committed, omitted, or caused by a corporation or other business entity which holds a controlling interest in the grantee, whether directly or indirectly. Further, the

failure of a grantee to obtain financing, or to pay any money due from it to any person, including the Village, for whatever reason, shall not be an act or omission which is beyond the control of the grantee.

(Ord. 99-15. Passed 6-21-99.)

818.34 DELEGATION OF VILLAGE POWERS.

Any right, power, or duty of the Village President and Village Board of the Village of Elburn, the agency or any official of the Village under this chapter may be transferred or delegated by ordinance, resolution, or other appropriate action of the Village to an appropriate officer, employee, department, or commission of the Village, or any legal authority created for the purpose of regulating the operation and development of the cable television system.

(Ord. 99-15. Passed 6-21-99.)

818.35 NONWAIVER OF RIGHTS.

Neither the Village nor the grantee waive or release those rights bestowed upon either party by virtue of law or statute.

(Ord. 99-15. Passed 6-21-99.)

818.99 PENALTY; EQUITABLE REMEDIES.

(a) No provision of this chapter shall be deemed to bar or otherwise limit the right of the Village to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Village to recover monetary damages, except where liquidated damages are otherwise prescribed for such violation by the grantee, or judicial enforcement of the grantee's obligations by means of specific performance, injunction relief or mandate, or any other remedy available contractually, at law or in equity.

(b) Unless otherwise provided, any person convicted of violating any provision of this chapter or any rule or regulation promulgated hereunder shall, upon conviction, be subject to a fine not to exceed five hundred dollars (\$500.00) and costs for each offense. Each day of a continuing violation shall constitute a separate and distinct offense.

(c) By acceptance of the franchise, each grantee shall agree that failure to comply with any time and performance requirements as stipulated in this chapter and the franchise agreement will result in damage to the Village, and that it may be impracticable to determine the actual amount of such damage in the event of delay or non-performance; therefore, the applicable franchise agreement shall include provisions for liquidated damages to be paid by the grantee, in amounts set forth in the applicable franchise agreement and chargeable to a security fund therein created.

(d) If the Village concludes that a grantee is liable for penalties pursuant to this section, it shall issue to the grantee by certified United States mail a notice of intention to assess penalties. The notice shall set forth the nature of the violation, a written demand that the grantee correct the violation, and notice that any failure to correct the violation within thirty days or such other period of time as the Village and the grantee may agree, may be cause for assessment of penalties, liquidated damages, or revocation.

(e) Within thirty days, the grantee shall respond in writing to the Village, together with documentation in support of its response;

(1) That it contests the Village's notice of violation and requests an opportunity to be heard as provided hereinbelow.

(2) That corrective action has been implemented by the grantee and the violation has been cured.

(3) That corrective action has been implemented by the grantee and is being actively and diligently pursued in accordance with a written corrective action plan to be submitted to the Village.

(Ord. 99-15. Passed 6-21-99.)

CHAPTER 830
Handbills

- 830.01 Public distribution of cards, circulars, etc., prohibited.
- 830.02 Private distribution; license required.
- 830.03 License applications; fees.
- 830.99 Penalty.

CROSS REFERENCES

- Littering - see GEN. OFF. 624.06
- Licenses and permits in general - see B.R. & T. Ch. 802
- Sidewalks - see S.U. & P.S. 1020.04(i)
- Posting of bills - see B. & H. 1476.04

830.01 PUBLIC DISTRIBUTION OF CARDS, CIRCULARS, ETC.,
PROHIBITED.

No person shall distribute indiscriminately to the public any cards, circulars, handbills, samples of merchandise or any advertising matter whatsoever on any public street or sidewalk or other public place in the Village. However, this section shall not be construed to prohibit the peddling or sale of any article or publication that may carry or be accompanied by advertising matter, where a charge is made or price paid for such article or publication.

(Ord. 76-20. Passed 9-7-76.)

830.02 PRIVATE DISTRIBUTION; LICENSE REQUIRED.

No person shall distribute indiscriminately to the public, by leaving the same at stores, offices, houses or residences in the Village, any cards, circulars, handbills, samples of merchandise, or any matter except regularly published advertising publications, without first securing a license therefor. However, this section shall not be construed to apply to the sale of articles by licensed peddlers.

(Ord. 76-20. Passed 9-7-76.)

830.03 LICENSE APPLICATIONS; FEES.

(a) Applications for such licenses as are required in Section 830.02 shall be made to the Village Clerk, and shall contain a statement of the nature of the article or cards or advertisement to be distributed, the name of the applicant and the name of the manufacturer or distributor of such article or of the article or service advertised.

(b) The fee for such licenses shall be two dollars (\$2.00) per day. No such license shall be issued to any but a person of good character. The Chief of Police shall make or cause to be made an investigation into the character of each applicant, and shall report the results thereof to the Village Clerk before any such license is issued.

(Ord. 76-20. Passed 9-7-76.)

830.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 838
Itinerant Merchants

- 838.01 License required. 838.99 Penalty.
838.02 License applications; fees.

CROSS REFERENCES

Itinerant merchants by motor vehicle - see Ill. R.S. Ch. 12-1/2, Secs. 165.1 et seq.
Power to license peddlers - see Ill. R.S. Ch. 24, Sec. 11-42-5
Theft - see Ill. R.S. Ch. 38, Secs. 16-1 et seq.; GEN. OFF. 652.04
Peddlers - see Ill. R.S. Ch. 121-1/2, Secs. 158 et seq.
Littering - see GEN. OFF. 624.06
Handbills - see B.R. & T. Ch. 830
Solicitors - see B.R. & T. Ch. 874

838.01 LICENSE REQUIRED.

No person shall do business in the Village as an itinerant merchant without having first secured a license therefor as is herein provided. For the purpose of this chapter, any merchant engaging or intending to engage in business within the Village as a merchant dealing with potential customers in person, door-to-door, or from a vehicle shall be considered to be an itinerant merchant. However, solicitors who are licensed as required by these Codified Ordinances shall not be considered itinerant merchants.
(Ord. 76-20. Passed 9-7-76; Ord. 2005-11. Passed 7-5-05.)

838.02 LICENSE APPLICATIONS; FEES.

(a) Every applicant for the license required in Section 838.01 shall set forth the commodities intended to be sold and the place intended to be used or occupied for the business, as well as fulfilling the other regulations required for a license.

(b) The fee for such license shall be fifty dollars (\$50.00) for a 30-day license, and five dollars (\$5.00) for a one-day license.
(Ord. 76-20. Passed 9-7-76; Ord. 2005-11. Passed 7-5-05.)

838.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 846

Kennels, Pet Shops and Animals Shelters,
Pounds and Hospitals

- 846.01 License required.
 846.02 License applications.
 846.03 License fee.
 846.04 Unsanitary facilities prohibited.
 846.05 Inspections.
 846.06 Revocation of licenses.
 846.99 Penalty.

CROSS REFERENCES

- Cruelty to animals - see Ill. R.S. Ch. 8, Secs. 8704 et seq.
 Power to prohibit cruelty to animals - see Ill. R.S. Ch. 24, Sec.
 11-5-6
 Power to regulate and prohibit animals from running at large - see
 Ill. R.S. Ch. 24, Sec. 11-20-9
 Power to tax dogs - see Ill. R.S. Ch. 24, Sec. 11-20-9
 Unattended animals - see TRAF. 440.01
 Animals generally - see GEN. OFF. Ch. 608

846.01 LICENSE REQUIRED.

It shall be unlawful to keep or maintain any kennel, pet shop or animal shelter, pound or hospital within the Village without first obtaining a license therefor as provided herein. (Ord. 74-21. Passed 11-4-74.)

846.02 LICENSE APPLICATIONS.

Applications for licenses to operate kennels, pet shops or animal shelters, pounds or hospitals shall be made to the Village Clerk. The application for such a license shall describe the premises where the establishment is located or is proposed to be located and the purpose or purposes for which it is to be maintained, and shall be accompanied by the written approval of the Health Officer, showing compliance with local and State rules and regulations governing the location of and sanitation at such establishments. (Ord. 74-21. Passed 11-4-74.)

846.03 LICENSE FEE.

The annual fee for a license to operate a kennel, pet shop or animal shelter, pound or hospital shall be twenty-five dollars (\$25.00).
(Ord. 74-21. Passed 11-4-74.)

846.04 UNSANITARY FACILITIES PROHIBITED.

No person shall keep, use or maintain within the Village any kennel, pet shop or animal shelter, pound or hospital that is unsanitary, foul or offensive, or is in any way detrimental to the public health or safety, or that violates State or local sanitation requirements.
(Ord. 74-21. Passed 11-4-74.)

846.05 INSPECTIONS.

It shall be the duty of the Health Officer to make or cause to be made such inspections as may be necessary to insure compliance with Section 846.04. Subject to compliance with legal requirements, the Health Officer shall have the power to make or cause to be made entry into any building or premises in which is contained a kennel, pet shop or animal shelter, pound or hospital for the purpose of making such inspections at any reasonable time.
(Ord. 74-21. Passed 11-4-74.)

846.06 REVOCATION OF LICENSES.

The Board of Trustees may, in addition to other penalties provided in this chapter, revoke or refuse to renew any kennel, pet shop or animal shelter, pound or hospital license upon good cause. However, such revocation or refusal shall be executed only after a notice of intention to revoke or to refuse to renew has been served upon the licensee, and after a hearing to be held by the Village Board no less than ten days after the mailing of such notice to the license holder at the address given on the license.
(Ord. 74-21. Passed 11-4-74.)

846.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 850
Massage Establishment and Therapists

EDITOR'S NOTE: This chapter was repealed by Ordinance 2005-14, passed July 5, 2005.

CHAPTER 852
Mechanical or Electronic Amusement Devices

- 852.01 Mechanical or electronic devices defined.
- 852.02 License required.
- 852.03 License applications.
- 852.04 Issuance of licenses.
- 852.05 License fees.
- 852.06 Temporary permits.
- 852.07 Maximum number of devices.
- 852.08 Transfer fee.
- 852.09 Devices to be located in business districts.
- 852.10 License termination; refund of fees.
- 852.11 Inspections.
- 852.99 Penalty.

CROSS REFERENCES

- Licenses and permits in general - see B.R. & T. Ch. 802
- Amusements - see B.R. & T. Ch. 806
- Billiard or pool tables - see B.R. & T. Ch. 810
- Bowling alleys - see B.R. & T. Ch. 812
- Table games - see B.R. & T. Ch 878

852.01 MECHANICAL OR ELECTRONIC DEVICES DEFINED.

For the purposes of this chapter, “mechanical or electronic amusement device” shall include, but not necessarily be limited to, any mechanical or electronic game, or any machine apparatus, contrivance, appliance or device which may be operated or played upon the placing or depositing therein of any coin, check, slug, ball or other article or device, or by paying for such article or device, either in advance of or after use. A “mechanical or electronic amusement device” involves, in its use, either skill or chance, and includes, but shall not be limited to, tape machines, card machines, pinball machines, bowling game machines, shuffleboard machines, marble game machines, horse racing machines, basketball game machines, baseball game machines, football game machines, electronic video games or any other similar machines or devices. (Ord. 82-4. Passed 4-19-82.)

852.02 LICENSE REQUIRED.

No person, firm or corporation shall have or keep for use, or suffer or permit to be used, for a fee or for profit, any mechanical or electronic amusement device without first obtaining a license therefor as herein provided. However, the issuance of such a license shall not be construed as permitting the use of any such device, as described in Section 852.02, for any purpose other than amusement.
(Ord. 82-4. Passed 4-19-82.)

852.03 LICENSE APPLICATIONS.

Any person, firm or corporation desiring to be licensed under the provisions of this chapter shall present to the Village a certified check, in the amount of the fee required, as herein provided, and a written application for such license, which application shall be directed to the Village President, and which shall set forth the following:

(a) The address of the premises at or in which a mechanical or electronic amusement device is to be kept, used or operated;

(b) The full name of the applicant; whether the applicant is a partnership and, if so, the names and addresses of all partners; or whether the applicant is a corporation and, if so, the name and address of the registered agent of said corporation and the names and addresses of the officers and directors of said corporation;

(c) The serial numbers or identification numbers, and a description, of the devices sought to be licensed;

(d) A statement, under oath, signed by the applicant, if an individual, if the applicant is a corporation, disclosing whether the applicant, if an individual, any of the partners, if the applicant is a partnership or, any of the officers, directors or shareholders holding more than ten percent of the stock of the corporation, if the applicant is a corporation, have:

(1) Ever been convicted of a felony; or

(2) Ever been licensed under this chapter, or a similar ordinance in any other city, village or municipality, and been a respondent in any proceedings brought to revoke such license.

(Ord. 82-4. Passed 4-19-82.)

852.04 ISSUANCE OF LICENSES.

If the answers to the questions set forth in Section 852.03(d)(1) and (2) are negative and the application is otherwise approved, the Village President shall issue or cause to be issued to such applicant a license, attested to by the Village Clerk, authorizing the keeping, conducting or operating of such amusement device at the

place described in such application, for and during the term of such license as thereon specified and subject to the conditions and limitations herein contained and as set forth in other applicable Village ordinances and appropriate laws and regulations, both State and Federal.

(Ord. 82-4. Passed 4-19-82.)

852.05 LICENSE FEES.

The license fee for mechanical and electronic amusement devices shall be fifty dollars (\$50.00) per machine or device, per year, and upon approval of the application and payment of the fee as herein provided, the Village shall issue a sticker, which must be displayed on each machine. Any application for a portion of the fiscal year amounting to not more than six months shall result in a reduction of the license fee to twenty-five dollars (\$25.00) per machine or device for the remainder of said fiscal year.

(Ord. 82-4. Passed 4-19-82.)

852.06 TEMPORARY PERMITS.

Temporary permits may be issued on the terms and conditions herein contained for a period of seven days or less and at the rate of twenty-five dollars (\$25.00) per machine. However, such temporary permits shall be associated or connected with a temporary business or activity such as a fair or carnival.

(Ord. 82-4. Passed 4-19-82.)

852.07 MAXIMUM NUMBER OF DEVICES.

Not more than ten electronic or mechanical amusement devices, exclusive of juke boxes, shall be permitted in any establishment at one time.

(Ord. 92-29. Passed 12-7-92.)

852.08 TRANSFER FEE.

In the event that such electronic or mechanical amusement devices are transferred or exchanged during the term of the aforesaid license, a ten dollar (\$10.00) transfer fee will be charged therefor.

(Ord. 82-4. Passed 4-19-82.)

852.09 DEVICES TO BE LOCATED IN BUSINESS DISTRICTS.

Licenses to be issued pursuant to the terms of this chapter and for the use of said electronic or mechanical amusement devices, as detailed in this chapter, shall be issued only for premises which are located in Business Districts, as defined in the Zoning Code.

(Ord. 82-4. Passed 4-19-82.)

852.10 LICENSE TERMINATION; REFUNDS OF FEES.

In addition to the remedies otherwise available to the Village upon termination of the license issued in accordance with this chapter, no part of the license fees set forth in Sections 852.05, 852.06 and 852.08 shall be refunded upon termination of the said license, for any reason.

(Ord. 82-4. Passed 4-19-82.)

852.11 INSPECTIONS.

As a condition of the issuance of a license in accordance with the provisions of this chapter, the applicant shall be deemed to have consented to semiannual inspections of such applicant's business premises by the Village President or his or her authorized agent.

(Ord. 92-29. Passed 12-7-92.)

852.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 856
Motion Picture Theaters

- 856.01 License required.
 856.02 License applications.
 856.03 License fee; number of performances authorized.
 856.04 Unlicensed premises; fee; compliance with Building and Housing Code.
 856.05 Standing during performances; crowding.
 856.06 Building requirements for exits, electric wiring and ventilation.
 856.99 Penalty.

CROSS REFERENCES

- Disorderly conduct - see GEN. OFF. 656.01
 Unlawful assemblages - see GEN. OFF. 656.02, 656.03
 Disturbing lawful assemblages - see GEN. OFF. 656.04
 Licenses and permits in general - see B.R. & T. Ch. 802
 Amusements - see B.R. & T. Ch. 806

856.01 LICENSE REQUIRED.

No person shall give, present or conduct any motion picture, play or theatrical performance, for admission to which a fee is charged, excepting performances given solely for the benefit of and under the supervision of an educational, religious or charitable organization, without first having secured a license therefor as is provided in this chapter. (Ord. 76-20. Passed 9-7-76.)

856.02 LICENSE APPLICATIONS.

Applications for licenses required by Section 856.01 shall be made in conformance with the general provisions relating to such applications, and shall state, in addition to the other information required, the place of the intended performance and the seating capacity thereof. (Ord. 76-20. Passed 9-7-76.)

856.03 LICENSE FEE; NUMBER OF PERFORMANCES AUTHORIZED.

The annual fee for the license required by Section 856.01 shall be fifty dollars (\$50.00). Any person securing an annual license for motion pictures and naming a specific place or building in which the performances are to be presented, may present therein any number of performances, including theatricals, during the year for which the license was secured, without having to pay any additional fee.
(Ord. 76-20. Passed 9-7-76.)

856.04 UNLICENSED PREMISES; FEE; COMPLIANCE WITH BUILDING AND HOUSING CODE.

For motion pictures or theatrical performances which are to be presented in premises which are not covered by an annual license, as described in Sections 856.01 to 856.03, the fee shall be ten dollars (\$10.00) per day, provided that no such motion picture shall be presented in or on any premises or building which does not fully comply with the Building and Housing Code.
(Ord. 76-20. Passed 9-7-76.)

856.05 STANDING DURING PERFORMANCES; CROWDING.

No person, other than an usher, shall remain standing in a hall or room in which a motion picture or play is being presented, during the time of such performance. No person shall admit to any such hall or room more persons than can be accommodated by the seating arrangements of such premises.
(Ord. 76-20. Passed 9-7-76.)

856.06 BUILDING REQUIREMENTS FOR EXITS, ELECTRIC WIRING AND VENTILATION.

No person shall present any public motion picture or theatrical performance in any building or structure which does not contain the number of exits required for buildings or places intended for motion picture performances by the Building and Housing Code, or in any premises in which the electric wiring does not fully comply with such Code. All places used for the exhibition of theatricals must be kept adequately ventilated during a performance, and for so long a time as the audience may remain therein, and must meet all the requirements of this chapter.
(Ord. 76-20. Passed 9-7-76.)

856.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 866

Raffles

- 866.01 Definitions.
- 866.02 License required; issuance.
- 866.03 Authorized licenses; exemption.
- 866.04 License applications.
- 866.05 Regulations governing licensees.
- 866.06 License fees.
- 866.07 Administration; authority of Chief of Police.
- 866.99 Penalty.

CROSS REFERENCES

- Police Department - see ADM. Ch. 248
- Theft - see GEN. OFF. 652.04
- Licenses and permits in general - see B.R. & T. Ch. 802
- Amusements - see B.R. & T. Ch. 806

866.01 DEFINITIONS.

(a) State Law. "State law," as referred to in this chapter, means and refers to an Act of the General Assembly of the State of Illinois entitled "An Act to Provide for Licensing and Regulating Certain Games of Chance and Amending Certain Acts Herein Named," approved August 5, 1980, as amended, Chapter 85, Illinois Revised Statutes, Sections 2301, et seq.

(b) Other Words and Phrases. Unless the context otherwise requires, all words and phrases used in this chapter shall have the same meaning as the same or similar words or phrases are defined in State law.
(Ord. 81-2. Passed 6-1-81.)

866.02 LICENSE REQUIRED; ISSUANCE.

(a) No person shall conduct or operate any raffle, as hereinafter described, within the Village without first having secured a license therefor.

(b) The license hereby required shall be issued upon a proper application having been filed therefor with the Raffles Administrator of the Village, as hereinafter provided, and upon payment of the requisite fee therefor to the Village Clerk.
(Ord. 81-2. Passed 6-1-81.)

866.03 AUTHORIZED LICENSEES; EXEMPTION.

(a) A license to operate a raffle shall be issued only to bona fide religious, charitable, labor, fraternal, educational or veterans' organizations that operate without profit to their members and which have been in existence continuously for a period of at least five years immediately before making application for a license, and which have had, during that entire five-year period, a bona fide membership engaged in carrying out their objectives, or to a nonprofit fund-raising organization that the licensing authority determines is organized for the sole purpose of providing financial assistance to an identified individual or group of individuals suffering extreme financial hardship as the result of an illness, disability, accident or disaster.

(b) No license shall be issued to:

- (1) Any person who has been convicted of a felony;
- (2) Any person who is or has been a professional gambler or gambling promoter;
- (3) Any person who is not of good moral character;
- (4) Any firm or corporation in which a person defined in paragraphs (b)(1), (2) or (3) hereof has a proprietary, equitable or credit interest, or in which such a person is active or employed;
- (5) Any organization in which a person defined in paragraphs (b)(1), (2) or (3) hereof is an officer, director or employee, whether compensated or not;
- (6) Any organization in which a person defined in paragraphs (b)(1), (2) and (3) hereof is to participate, in the management or operation of a raffle as defined by State law.

(c) Notwithstanding anything to the contrary contained in this section, any raffle in which the aggregate value of the prizes is less than five hundred dollars (\$500.00) shall be considered automatically licensed without the necessity of an application. However, any such raffle shall comply with all other requirements of this chapter, and specifically subsection (a) hereof.

(Ord. 96-3. Passed 2-29-96.)

866.04 LICENSE APPLICATIONS.

(a) Application forms shall be furnished by the Raffles Administrator of the Village, and shall be filed with the same. Said applications shall show the following:

- (1) The name and address of the applicant(s);
- (2) The address or place for the raffle's drawing;
- (3) A sworn statement attesting to the nonprofit character of the applicant, and the length of time said applicant has been in existence, if applicable.
- (4) The place and date of incorporation of the applicant, if applicable;
- (5) The number of members in good standing of the organization, if applicable.
- (6) The name, address, telephone number, Social Security number and date of birth of the president or chairperson of the organization;
- (7) The name, address, telephone number, Social Security number and date of birth of the raffle's manager;
- (8) Designation, by name, address, telephone number, Social Security number and date of birth, of all member(s) who will be responsible for the conduct and operation of the raffle;
- (9) The time period during which the raffle chances will be sold or issued;
- (10) The location of raffle ticket sales;
- (11) The location at which winning chances will be determined;
- (12) The time of determination of winning chances;
- (13) The total retail value of all prizes awarded in a single raffle;
- (14) The maximum retail value of each prize awarded in a single raffle;
- (15) The maximum price charged for each chance sold; and
- (16) If the purpose of the raffle is to provide financial assistance to an identified individual or group of individuals suffering extreme financial hardship as the result of an illness, disability, accident or disaster, the name or names of the individual or group of individuals to be benefited and a brief description of the illness, disability, accident or disaster giving rise to the financial hardship.

(b) The license application shall contain a sworn statement attesting to the accuracy of the information provided and to the nonprofit character of the prospectively licensed organization. Said statement shall be signed by the presiding officer and the secretary of that organization, or by the raffle manager if the raffle provides financial assistance to an individual or group of individuals suffering extreme financial hardship.

(c) An application for a license under this chapter is valid for one raffle only.
(Ord. 96-3. Passed 2-29-96.)

866.05 REGULATIONS GOVERNING LICENSEES.

(a) Value of Prizes.

(1) The aggregate retail value of all prizes or merchandise awarded by a licensee in a single raffle shall not exceed one hundred twenty thousand dollars (\$120,000).

(2) The maximum retail value of each prize awarded by a licensee in a single raffle shall be fifty thousand dollars (\$50,000).

(3) The maximum price which may be charged for each raffle chance issued or sold shall be five hundred dollars (\$500.00).

(Ord. 95-24. Passed 5-1-95.)

(b) Duration of Raffle. The maximum number of days during which chances may be issued or sold pursuant to a license under this chapter shall be 180 days.

(c) Conduct of Raffles. The conducting of raffles shall be subject to the following restrictions:

(1) The entire net proceeds of any raffle must be exclusively devoted to the lawful purposes of the organization permitted to conduct said raffle.

(2) No person, except a bona fide member of the licensed organization, may participate in the management or operation of the raffle.

(3) No person may receive any remuneration or profit for participating in the management or operation of the raffle.

(4) A licensee may rent a premises on which to determine the winning chance or chances in a raffle only from an organization which is also licensed under this chapter.

(5) Raffle chances may be sold or issued only within the area or areas specified on the license.

(6) Winning chances may be determined only at those locations specified on the license.

(7) No person under the age of eighteen years may participate in the conducting of raffles or chances. A person under the age of eighteen years may be within the area where winning chances are being determined only when accompanied by his or her parent or guardian.

(d) Raffles Manager and Bond.

(1) All operations of, and the conduct of, raffles shall be under the supervision of a single raffles manager as designated on the license application by the licensed organization.

(2) A manager shall give a fidelity bond in the amount of the aggregate retail value of the prizes as set out on the application, in favor of the organization and conditioned upon his or her honesty in the performance of his or her duties. Said bond shall provide that notice shall be given in writing to the licensing authority not less than thirty days prior to its cancellation. Said bond may be waived by the Village by including a waiver provision in the license, provided that such a waiver shall be granted only upon a unanimous vote of the members of the licensed organization.

(e) Records.

(1) Each licensee shall keep records of gross receipts, expenses and net proceeds for each single gathering or occasion at which winning chances are determined. All deductions from gross receipts for each

single gathering or occasion shall be documented with receipts or other records, indicating the amount, a description of the purchased item or service or other reason for the deduction, and the recipient. The distribution of net proceeds shall be itemized as to payee, purpose, amount and date of payment.

(2) Gross receipts from the operation of raffles programs shall be segregated from other revenues of the organization including bingo gross receipts, if bingo games are also conducted by the same nonprofit organization pursuant to a license issued by the Department of Revenue of the State of Illinois, and shall be placed in a separate account. Each organization shall have separate records of its raffles. The person who accounts for gross receipts, expenses and net proceeds from the operation of raffles shall not be the same person who accounts for other revenues of the organization.

(3) Each organization licensed to conduct raffles shall report monthly to its membership, and to the Village, disclosing its gross receipts, expenses and net proceeds from raffles, and the distribution of net proceeds itemized as required above.

(4) Records required by this section shall be preserved for three years, and the licensed organization shall make available said records relating to the operation of raffles for public inspection at reasonable times and places.

(f) Unauthorized Gambling. Nothing in this chapter shall be construed to authorize the conducting or operating of any gambling scheme, enterprise, activity or device, other than raffles as herein provided.
(Ord. 81-2. Passed 6-1-81; Ord. 82-6. Passed 7-19-82.)

866.06 LICENSE FEES.

The fee for the license provided for herein shall be calculated as follows:

Aggregate Prize Value	Fee
Less than \$500.00	None
\$500.00 to \$5,000	\$ 5.00
Over \$5,000	25.00

(Ord. 82-6. Passed 7-19-82.)

866.07 ADMINISTRATION; AUTHORITY OF CHIEF OF POLICE.

(a) The Chief of Police of the Village shall be the Raffles Administrator of the Village and shall be charged with the administration of this chapter.

(b) After the receipt by the Raffles Administrator of an application filed under this chapter, he or she shall submit the same to the Village Board, at the next regular meeting of the Board, for action by the Board, which action shall be taken within thirty days from the date of said filing.

(Ord. 81-2. Passed 6-1-81.)

866.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 870
Scavengers

- 870.01 License required.
 870.02 License applications; number of licenses; fee.
 870.03 Vehicle specifications.
 870.04 Disposal or storage of refuse within Village.
 870.99 Penalty.

CROSS REFERENCES

- Operation of garbage and rubbish trucks - see TRAF. 468.02(e)
 Restrictions on burning, storage and dumping - see GEN. OFF.
 624.02
 Littering - see GEN. OFF. 624.06
 Licenses and permits in general - see B.R. & T. Ch. 802
 Deposits of garbage and rubbish on streets and sidewalks - see
 S.U. & P.S. 1020.04(k)

870.01 LICENSE REQUIRED.

No person shall engage in the business of scavenging, or the collection and disposal of animal, human or vegetable refuse, or offal or refuse of any kind, without having first secured a license therefor.
 (Ord. 76-20. Passed 9-7-76.)

870.02 LICENSE APPLICATIONS; NUMBER OF LICENSES; FEE.

(a) Application for the license required in Section 870.01 shall be made to the Village Clerk and shall be referred by him or her to the Village President for recommendation. No such license shall be issued except on order of the Village President and the Board of Trustees of the Village.

Each application must show the Village Clerk evidence of a permit to dump at a legal dump.

(b) There shall be no more than three scavenger licenses issued and valid at any time.

(c) The annual fee for such license shall be two hundred fifty dollars (\$250.00).
 (Ord. 76-20. Passed 9-7-76.)

870.03 VEHICLE SPECIFICATIONS.

Any vehicle used by a licensed scavenger in his or her business shall be watertight and shall be equipped with airtight covers for such portions of the vehicle as shall be used for the transportation of the refuse described in Section 870.01.

(Ord. 76-20. Passed 9-7-76.)

870.04 DISPOSAL OR STORAGE OF REFUSE WITHIN VILLAGE.

The disposal or storage by a licensed scavenger of any refuse, as described in Section 870.01, within the Village corporate limits or within one mile thereof shall be cause for revocation of that scavenger's license.

(Ord. 76-20. Passed 9-7-76.)

870.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 872
Skating Rinks

- 872.01 License required.
- 872.02 License applications; investigations.
- 872.03 License fee.
- 872.04 Number of exits; safety inspections.
- 872.05 Hours of operation.
- 872.99 Penalty.

CROSS REFERENCES

- Disturbing lawful assemblages - see GEN. OFF. 656.04
- Licenses and permits in general - see B.R. & T. Ch. 802
- Amusements - see B.R. & T. Ch. 806
- Athletic exhibitions - see B.R. & T. Ch. 808

872.01 LICENSE REQUIRED.

No person shall operate or maintain a public skating rink in the Village without first having obtained a license therefor as provided in this chapter.
(Ord. 76-20. Passed 9-7-76.)

872.02 LICENSE APPLICATIONS; INVESTIGATIONS.

(a) Applications for licenses required by Section 872.01 shall be made in conformity with Section 810.02 of this Business Regulation and Taxation Code.

(b) It shall be the duty of the Chief of Police to make, or cause to be made, an investigation into the character of each applicant, and to report the results of such investigation to the Village President and Village Board.
(Ord. 76-20. Passed 9-7-76.)

872.03 LICENSE FEE.

The fee for a skating rink license shall be such as shall be set from time to time by the Village President and the Village Board.
(Ord. 76-20. passed 9-7-76.)

872.04 NUMBER OF EXITS; SAFETY INSPECTIONS.

(a) No person shall operate a public skating rink in any hall or building which is not equipped with sufficient and adequate exits, nor in a hall or building which is not provided with at least two exits of four feet or more in width.

(b) No license shall be issued until an inspection of the premises is made by the Chief of Police and the Building Inspector of the Village, and report made that said premises are in a safe condition and that proper safeguards have been taken for the protection of patrons and the public.

(Ord. 76-20. Passed 9-7-76.)

872.05 HOURS OF OPERATION.

No person shall keep open, operate or use any skating rink licensed under this chapter after the hour of 10:30 p.m. on Sunday through Thursday, or after 12:00 midnight on Fridays and Saturdays. No skating rink shall be opened before noon on any day.

(Ord. 76-20. Passed 9-7-76.)

872.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 874
Solicitors

- 874.01 Definitions.
 874.02 Certificate of registration required.
 874.03 Certificate of registration applications.
 874.04 Denial or issuance of certificate; revocation; fee.
 874.05 Occupants to determine status of solicitors as invitees.
 874.06 Posting of notice prohibiting solicitation.
 874.07 Compliance with notice required; duty to depart from premises.
 874.08 Uninvited soliciting prohibited.
 874.09 Hours of soliciting.
 874.99 Penalty.

CROSS REFERENCES

- Itinerant merchants by motor vehicle - see Ill. R.S. Ch. 12-1/2,
 Secs. 165.1 et seq.
 Power to license peddlers - see Ill. R.S. Ch. 24, Sec. 11-42-5
 Theft - see Ill. R.S. Ch. 38, Secs. 16-1 et seq.; GEN. OFF. 652.04
 Peddlers - see Ill. R.S. Ch. 121-1/2, Secs. 158 et seq.
 Littering - see GEN. OFF. 624.06
 Handbills - see B.R. & T. Ch. 830
 Itinerant merchants - see B.R. & T. Ch. 838

874.01 DEFINITIONS.

As used in this chapter:

- (a) "Registered solicitor" means and includes any person who has obtained a valid certificate of registration, as described in this chapter, which certificate is in the possession of the solicitor and/or is on his or her person while engaged in soliciting.
- (b) "Residence" means and includes every living unit occupied for residential purposes by any one or more persons, contained within any type of building or structure.

(c) "Soliciting" means and includes any one or more of the following activities:

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

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

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

(4) Seeking to obtain gifts or contributions of money, clothing or any other valuable thing for the support or benefit of any charitable or association, organization, corporation or project.

(Ord. 76-20. Passed 9-7-76.)

874.02 CERTIFICATE OF REGISTRATION REQUIRED.

Every person desiring to engage in soliciting, as defined in Section 874.01, from persons in residences within the Village is hereby required to make written application for a certificate of registration as described in Section 874.03.

(Ord. 76-20. Passed 9-7-76.)

874.03 CERTIFICATE OF REGISTRATION APPLICATIONS.

(a) Application for a certificate of registration shall be made upon a form provided by the Chief of Police of the Village, and shall be filed with the Chief of Police. The applicant shall truthfully state in full the information requested on the application, to wit:

(1) The applicant's name, the address of his or her present place of residence and the length of residence at such address; also, the applicant's business address, if it is different than his or her residence address, and his or her social security number;

(2) The address of the applicant's place of residence during the past three years, if other than his or her present address;

(3) The age of the applicant;

(4) A physical description of the applicant;

(5) The name and address of the person, firm, corporation or association whom the applicant is employed by or represents, and the length of time of such employment or representation;

(6) Whether or not the person, firm, corporation or association whom the applicant is employed by or represents is subject to an act entitled "An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes, Providing the Violations Thereof, and Making an Appropriation Therefor" (Ill. R.S. Chap. 23, Secs. 5101 et seq., as amended).

(7) The name and address of the applicant's employer during the past three years, if other than the present employer;

(8) A description, sufficient for identification of the subject matter, of the soliciting which the applicant will engage in;

(9) The period of time for which the certificate is being applied for;

(10) The date, or approximate date, of the latest previous application for a certificate under this section, if any;

(11) A statement as to whether a certificate of registration issued to the applicant under this section has ever been revoked;

(12) A statement as to whether the applicant has ever been convicted of a violation of any of the provisions of this section, or the ordinance of any other Illinois municipality regulating soliciting;

(13) A statement as to whether the applicant has ever 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; and

(14) Any such additional information as the Chief of Police may deem necessary to process the application.

(b) All statements made by the applicant upon the application on in connection therewith shall be under oath.

(c) If the answer to paragraph (a)(6) hereof is in the affirmative, then the applicant shall produce certification by the Attorney General of the State of Illinois that the person, firm, corporation or association whom the applicant is employed by or represents has complied with Illinois Revised Statutes Chapter 23, Sections 5101 et seq.

(d) The Chief of Police shall cause to be kept in his or her office an accurate record of every application received and acted upon, together with all other information and data pertaining thereto, and all certificates of registration issued under the provisions of this chapter, together with a record of the denial of any such applications. Applications for certificates shall be numbered in consecutive order as filed, and every certificate issued, and any renewal thereof, shall be identified with the duplicate number of the application upon which it was issued.

(e) No certificate of registration shall be issued to any person who has been convicted of the commission of a felony under the laws of the State of Illinois or the United States, within five years of the date of the application, nor to any person who has been convicted of a violation of any of the provisions of this chapter, nor to any person whose certificate of registration issued under this chapter has previously been revoked as herein provided. (Ord. 76-20. Passed 9-7-76.)

874.04 DENIAL OR ISSUANCE OF CERTIFICATE; REVOCATION; FEE.

(a) The Chief of Police, after consideration of the application and all other information obtained relative thereto, shall deny the application if the applicant does not possess the qualifications for such certificate as herein required, and if the issuance of a certificate of registration to the applicant would not be in accord with the intent and purpose of this chapter. Endorsement shall be made by the Chief of Police upon the application or upon the denial of the application. When the applicant is found to be fully qualified, a certificate of registration shall be issued forthwith.

(b) Any certificate of registration issued hereunder shall be revoked by the Chief of Police if the holder of the certificate is convicted of a violation of any of the provisions of this chapter, or if he or she has made a false material statement in the application or otherwise becomes disqualified for the issuance of a certificate of registration under the terms of this chapter. Immediately upon such revocation, written notice thereof shall be given by the Chief of Police to the holder of the certificate, in person or by certified U.S. Mail addressed to such holder's residence address as set forth in the application.

(c) Immediately upon the giving of such notice, the certificate of registration shall become null and void.

(d) The certificate of registration shall state the effective date and the expiration date thereof, and the applicant, at the time of the issuance of said certificate, shall pay the sum of five dollars (\$5.00) per day for each day within and including such dates. (Ord. 76-20. Passed 9-7-76.)

874.05 OCCUPANTS TO DETERMINE STATUS OF SOLICITORS AS INVITEES.

It is hereby declared to be the policy of the governing body of this municipality that the occupant or occupants of the residences in this municipality shall make the determination as to whether solicitors shall be, or shall not be, invited to their respective residences.

(Ord. 76-20. Passed 9-7-76.)

874.06 POSTING OF NOTICE PROHIBITING SOLICITATION.

Notice of an invitation to solicitors, to any residence, shall be given in the following manner:

(a) A weatherproof card, approximately three inches by four inches in size, shall be exhibited upon or near the main entrance door of the residence, indicating such determination by the occupant, as follows:

“NO SOLICITORS INVITED”

The letters shall be at least one-third of an inch in height. For the purpose of uniformity, the cards shall be provided by the Chief of Police, to persons requesting the same, at the cost thereof.

(b) Such card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence.

(Ord. 76-20. Passed 9-7-76.)

874.07 COMPLIANCE WITH NOTICE REQUIRED; DUTY TO DEPART FROM PREMISES.

(a) It shall be the duty of every solicitor, upon approaching any residence, as defined in Section 874.01, to be governed by the statement contained on the notice described in Section 874.06. If a notice is posted, as provided in Section 874.06, a solicitor shall immediately and peacefully depart from the premises.

(b) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the said premises where requested to do so by the occupant thereof.

(Ord. 76-20. Passed 9-7-76.)

874.08 UNINVITED SOLICITING PROHIBITED.

It is hereby declared to be unlawful, and the same shall constitute a trespass and a nuisance, for any person to go upon any premises and ring the doorbell upon or near any door, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engaging in soliciting as defined in Section 874.01, in defiance of the notice exhibited at the residence in accordance with the provisions of this chapter.

(Ord. 76-20. Passed 9-7-76.)

874.09 HOURS OF SOLICITING.

It is hereby declared to be unlawful, and the same shall constitute a trespass and a nuisance, for any person, whether registered under this chapter or not, to go upon any premises and ring the doorbell upon or near any door of a residence located thereon, or rap or knock upon any door, or create any sound in any other manner calculated to attract the attention of the occupant of such residence, for the purpose of securing an audience with the occupant thereof and engaging in soliciting as defined in Section 874.01, prior to 9:00 a.m. or after 9:00 p.m. on Monday through Saturday, or at any time on a Sunday or national holiday.

(Ord. 76-20. Passed 9-7-76.)

874.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 880
Tattoo and Body Piercing Establishments

880.01	Definitions.	880.09	Transfer of license prohibited.
880.02	License required.	880.10	Display of license required.
880.03	Application fee.	880.11	Exceptions.
880.04	Duration of license.	880.12	Requirement for authorized physician for body piercing.
880.05	Premises.	880.13	Reserved.
880.06	Operating requirements.	880.99	Penalty.
880.07	Inspections.		
880.08	License revocation and suspension.		

CROSS REFERENCES

Licenses and permits in general - see B.R. & T. Ch. 802

880.01 DEFINITIONS.

For purposes of this chapter, the words and terms defined below shall have the following meanings:

- (a) "Aseptic technique" means a practice that prevents and hinders the transmission of disease-producing microorganisms from one person or place to another.
- (b) "Body piercing" means penetrating the skin to make a hole, mark, or scar that is generally permanent in nature. "Body piercing" does not include practices that are considered medical procedures or the puncturing of the outer perimeter or lobe of the ear using a pre-sterilized, single-use stud and clasp ear-piercing system.
- (c) "Client" means the person, customer, or patron whose skin will be tattooed or pierced.
- (d) "Communicable disease" means a disease that can be transmitted from person to person directly or indirectly, including diseases transmitted via blood or body fluids.
- (e) "Department" means the Department of Public Health or other health authority designated as its agent.
- (f) "Director" means the Director of Public Health or his or her designee.
- (g) "Establishment" means a body-piercing operation, a tattooing operation, or a combination of both operations in a multiple-type establishment.
- (h) "Ink cup" means a small container for an individual portion of pigment that may be installed in a holder or palette and in which a small amount of pigment of a given color is placed.
- (i) "Multi-type establishment" means an operation encompassing both body piercing and tattooing on the same premises and under the same management.

- (j) “Procedure area” means the immediate area where instruments and supplies are placed during a procedure.
- (k) “Operator” means an individual, partnership, corporation, association, or other entity engaged in the business of owning, managing, or offering services of body piercing or tattooing.
- (l) “Sanitation” means the effective bactericidal and veridical treatment of clean equipment surfaces by a process that effectively destroys pathogens.
- (m) “Single use” means items that are intended for one time and one person use only and are to then be discarded.
- (n) “Sterilize” means to destroy all living organisms including spores.
- (o) “Tattooing” means making permanent marks on the skin of a live human being by puncturing the skin and inserting indelible colors. “Tattooing” includes imparting permanent makeup on the skin, such as permanent lip coloring and permanent eye liner. “Tattooing” does not include any of the following:
 - (1) The practice of electrology as defined in the Electrology Licensing Act.
 - (2) The practice of acupuncture as defined in the Acupuncture Licensing Act.
 - (3) The use, by a physician licensed to practice medicine in all its branches, of colors, dyes, or pigments for the purpose of obscuring scar tissue or imparting color to the skin for cosmetic, medical, or figurative purposes.(Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.02 LICENSE REQUIRED.

No person, firm or corporation shall maintain and operate a tattoo or body piercing establishment without first having obtained a Village of Elburn license therefor as hereinafter provided, and registration issued by the Illinois Department of Public Health as required by the Illinois Tattoo and Body Piercing Establishment Registration Act. (Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.03 APPLICATION FEE.

Every applicant for a license to maintain, operate or conduct a tattoo or body piercing establishment shall file an application upon a form provided by the Village Clerk and pay a non-refundable filing fee of fifty dollars (\$50.00) to the Village Clerk. The Village Clerk shall thereafter refer copies of such application and all additional information to the Police Department, the Building Department and the Village President. The Village departments shall inspect the premises proposed to be operated as a tattoo or body piercing establishment and make recommendations to the Clerk concerning compliance with the ordinances of the Village. Upon receipt of the recommendations of the respective Village departments, the Clerk shall notify the applicant as to whether the application has been granted, denied or held for further investigation. (Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.04 DURATION OF LICENSE.

A license as provided for herein shall be for a term of one year. (Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.05 PREMISES.

No tattoo or body piercing establishment shall receive a license or be operated, established or maintained unless the establishment shall comply with each of the following minimum regulations:

- (a) The establishment shall have a registration issued by the Illinois Department of Public Health, pursuant to the Illinois Tattoo and Body Piercing Establishment and Registration Act (410 ILCS 54).
- (b) The room in which tattooing or body piercing is done shall have an enclosed area of not less than 500 square feet. The walls, floors and ceiling shall have an impervious, smooth and washable surface.
- (c) Toilet facilities shall be provided within the establishment. When five or more employees or patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Lavatories shall be provided with both hot and cold running water and shall be installed in the toilet room. Lavatories shall be provided with soap and a dispenser with sanitary towels.
- (d) All tables and other equipment shall be constructed of easily cleanable material, shall be painted or finished in a light color, with a smooth, washable finish, and shall be separated from waiting customers or observers by a solid wall or door totally eliminating any view into the tattooing room.
- (e) Closed cabinets shall be provided for use in the storage of clean linens, towels, needles and other materials and instruments used in tattooing and body piercing. All used linens, towels, equipment, instruments and other materials shall be kept in properly covered containers or cabinets, which shall be kept separate from the clean storage areas.
- (f) The entire premises and all equipment shall be maintained in a clean, sanitary condition and in good repair.
- (g) No tattoo or body piercing establishment shall be open to the public for business between the hours of 10:00 p.m. and 7:00 a.m.
- (h) The main entrance door of any tattoo or body piercing establishment shall be visible from a public street and shall remain unlocked during business hours.
- (i) An establishment must ensure that all body piercing and tattooing procedures are performed in a clean and sanitary environment that is consistent with sanitation techniques established by the Department.
- (j) An establishment must ensure that all body piercing and tattooing procedures are performed in a manner that is consistent with an aseptic technique established by the Department.
- (k) An establishment must ensure that all equipment and instruments used in body piercing and tattooing procedures are either single use and pre-packaged instruments or in compliance with sterilization techniques established by the Department.
- (l) An establishment must ensure that single use ink is used in all tattooing procedures.

(Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.06 OPERATING REQUIREMENTS.

(a) No person, while on the premises of any tattoo or body piercing establishment, shall possess, sell, dispense, provide, give, keep or maintain any alcoholic beverage.

(b) No intoxicated person shall be tattooed or pierced by an operator on the licensed premises.

(c) Operators shall at all times comply with the regulations of the Department of Labor's Occupational Safety and Health Administration as presently existing or hereafter amended, with respect to occupational exposure to blood, blood-borne pathogens or other potentially infectious materials, which regulations are incorporated by reference herein.

(d) Written parental consent shall be obtained before any person under the age of 18 is tattooed or body pierced.

(Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.07 INSPECTIONS.

Any Village department or agency may make an inspection of each establishment granted a license under the provisions of this chapter for the purposes of determining compliance with the provisions of this chapter.

(Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.08 LICENSE REVOCATION AND SUSPENSION.

It shall be cause for revocation or suspension that:

- (a) A licensee has violated the provisions of this chapter or any code or ordinance of the Village relative to operation of the business or use of the premises;
- (b) Has made a false statement on any application for license under this chapter;
- (c) In the event that the licensee shall refuse to permit any authorized police officer or authorized member of the Police Department or Building Department of the Village to inspect the premises or the operations thereof at reasonable times;
- (d) Violation of any of the provisions of the Illinois Tattoo and Body Piercing Establishment Registration Act, or the rules and regulations adopted by the Department under this Act;
- (e) Conviction of licensee of an offense arising from false, fraudulent, deceptive, or misleading advertising. The record of conviction or a certified copy shall be conclusive evidence of the conviction;
- (f) Revocation of a certificate of registration during the previous five years or surrender or expiration of the certificate of registration during the pendency of action by the Illinois Department of Public Health to revoke or suspend the certificate of registration during the previous five years, if before the certificate of registration was issued to the individual applicant, a controlling owner or controlling combination of owners of the applicant, or any affiliate of the

individual applicant or controlling owner of the applicant or affiliate of the applicant, was a controlling owner of the prior certificate of registration;

- (g) Revocation of certificate of registration by Illinois Department of Public Health. (Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.09 TRANSFER OF LICENSE PROHIBITED.

No license for the operation of a tattoo or body piercing establishment shall be transferable.

(Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.10 DISPLAY OF LICENSE REQUIRED.

Each licensee shall display a valid current license in a conspicuous place within the licensed establishment so that the same may be readily seen by persons entering the establishment.

(Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.11 EXCEPTIONS.

The provisions of this chapter shall not apply to licensed medical doctors or doctors of osteopathic medicine who perform body piercing or tattoo individuals while in the course of their medical practice.

(Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.12 REQUIREMENT FOR AUTHORIZED PHYSICIAN FOR BODY PIERCING.

Every licensee of a tattooing and/or body piercing establishment must have on call during business hours, a physician or osteopath authorized to practice medicine or osteopathic medicine in the State of Illinois as set forth in Illinois Medical Practice Act of 1987 (225 ILCS 60/1 et seq.) or any amendment thereof. The licensee must annually provide a statement to the Village listing the name, address, telephone number and specialty of each physician and osteopath licensee has on call. Said list shall be accompanied by a statement addressed to the Village from the physician or osteopath confirming same.

(Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

880.13 RESERVED.

880.99 PENALTY.

In addition to license suspension or revocation as hereinabove provided, any person, firm or corporation violating any of the provisions of this chapter shall be fined not less than seventy-five dollars (\$75.00) or more than seven hundred fifty dollars (\$750.00), for each offense. A separate offense shall be determined to have been committed each day during which or on which the violation occurs or continues.

(Ord. 2000-16. Passed 10-16-00; Ord. 2011-24. Passed 10-3-11.)

Chapter 882
Second-Hand Articles Drop-Off Containers

882.01	Definition.	882.05	Nonusable container.
882.02	Prohibitions.	882.06	Application for license.
882.03	Licensing.	882.99	Penalty.
882.04	Regulations.		

882.01 DEFINITION.

A “second-hand articles drop-off container” is any receptacle, box, or holder used to collect second-hand articles. Whenever the words “container” or “containers” are used herein, they shall mean a “second-hand articles drop-off container.” Examples of such containers are the containers placed by Goodwill, Amvets, and other organizations for the collection of second-hand articles.

(Ord. 2001-09. Passed 5-21-01.)

882.02 PROHIBITIONS.

Second-hand articles drop-off containers are prohibited in all zoning districts except CM Commercial Manufacturing Districts.

(Ord. 2001-09. Passed 5-21-01.)

882.03 LICENSING.

All containers located in the Village must be inspected and licensed by the Village. The inspection shall be conducted annually by the Village Building Department. The annual fee for such a license and inspection shall be two hundred fifty dollars (\$250.00) for the first container owned by the entity and fifty dollars (\$50.00) for each additional container owned by the entity that is located in the Village.

(Ord. 2001-09. Passed 5-21-01.)

882.04 REGULATIONS.

The following regulations shall apply to all such containers:

- (a) No articles shall be permitted to accumulate outside of the container;
- (b) The container must not block any public road or sidewalk;
- (c) The container must not impede motorists' line of sight;
- (d) No flammable or hazardous materials or perishable items should be placed or kept in said container;
- (e) The container shall be no larger than 60 cubic feet;

- (f) The container shall be anchored to the ground in such a manner that it cannot be easily tipped over;
- (g) The container and the area surrounding it shall be kept clean and free from trash and debris;
- (h) The container shall be kept freshly painted and no rust shall be allowed to show;
- (i) The container shall be equipped with a lid and/or doors that automatically close after articles are deposited in the container.
(Ord. 2001-09. Passed 5-21-01.)

882.05 NONUSABLE CONTAINER.

Once a container becomes unusable, or does not pass inspection by the Building Department, it must be immediately removed. If it is not removed within 14 days of the Building Department's notice to remove, the Village may remove and dispose of same and charge the licensee its costs of removal and disposal.
(Ord. 2001-09. Passed 5-21-01.)

882.06 APPLICATION FOR LICENSE.

An applicant for a license must submit an application form provided by the Village. The application must be signed by the applicant. In the event the applicant is a corporation or partnership, it must be signed by the President and Secretary of the corporation, if a corporation, and by all the partners if a partnership. All such signatures shall be under oath. The application shall contain, at a minimum, the following information and documents:

- (a) Name and principal street address of applicant;
- (b) A statement that the applicant is a not-for-profit entity (documentation evidencing same shall be furnished);
- (c) A description of where the used articles are sent and the ultimate disposition of same;
- (d) Whether the used articles are sold, and if so, an explanation why;
- (e) A statement as to how long the entity has been in business;
- (f) A color photograph of the proposed container;
- (g) A site plan showing the proposed location of the container.
(Ord. 2001-09. Passed 5-21-01.)

882.99 PENALTY.

The general penalty provisions of Section 202.99 of these Codified Ordinances shall be applicable to violations of this chapter. Additionally, the Village shall be entitled to recover all costs and expenses, including its reasonable attorneys' fees, that it may incur in enforcing the provisions of this chapter.
(Ord. 2001-09. Passed 5-21-01.)

CHAPTER 884
Towing Services

884.01	Definitions.	884.13	Ethics and conduct.
884.02	Selection and designation of towing services.	884.14	Insurance.
884.03	Minimum business and storage lot requirements.	884.15	Storage lot capacity.
884.04	Towing fee.	884.16	Hold harmless and indemnification.
884.05	Review of applications.	884.17	Responsibility.
884.06	Number of agencies.	884.18	Supervision checks.
884.07	Assignments.	884.19	Vehicle repair or alteration; when permitted.
884.08	Tow trucks - minimum equipment standards.	884.20	Access to vehicles.
884.09	Dispatching requirements.	884.21	Damage appraisals.
884.10	Fees.	884.22	Failure to provide services; penalty.
884.11	Other rules of operation.	884.23	Building code.
884.12	Tow truck markings.	884.24	Regulations.

884.01 DEFINITIONS.

For purposes of this chapter, the words and terms defined below shall have the following meanings:

- (a) "Abandoned vehicle" is any motor vehicle, trailer or vehicle, as defined in Chapter 480, in a state of disrepair rendering the vehicle incapable of being driven in its current condition; or any motor vehicle upon public roads, or property that has not been moved or used for seventy-two hours or more and is apparently deserted, that is, a vehicle which appears to have been left by the owner and it appears that the owner has no intent to retrieve or claim said vehicle.
- (b) "Police tow" is a tow requested by the Elburn Police Department for:
 - (1) Vehicles that are disabled either mechanically or due to a crash where the person in charge of the vehicle has no preference for any particular tow service or is unable to make such decision.
 - (2) Village-owned vehicles.
 - (3) Vehicles impounded by the Elburn Police Department for evidentiary, investigative, or seizure purposes, or arrests.
 - (4) Abandoned vehicles that are towed pursuant to Elburn Police Department procedures.
 - (5) Illegally parked vehicles that pose a traffic/safety hazard.
- (c) "Service call" are those requests for services such as bringing fuel, tire changes, or other services which do not require towing at the time of the original request.

Towing firms may not, if the service calls results in the vehicle being towed, charge for the service call in addition to the customary towing charge.

- (d) “Stand-by” is when a tow firm is called out and the tow operator is asked by the police or fire personnel to wait at the scene before the tow driver can provide the requested service.
- (e) “Tow truck” is a motor vehicle which has been altered or designed and equipped for and exclusively used in the business of towing vehicles by means of a crane, tow bar, tow line or dolly, or is otherwise exclusively used to render assistance to other vehicles.
- (f) “Towing service” shall mean a business that provides tow services in response to a dispatch or request from the Village Police Department or any other Village department.
- (g) “Uprighting” is bringing a vehicle that is either overturned or on its side to the upright position to tow.
- (h) “Winching” or “pullout” is bringing a vehicle that is completely off the road surface onto the road surface for the purposes of towing or removal.
(Ord. 2008-12. Passed 8-25-08.)

884.02 SELECTION AND DESIGNATION OF TOWING SERVICES.

It is the purpose of this chapter to prescribe regulations for the operation of tow trucks in the removal of motor vehicles, trailers and vehicles which are illegally parked, abandoned, involved in crashes, or which constitutes obstructions to traffic or snow removal operations, or which constitute public nuisances. In enacting this chapter, it is further proposed to provide a fair and impartial means of distributing Village requests for towing services among qualified firms, and to ensure that such services are prompt and reasonably priced and are provided in the best interests of the public, as well as the interest of efficient removal of said vehicles. This chapter regulates only towing services dispatched or requested by Village personnel. The provisions hereof shall at all times be subject to the applicable statutory requirements and Illinois Commerce Commission regulations and orders pertaining to commercial towing.

- (a) Roster. All firms selected and approved to provide towing services hereunder shall be assigned a position on the roster by the Chief of Police, and listed on a roster to be kept by the Police Department. Said roster of towing firms shall, at all reasonable times, be open to public inspection.
- (b) Eligibility. Any firm is eligible to be listed on the roster and participate in the assignment of service calls by the Police Department if it maintains its principal place of business and storage lot in the Village or within ten miles of the Village's corporate limits.
- (c) Application. Any firm meeting the minimum eligibility requirements set forth in subsection (b) above may submit an application to the Village to participate in police towing operations. The application shall be in a form provided by the Village, which form shall elicit the information hereinafter set forth:
 - (1) Business operation.
 - A. Name of firm. Indicate whether a corporation or a partnership, list all the parties having an interest in said towing firm, including names and

addresses, number of years business has been established, and the number of years that those persons holding such ownership in said firm have been doing business. Also indicate any parties subcontracting with the firm, including names, addresses and number of years they have been doing business.

- B. Experience. List the number of years and location of the firm's participation in similar police towing services, together with any commendations or written complaints received by or from governmental agencies in conduct of said business within the last five years.
 - C. Stability. State business activities of firm aside from participation in police towing activities.
 - D. Attendants and drivers. List the names, addresses and driver's license number of all attendants and drivers who will conduct the police towing service, including any subcontractors as well as number of years employed, training received by said attendants and drivers, and experience of said personnel in the conduct of said business.
 - E. Equipment. Describe available equipment to be used in police towing services.
 - F. Communications. Describe the communications system between the firm's place of business and operating tow trucks, as well as the means utilized for insuring prompt dispatch of trucks upon receipt of a call from Police Dispatch.
 - G. Other facilities and personnel available. List all provisions for recordkeeping, backup personnel and auxiliary services which might be required to effectively service the public in the business of tow service operations.
- (2) Business location and storage lot.
- A. Primary business location. List location of primary business operation, including buildings and storage yards, and approximate square footage of each.
 - B. Storage lot. List location of storage lot(s), zoning classifications, dimensions thereof, relationship to primary business operation, proof of ownership or signed lease agreement, valid for one year, and type of security at said lot(s).
(Ord. 2008-12. Passed 8-25-08.)

884.03 MINIMUM BUSINESS AND STORAGE LOT REQUIREMENTS.

(a) Business and Storage. The business facilities and storage lot must at all times comply with local zoning and building ordinances. The storage lot must be accessible. It must be capable of being secured after business hours. The firm must exercise care in keeping stored vehicles and contents secure from pilfering as may be required by a bailee or as otherwise required by law.

(b) Hours. There shall be an attendant on call, capable of responding to police requests for towing or for the release of vehicles twenty-four hours a day, seven days a week. The attendant shall also be present or available for the release of vehicles to the public, from 6:00 a.m. to 10:00 p.m., seven days a week.

(c) Records. Each garage shall keep a record of all vehicles towed, including make and model; license plate number; date and time which it was towed; location from which it was towed; name of officer ordering the tow; whether the vehicle was impounded; or if the vehicle was towed at the owner's request.
(Ord. 2008-12. Passed 8-25-08.)

884.04 TOWING FEE.

(a) All firms listed on the towing roster shall pay the Village a fee in the amount of one hundred dollars (\$100.00) for each year, starting May 1st and ending the following April 30th, that said firm is listed on the roster.

(b) The initial fee is due and payable upon approval by the Village Board of Trustees of the application provided. The renewal fee shall be paid on the first May 1st thereafter.
(Ord. 2008-12. Passed 8-25-08.)

884.05 REVIEW OF APPLICATIONS.

It shall be the duty of the Chief of Police, or his designee, to investigate all applications submitted. The Chief of Police may deny any application if, after due investigation, he finds that the applicant does not meet the minimum requirements set forth herein.
(Ord. 2008-12. Passed 8-25-08.)

884.06 NUMBER OF AGENCIES.

The Chief of Police shall also determine the number and callout rotation of towing agencies used by the Department based on calls for service, as well as availability of the rostered agencies to provide services.
(Ord. 2008-12. Passed 8-25-08.)

884.07 ASSIGNMENTS.

(a) The Chief of Police or his designee may, at his discretion, assign a towing service to operate in conjunction with those firms already on the towing roster, in the event that those firms are not available to respond, or unable to handle specific vehicles.

(b) The towing service shall meet all the requirements set forth in this chapter and have made application and been inspected by the Village Police Department to ensure compliance.

(c) Any firm listed on the roster shall not assign its position on the schedule to other towing services without written consent of the Chief of Police.

(d) Any firm listed on the roster must be able to respond to all requests for service within twenty minutes of dispatch.
(Ord. 2008-12. Passed 8-25-08.)

884.08 TOW TRUCKS - MINIMUM EQUIPMENT STANDARDS.

Minimum standards for towing services shall be as follows:

- (a) Two Truck Minimum. Not less than two operating tow trucks shall be available for towing service, one of which must be a flat bed of one ton capacity with dual rear wheels. The police officer on the scene shall determine if greater capacity is needed and may call upon any service capable of providing that capacity regardless of whether or not said company is on the roster of the Village and whether it is their turn on the roster.
- (b) Company Name. Company name, address and phone number on both sides of the tow truck which conform in color and size to those required in 625 ILCS 5/12-606(a). Subcontractors must display the name, address, and phone number of the agency they are subcontracting for while operating under the license of a Village-approved towing firm.
- (c) Lights. Trucks must, at all times, be equipped with such headlights, taillights, red reflectors, stoplights, warning lights, as required by Illinois law, plus one white utility light (adjustable or portable), and front corner strobe lamps, and may be equipped with such other lights as the owner may desire which are not forbidden by Illinois law.
- (d) Winch. To be power-driven with original manufacturer's installed braking device.
- (e) Additional Equipment. Trucks must be equipped with red flares, lanterns or reflectors, hand tools, crowbar, rope, broom, shovel, dustpan, fire extinguisher (ABC rating), portable red taillights and stoplights for towed vehicles, equipment for opening locked vehicles and safety snubber chain. Each tow company shall have at least one set of dollies readily available at all times.
- (f) All tow vehicles must display an Illinois vehicle safety inspection sticker or equivalent as required in 625 ILCS 5/13-111. All vehicles must also display the insignia as required in 625 ILCS 5/18d-140.
(Ord. 2008-12. Passed 8-25-08.)

884.09 DISPATCHING REQUIREMENTS.

(a) All requests for towing service pursuant to this chapter shall be made through the Police Department.

(b) When it becomes evident that there will be more than a twenty minute delay in responding to a request for towing service, the tow company concerned shall advise the dispatch center of the delay. At that time the Police Department reserves the right to request the services of the next towing service on the roster.

(c) Failure to comply with any of the requirements under this chapter shall not subject the Village to liability.
(Ord. 2008-12. Passed 8-25-08.)

884.10 FEES.

(a) Towing. The maximum fee which may be charged by any towing firm for removing a vehicle from the street in response to a police call shall be as follows:

- (1) For the towing of any vehicle with a total gross weight of not more than 12,000 pounds, a flat rate of one hundred twenty-five dollars (\$125.00). This includes cleaning the road surface of debris and oil dry as needed.
- (2) For those vehicles towed for 720 ILCS 5/36-1 et seq. seizures:
 - A. Less than 12,000 pounds - one hundred seventy-five dollars (\$175.00);
 - B. 12,000 to 40,000 pounds - two hundred twenty-five dollars (\$225.00);
and
 - C. Any and all vehicles over 40,000 pounds - two hundred seventy-five dollars (\$275.00).

This is inclusive of all accrued storage fees prior to disposition of the seized vehicle.

- (3) For any service call where no tow is involved - sixty dollars (\$60.00).
- (4) Mileage charges shall not exceed three dollars (\$3.00) per mile. Mileage assessment to begin at the point of disablement.
- (5) For the towing of vehicles with a gross weight greater than 12,000 pounds but less than 40,000 pounds - one hundred fifty dollars (\$150.00) per hour. This includes cleaning the road surface of debris and oil dry as needed.
- (6) For the towing of any and all vehicles with a gross weight over 40,000 pounds - two hundred fifty dollars (\$250.00) per hour. This includes cleaning the road surface and oil dry as needed.
- (7) Charges of fifty dollars (\$50.00) per hour will be charged to cage brakes and/or to remove the drive shaft, if necessary, for the removal of the disabled vehicle.
- (8) Where a lowboy trailer is required to haul away a vehicle the rate shall not exceed more than two hundred fifty dollars (\$250.00) per hour.
- (9) Special handling charges shall be at a rate not to exceed one hundred dollars (\$100.00) per hour and shall be measured in fifteen minute increments. Special handling charges shall include, but not be limited to, the following:
 - A. Vehicle roll over;
 - B. Vehicle impacted in a building or other structure;
 - C. Vehicle in a body of water;
 - D. Vehicle off the roadway requiring the use of a power winch for retrieval; or
 - E. Motorcycle, snowmobile, all terrain vehicles, or any other vehicle requiring special handling considerations.
- (10) Miscellaneous rates:

- A. Village vehicles will be towed at the rate of fifty dollars (\$50.00) per occurrence.
 - B. Removal of abandoned vehicles from Village streets to a Village impound lot will be towed at the rate of fifty dollars (\$50.00) per vehicle.
 - C. Snow tow removal or relocation shall be charged at the rate of ninety dollars (\$90.00) per hour.
 - D. Standby time shall be charged at the rate of fifty dollars (\$50.00) per hour up to a maximum of two hours.
 - E. Anytime a firm is required to respond out of the corporate limits of the Village to recover a vehicle for the Police Department, normal hook-up fees apply plus mileage from point of hook-up to point of drop. Time shall be charged at the rate of seventy dollars (\$70.00) per hour starting one hour after the original arrival time of the firm if vehicle removal is delayed.
- (b) Storage Charges. The storage charges for vehicles shall be as follows:
- (1) For vehicles stored less than twenty-four hours - no charge.
 - (2) For any vehicle up to 12,000 pounds after twenty-four hours - thirty-five dollars (\$35.00) per day.
 - (3) For any vehicle up to 12,000 pounds, motorcycles, all-terrain vehicles, snowmobiles, requiring inside storage for the safety of the vehicle and or it's contents - forty dollars (\$40.00) per day.
 - (4) For any vehicle over 12,000 pounds - fifty dollars (\$50.00) per day, inside storage - sixty dollars (\$60.00) per day.
 - (5) For storage of semi-tractor only - fifty dollars (\$50.00) per day, inside storage - sixty dollars (\$60.00) per day.
 - (6) For storage of semi-tractor and trailer - seventy-five dollars (\$75.00) per day. After the tenth day - one hundred dollars (\$100.00) per day.
 - (7) Storage for investigative hold - inside and secured - forty dollars (\$40.00) per day.
- (c) Release Fee. Fee for release of vehicles other than normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. and Saturday, 8:00 a.m. to noon - thirty-five dollars (\$35.00).
- (d) Revision of Rates - Notice of Hearing.
- (1) The Village Board of Trustees may amend the schedule of maximum fees or rates, which may be charged for towing and storage services.
 - (2) Prior to Village Board action adjusting rates and fees, at least ten days' written notice shall be given to each firm then listed on the roster which notice shall be sent to the address stated in the application submitted. Failure to give such notice shall not invalidate the increased fees.
(Ord. 2008-12. Passed 8-25-08.)

884.11 OTHER RULES OF OPERATION.

(a) Removing Hazards. After being dispatched to a scene the tow truck operator shall cooperate with the police officers in removing hazards and illegally parked vehicles as requested. The police officer shall determine when such a vehicle should be impounded, removed, or relocated. The tow truck operator shall abide by the police officer's decision.

(b) Every tow truck operator shall remove or cause to be removed all glass and debris deposited on any street or highway by the vehicle being serviced. The tow truck operator shall also spread oil-dry upon that portion of the street or highway where any fluids have been deposited by the vehicle being serviced, unless the Fire Department has taken charge of the cleanup, at which point the tow truck operator will follow the instructions of Fire Department personnel regarding cleanup.

(c) While at the scene of any call for a Village tow, every tow truck operator shall wear safety apparel compliant with the Class 2 or 3 standard of the International Safety Equipment Association standard: ANSI/ISEA 107-2004 (as amended) standard for visibility safety apparel, as appropriate to the task being performed and the conditions present.

(d) While on the scene of any call for a Village tow, every tow operator will wear outer apparel that clearly identifies the company for which they work. This identification can also appear high visibility safety apparel.

(e) No tow truck operator shall respond to the scene of a Village call for service while having any alcohol, controlled substance, or both in his system. He shall not have prescribed or over-the-counter medication in his system that renders him incapable of safely driving or operating the tow truck.
(Ord. 2008-12. Passed 8-25-08.)

884.12 TOW TRUCK MARKINGS.

Only tow trucks bearing the name of the company called shall be dispatched in response to police department requests.
(Ord. 2008-12. Passed 8-25-08.)

884.13 ETHICS AND CONDUCT.

All owners of towing services shall conduct their business in an orderly, ethical, and businesslike manner and use every means to keep and maintain the confidence of the motoring public.
(Ord. 2008-12. Passed 8-25-08.)

884.14 INSURANCE.

Each firm listed on said firm roster shall have in full force and effect during the period said firm remains on said roster, public liability, property damage, and fire and theft insurance coverage. Coverage shall not be less than that specified by 625 ILCS 5/12-606(d). The Village shall be named as additional insured on said policy and proof thereof furnished

the Village not less frequently than annually. Said policy shall include a provision that it not be cancelled without thirty days advance written notice to the Village.
(Ord. 2008-12. Passed 8-25-08.)

884.15 STORAGE LOT CAPACITY.

At no time shall the storage lot be filled to more than ninety percent capacity. Should the lot be filled greater than said limit, the Chief of Police of the Village may suspend towing services pursuant to this chapter until such time as the number of vehicles in said lot is reduced, to within the above-stated capacity.
(Ord. 2008-12. Passed 8-25-08.)

884.16 HOLD HARMLESS AND INDEMNIFICATION.

The owner of each towing service shall indemnify and hold the Village, together with its officers and employees, harmless from all damages for injury, death, property damage and other liability occurring and/or arising while said towing service is providing any services provided for in this chapter and/or while providing any services on behalf of the Village or for any services provided within the Village.
(Ord. 2008-12. Passed 8-25-08.)

884.17 RESPONSIBILITY.

The owners of towing services participating in towing assignments authorized by the Police Department shall be responsible for the acts of their employees and agents. Towing services shall be responsible for damage to vehicles while in their possession.
(Ord. 2008-12. Passed 8-25-08.)

884.18 SUPERVISION CHECKS.

All towing service's records, equipment, and storage facilities will be subject to periodic checks by Police Department personnel. Any deviation from responsible, quick, and efficient service at the rates prescribed will result in the removal of the name of such firm from the roster by the Village Board upon the recommendation of the Chief of Police.
(Ord. 2008-12. Passed 8-25-08.)

884.19 VEHICLE REPAIR OR ALTERATION; WHEN PERMITTED.

A person conducting towing operations shall refrain from making any repairs or alterations to a vehicle without first being authorized by the owner or his designee. Parts or accessories shall not be removed from vehicles without authorization except as necessary for security purposes, in which case, said parts or accessories shall be listed on the tow sheet.
(Ord. 2008-12. Passed 8-25-08.)

884.20 ACCESS TO VEHICLES.

Vehicles to be impounded shall be accessible to Police Department personnel. An employee of the towing firm may be required to assist.
(Ord. 2008-12. Passed 8-25-08.)

884.21 DAMAGE APPRAISALS.

All vehicles stored or impounded, as the result of a tow ordered by the Police Department, shall be made available to the owner of the vehicle or his representative, insurance agents, insurance adjusters, or any body shops or car dealers, for the purpose of estimating or appraising damages, except vehicles with a "police hold", during the hours of 6:00 a.m. to 10:00 p.m., seven days a week.

(Ord. 2008-12. Passed 8-25-08.)

884.22 FAILURE TO PROVIDE SERVICES; PENALTY.

Any person, firm, or corporation whose name is on the roster maintained by the Chief of Police who fails to provide such services in the manner provided by this chapter may be removed from the roster and shall not be reinstated for a period of one year following removal.

(Ord. 2008-12. Passed 8-25-08.)

884.23 BUILDING CODE.

Storage lot buildings, fencing, driveways, etc. that are located in the corporate limits of the Village must comply with the zoning and building code requirements of the Village.

(Ord. 2008-12. Passed 8-25-08.)

884.24 REGULATIONS.

(a) Any and all tow truck operators not selected and designated pursuant to this chapter are hereby prohibited from removing from the public streets in the Village or towing any vehicles described in Section 884.01(d); provided, however, that the owner or operator of the vehicle involved may designate any towing service to be used for the towing of said vehicle and/or may designate the destination of the towed vehicle.

(b) Any firm doing business for the Village under this chapter shall not be permitted to charge an "administrative fee" for the release of any vehicle towed at the request of the Village, other than those fees herein provided.

(c) No firm doing business for the Village under this chapter shall hold the Village liable for any expenses, costs or fees for vehicles towed or stored whether or not said tow or storage was requested by the Village Police Department.

(Ord. 2008-12. Passed 8-25-08.)

CHAPTER 886
Cable and Video Customer Protection Law

886.01	Customer Service and Privacy Protection Law.	886.03	Customer credits.
886.02	Enforcement.	886.99	Penalty.

886.01 CUSTOMER SERVICE AND PRIVACY PROTECTION LAW.

(a) Adoption. The regulations of 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.

(b) Amendments. Any amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this chapter shall be incorporated into this chapter by reference and shall be applicable to cable or video providers offering services within the Municipality's boundaries. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this chapter by reference without formal action by the corporate authorities of the Village.
(Ord. 2007-33. Passed 12-17-07.)

886.02 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.
(Ord. 2007-33. Passed 12-17-07.)

886.03 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.
(Ord. 2007-33. Passed 12-17-07.)

886.99 PENALTY.

The Village, pursuant to 220 ILCS 5/70-501(r)(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 seven hundred fifty dollars (\$750.00) for each day of the material breach, and shall not exceed twenty-five thousand dollars (\$25,000) 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 thirty days from the receipt of the notice to remedy the specified material breach.
- (c) A material breach, for the purposes of assuming 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 subsection (b) hereof.
(Ord. 2007-33. Passed 12-17-07.)

CHAPTER 888
Video Gaming Act

888.01	Definitions.	888.05	Restrictions on operation.
888.02	Conflict.	888.06	Compliance with law.
888.03	Jurisdiction.	888.07	Village license.
888.04	Where video gaming terminals may be placed.	888.99	Penalty.

888.01 DEFINITIONS.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (a) “Video gaming terminal” means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including but not limited to video poker, line up, and blackjack, as authorized by the Illinois Gaming Board, utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash. The term does not include a machine that directly dispenses coins, cash, or tokens or is for amusement purposes only. (230 ILCS 40/5)
- (b) “Video Gaming Act” means the Illinois Video Gaming Act. (230 ILCS 40) (Ord. 2013-03. Passed 3-18-13.)

888.02 CONFLICT.

In the case of any conflict or inconsistency between this chapter and the Video Gaming Act, the Video Gaming Act shall control. (Ord. 2013-03. Passed 3-18-13.)

888.03 JURISDICTION.

The Illinois Gaming Board shall have jurisdiction over and shall supervise all gaming operations governed by the Video Gaming Act. (230 ILCS 40778(a)) (Ord. 2013-03. Passed 3-18-13.)

888.04 WHERE VIDEO GAMING TERMINALS MAY BE PLACED.

(a) Licensed retail establishments where alcoholic liquor is drawn, poured, mixed, or otherwise served for consumption on the premises, and as otherwise defined in the Video Gaming Act.

- (b) Licensed truck stop establishments as defined in the Video Gaming Act.

(c) Licensed fraternal establishments where a qualified fraternal organization that derives its charter from a national fraternal organization regularly meets.

(d) Licensed veteran establishments where a qualified veterans organization that derives its charter from a national veterans organization regularly meets.
(Ord. 2013-03. Passed 3-18-13.)

888.05 RESTRICTIONS ON OPERATION.

(a) Location Restrictions. Video gaming terminals may not be operated on any premises that are: (i) located within 1,000 feet of a horse racing or riverboat gambling facility; or (ii) located within 100 feet of a school or place of worship. These distances will be determined by measuring the distance from a proposed or existing licensed video gaming location to a preexisting facility by drawing a straight line between the closest part of any building used for the proposed or existing licensed video gaming location and the closest part of any building used for the facility. When located within a subsection of property (e.g., a tenant in a shopping center or commercial condominium), measurement shall be from the boundaries of the establishment's leased building premises.

(b) Number of Machines. There may not be more than five machines on any premises.

(c) Location of Machines. Video gaming terminals must be located in an area that is restricted to persons over 21 years of age. The entrance to that area must be within the view of at least one employee.

(d) Age Restrictions. No licensee may cause or permit any person under the age of 21 years to use or play a video gaming terminal.

(e) Liquor License Required. Each establishment, except truck stops and fraternal organizations, must possess a valid liquor license issued by the Illinois Liquor Control Commission and the Village.

(f) Hours of Operation. Those premises that are licensed establishments, except truck stops and fraternal establishments, may operate video gaming terminals only during the hours of operation for the consumption of alcohol at that premises.

(g) Additional Regulations. The Illinois Gaming Board has adopted rules that clarify some of the restrictions or conditions found in the Video Gaming Act. Those rules can be found at 11 Ill. Adm. Code 1800.
(Ord. 2013-03. Passed 3-18-13.)

888.06 COMPLIANCE WITH LAW.

All establishments shall comply with the Illinois Video Gaming Act, together with all other applicable laws, rules, regulations, and ordinances.
(Ord. 2013-03. Passed 3-18-13.)

888.07 VILLAGE LICENSE.**(a) License Required.**

- (1) The owner of a video gaming terminal shall obtain a license for such device issued by the Village.
- (2) It shall be unlawful for any person to install, keep, maintain, or use, or permit the installation, keeping, maintenance, or use upon his premises of any video gaming terminal unless a valid license issued under this chapter for the video gaming terminal is in effect.
- (3) It shall be unlawful for any person to deliver video gaming terminals within the Village for use by any other person for gain or profit from the operation thereof unless a license therefor has been issued by the Village and the license fee has been paid for the current year.

(b) Application. Applications for the license required by this ordinance shall be filed with the Village Clerk and shall contain the following information:

- (1) The name, address, age, and date of birth of the owner of the video gaming terminal and of the owner of the establishment where the video gaming terminal shall be located.
- (2) Prior convictions of the owner of the video gaming terminal and the owner of the establishment, if any.
- (3) The place where the video gaming terminal is to be displayed or operated and the business conducted at that place.
- (4) A description of the video gaming terminal to be covered by the license.
- (5) A copy of the applicant's complete license application, and all supporting documents, to the Illinois Video Gaming Board.
- (6) Evidence that licenses have been issued by the Illinois Gaming Board to the owner of the video gaming terminal and the owner of the establishment.

(c) Fee. The annual fee for the license required by this chapter shall be twenty-five dollars (\$25.00) per machine.

(d) Expiration. Licenses issued pursuant to this chapter shall terminate at the end of the Village's fiscal year.

(e) Display. The license required by this chapter shall be prominently displayed next to the video gaming terminal.

(f) Suspension/Revocation. The Village President, or his designee, may suspend, for not more than 30 days, or revoke for cause, any video gaming license for any violation of this chapter. No license shall be suspended or revoked except after a public hearing before the Village President, or his designee. A five-day written notice shall be given to the licensee, notifying him or her of said hearing and of his or her right to appear and defend. If the Village President, or his designee, determines after the hearing that the Village-issued license shall be suspended or revoked, he or she shall serve a copy of the written order of suspension or revocation upon the licensee within five days of the hearing. Said order shall state the reasons for the suspension or revocation. The licensee may appeal the suspension or revocation to the Village Board of Trustees by sending written demand to the Village Administrator within five days of the licensee's receipt of the order from the Village President. Within five days thereafter, the Village Board of Trustees shall provide the licensee notice of the date and time of the appeal hearing, which shall be conducted within five days of said notice.

(Ord. 2013-03. Passed 3-18-13.)

888.99 PENALTY.

See Section 202.99 of these Codified Ordinances for General Code Penalty.

(Ord. 2013-03. Passed 3-18-13.)

TITLE FOUR - Taxation

- Chap. 890. Municipal Retailers Occupation Tax.
- Chap. 892. Municipal Service Occupation Tax.
- Chap. 894. Municipal Utility Tax.
- Chap. 895. Simplified Municipal Telecommunications Tax.
- Chap. 898. Cable/Video Service Provider Fee and PEG Access Support Fee.

CHAPTER 890
Municipal Retailers Occupation Tax

- | | | | |
|--------|------------------------------|--------|-----------------|
| 890.01 | Imposition; rate; exemption. | 890.03 | Payment of tax. |
| 890.02 | Filing of reports. | 890.99 | Penalty. |

CROSS REFERENCES

Municipal Retailers' Occupation Tax - see 65 ILCS 5/8-11-1

890.01 IMPOSITION; RATE; EXEMPTION.

(a) A tax is hereby imposed upon all persons engaged in the business of selling tangible personal property at retail in the Village, at the rate of one percent of the gross receipts from such sales made in the course of such business while this chapter is in effect, in accordance with the provisions of 65 ILCS 5/8-11-1.1.
(Ord. 79-1. Passed 2-19-79.)

(b) The exemption contained in Section 2(d) of the "Retailers Occupation Tax Act," (approved June 28, 1933), as amended, being 35 ILCS 120/1 et seq., shall not apply to property within the Village.
(Ord. 78-8. Passed 12-18-78.)

890.02 FILING OF REPORTS.

Every person engaged in the business of selling tangible personal property at retail in the Village shall file, on or before the last day of each calendar month, the report to the State Department of Revenue required by Section 3 of the "Retailers Occupation Tax Act" (approved June 28, 1933), as amended.

(Ord. 79-1. Passed 2-19-79.)

890.03 PAYMENT OF TAX.

At the time the report required in Section 890.02 is filed, there shall be paid to the State Department of Revenue the amount of tax hereby imposed on account of the receipts from sales of tangible personal property during the preceding month.

(Ord. 79-1. Passed 2-19-79.)

890.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 892
Municipal Service Occupation Tax

892.01	Imposition; rate; exemption.	892.03	Payment of tax.
892.02	Filing of reports.	892.99	Penalty.

CROSS REFERENCES

Municipal Service Occupation Tax - see Ill. R.S. Ch. 24, Sec. 8-11-5

892.01 IMPOSITION; RATE; EXEMPTION.

(a) A tax is hereby imposed upon all persons engaged in the business of making sales of service in the Village at the rate of one percent of the cost price of all tangible personal property transferred by such a person, either in the form of tangible personal property or in the form of real estate as an incident to a sale of service, in accordance with the provisions of Section 8-11-5 of the Illinois Municipal Code.
(Ord. 79-1. Passed 2-19-79.)

(b) The exemption contained in Section 2(e) of the "Service Occupation Tax Act" (approved July 10, 1961), as amended, being Illinois Revised Statutes, Chapter 120, Sections 439.101 et seq., shall not apply to property within the Village.
(Ord. 78-8. Passed 12-18-78.)

892.02 FILING OF REPORTS.

Every person required by Section 892.01 to account for the tax imposed by this chapter, for the benefit of the Village, shall file, on or before the twentieth day of each calendar month, the report to the State Department of Revenue required by the provisions of the "Service Occupation Tax Act" (approved July 10, 1961), as amended.

892.03 PAYMENT OF TAX.

At the time the report required by Section 892.02 is filed, there shall be paid to the State Department of Revenue the amount of tax hereby imposed.

(Ord. 79-1. Passed 2-19-79.)

892.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

CHAPTER 894
Municipal Utility Tax

894.01	Tax imposed.	894.07	Declaration of
894.02	Exceptions.		unconstitutionality.
894.03	Additional taxes.	894.08	Publication of chapter.
894.04	Collection.	894.09	Refunds to senior citizens.
894.05	Reports to Municipality.	894.10	Use of revenues.
894.06	Credit for over-payment.	894.99	Penalty.

CROSS REFERENCES

Authority to levy - see 65 ILCS 5/8-11-2
 Water generally - see S.U. & P.S. Ch. 1040
 Water rates and charges - see S.U. & P.S. Ch. 1042
 Water use restrictions - see S.U. & P.S. Ch. 1044
 Sewers generally - see S.U. & P.S. Ch. 1060
 Sewer rates and charges - see S.U. & P.S. Ch. 1062

894.01 TAX IMPOSED.

(a) A tax is hereby imposed on all persons engaged in the following occupations or privileges:

- (1) Persons engaged in the business of transmitting messages by means of electricity or radio magnetic waves, or fiber optics, at the rate of 5% of the gross receipts from such business originating within the corporate limits of the village.
- (2) Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the village, and not for resale, at a rate of 5% of the gross receipts therefrom.
- (3) Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use or consumption within the corporate limits of the village, and not for resale, at a rate of 5% of the gross receipts therefrom. (Ord. 96-30. Passed 9-3-96)
- (4) 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:
 - A. For the first 2,000 kilowatt-hours used or consumed in a month, .582 cents per kilowatt-hour;
 - B. For the next 48,000 kilowatt-hours used or consumed in a month; .382 cents per kilowatt-hour;

- C. For the next 50,000 kilowatt-hours used or consumed in a month; .344 cents per kilowatt-hour;
- D. For the next 400,000 kilowatt-hours used or consumed in a month; .334 cents per kilowatt-hour;
- E. For the next 500,000 kilowatt-hours used or consumed in a month; .324 cents per kilowatt-hour;
- F. For the next 2,000,000 kilowatt-hours used or consumed in a month; .305 cents per kilowatt-hour;
- G. For the next 2,000,000 kilowatt-hours used or consumed in a month; .301 cents per kilowatt-hour;
- H. For the next 5,000,000 kilowatt-hours used or consumed in a month; .296 cents per kilowatt-hour;
- I. For the next 10,000,000 kilowatt-hours used or consumed in a month; .291 cents per kilowatt-hour;
- J. For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month; .286 cents per kilowatt-hour.

(b) The tax rates set forth in subsection (a)(4) hereof will be used at least through December 31, 2008, are proportional to the rates enumerated in 65 ILCS 5/8-11-2 (as modified by Public Act 90-561), 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 90-561).

(c) The tax imposed by subsection (a)(3) hereof, as the same may from time to time be amended, shall not apply with respect to gross receipts pertaining to bills for the distribution, supply, furnishing or sale of electricity where the use or consumption of electricity is subject to the tax imposed by subsection (a)(4) hereof.

(d) Pursuant to 65 ILCS 5/8-11-2, the rates set forth in subsection (a)(4) hereof shall be effective: on March 1, 1999, for residential customers; and on the earlier of the first bill issued on or after January 1, 2001, or the date of the first bill issued pursuant to 220 ILCS 5/16-104, for nonresidential customers.

(e) The provisions of this chapter shall not be effective until March 1, 1999. (Ord. 96-30. Passed 9-13-96. Ord. 99-6. Passed 2-15-99.)

894.02 EXCEPTIONS.

Notwithstanding any other provision of this chapter, the tax imposed by Section 894.01 shall not be imposed if and to the extent that the imposition or collection of the tax would violate the Constitution or statutes of the United States or the State of Illinois. (Ord. 99-6. Passed 2-15-99.)

894.03 ADDITIONAL TAXES.

The tax imposed by Section 894.01 shall be in addition to other taxes levied upon the taxpayer or his or her business.

(Ord. 99-6. Passed 2-15-99.)

2005A Replacement

894.04 COLLECTION.

The tax authorized by this chapter shall be collected from the purchaser by the person maintaining a place of business in this State who delivers the electricity to the purchaser. The 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 chapter and any such tax collected by a person delivering electricity shall constitute a debt owed to the Municipality by such person delivering the electricity, provided that the person delivering electricity shall be allowed a credit for such tax related to deliveries of electricity, the charges for which are written off as uncollectible, and provided, further, that if such charges are thereafter collected, the delivering supplier shall be obligated to remit such tax.

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 three percent 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 section shall, at the time of filing such return, pay the Municipality the amount of the tax collected pursuant to this chapter. (Ord. 99-6. Passed 2-15-99.)

894.05 REPORTS TO MUNICIPALITY.

(a) On or before the last day of each January, April, July, and October, each taxpayer shall make a return to the Village for the preceding three calendar months stating:

- (1) The taxpayer's name.
- (2) The taxpayer's principal place of business.
- (3) The taxpayer's gross receipts and/or kilowatt-hour usage during the month upon the basis of which the tax is imposed.
- (4) The amount of tax.
- (5) Such other reasonable and related information as the corporate authorities may require.

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

(Ord. 99-6. Passed 2-15-99.)

894.06 CREDIT FOR OVER-PAYMENT.

(a) If it shall appear that an amount of tax has been paid which was not due under the provisions of this chapter, 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 chapter from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than three years prior to the filing of a claim therefor shall be so credited.

(b) No action to recover any amount of tax due under the provisions of this chapter shall be commenced more than three years after the due date of such amount.
(Ord. 99-6. Passed 2-15-99.)

894.07 DECLARATION OF UNCONSTITUTIONALITY.

In the event that Public Act 9-561 is declared unconstitutional, or if Ordinance 99-6 is voided by court action, the provisions of Chapter 894, as amended by Ordinance 96-30, shall remain in effect in all respects as if it had never been amended by Ordinance 99-6, and any amounts paid to the Village by any person delivering electricity pursuant to Ordinance 99-6 shall be deemed to have been paid pursuant to Chapter 894 and Ordinance 96-30, as the same existed prior to the passage of Ordinance 99-6.
(Ord. 99-6. Passed 2-15-99.)

894.08 PUBLICATION OF CHAPTER.

The Village Clerk is authorized to publish this chapter as provided by law.
(Ord. 99-6. Passed 2-15-99.)

894.09 REFUNDS TO SENIOR CITIZENS.

All residents age 65 years or older earning less than fifty-five thousand dollars (\$55,000) gross income per year per household are eligible to have the Village reimburse up to 75% of all amounts paid for electric and natural gas utility tax incurred on their primary residence, with a cap of one hundred fifty dollars (\$150.00) of reimbursement per calendar year. The gross income per year per household shall be adjusted to be consistent with the Senior Citizens Assessment Freeze Homestead Exemption set by the State. Persons seeking a refund must certify, under penalty of perjury, their qualifications for such refunds and that the property has no commercial or income uses. Persons shall submit an entire original bill with their application for reimbursement. Persons must submit their refund request and supporting documentation between January 1 and March 31 of the year following that for which a refund is sought.
(Ord. 2010-05. Passed 1-19-10.)

894.10 USE OF REVENUES.

The revenues from the tax imposed by this chapter shall be used by the Village for any corporate purpose.
(Ord. 2001-03. Passed 3-5-01; Ord. 2002-20. Passed 7-15-02.)

894.99 PENALTY.

Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this chapter, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00), and, in addition to such fine, shall be liable in a civil action for the amount of tax due. (See 65 ILCS 5/8-11-2)
(Ord. 99-6. Passed 2-15-99.)

CHAPTER 895
Simplified Municipal Telecommunications Tax

895.01	Definitions.	895.03	Collection of tax by retailers.
895.02	Simplified municipal telecommunications tax imposed.	895.04	Returns to Department.
		895.05	Resellers.

895.01 DEFINITIONS.

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

- (a) "Amount paid" means the amount charged to the taxpayer's service address in the Village regardless of where such amount is billed or paid.
- (b) "Department" means the Illinois Department of Revenue.
- (c) "Gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in the Village and for all services and equipment provided in connection therewith by a retailer, 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 this State, charges for the channel mileage between each channel point within this State, and charges for that portion of the interstate inter-office channel provided within Illinois. However, "gross charge" shall not include:
 - (1) Any amounts added to a purchaser's bill because of a charge made pursuant to: (1) the tax imposed by this section; (2) the tax imposed by the Telecommunications Excise Tax Act; (3) the tax imposed by Section 4251 of the Internal Revenue Code; (4) 911 surcharges; or (5) charges added to customers' bills pursuant to the provisions of Section 9-221 or 9-222 of the Public Utilities Act, as amended, or any similar charges added to customers' bills by retailers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in those provisions of the Public Utilities Act;
 - (2) Charges for a sent collect telecommunication received outside of the Village;

2004 Replacement

- (3) Charges for leased time on equipment or charges for the storage of data or information for 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;
- (4) 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;
- (5) Charges to business enterprises certified as exempt 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 Department of Commerce and Community Affairs;
- (6) Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the tax imposed under this chapter has already been paid to a retailer 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 for the corporation rendering such service;
- (7) Bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);
- (8) Charges paid by inserting coins in coin-operated telecommunication devices;
or
- (9) Amounts paid by telecommunications retailers under the Telecommunications Infrastructure Maintenance Fee Act.
- (d) "Interstate telecommunications" means all telecommunications that either originate or terminate outside this State.
- (e) "Intrastate telecommunications" means all telecommunications that originate and terminate within this State.
- (f) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed

by order of any court, the Federal and State governments, including State universities created by statute, or any city, town, county, or other political subdivision of this State.

- (g) "Purchase at retail" means the acquisition, consumption or use of telecommunications through a sale at retail.
- (h) "Retailer" means and includes every person engaged in the business of making sales at retail as defined in this section.
- (i) "Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within this State, 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.
- (j) "Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services and equipment provided in connection therewith for a consideration, to persons other than the Federal and State governments, and State universities created by statute and other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries for their use or consumption and not for resale.
- (k) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems and maritime systems, "service address" means the customer's place of primary use as defined in the Mobile Telecommunications Sourcing Conformity Act. For air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent.
- (l) "Taxpayer" means a person who individually or through his or her agents, employees, or permittees engages in the act or privilege of originating or receiving telecommunications in the Village and who incurs a tax liability as authorized by this chapter.
- (m) "Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll, and wide area telephone service, private line services, channel services, telegraph services, teletypewriter,

computer exchange services, cellular mobile telecommunications service, specialized mobile radio, stationary two-way radio, paging service, or any other form of mobile and portable one-way or two-way communications, 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. As used in this chapter “private line” means a dedicated non-traffic-sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of “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 purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by such provider to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right-of-access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale. Prepaid telephone calling arrangements shall not be considered “telecommunications” subject to the tax imposed under this Act. For purposes of this Section, “prepaid telephone calling arrangements” means that term as defined in Section 2-27 of the Retailers' Occupations Tax Act. (Ord. 2002-25. Passed 9-16-02.)

895.02 SIMPLIFIED MUNICIPAL TELECOMMUNICATIONS TAX IMPOSED.

A tax is hereby imposed upon any and all the following acts or privileges:

- (a) The act or privilege of originating in the Village or receiving in the Village intrastate telecommunications by a person at a rate of 6% of the gross charge for such telecommunications purchased at retail from a retailer.
- (b) The act or privilege of originating in the Village or receiving in the Village interstate telecommunications by a person at a rate of 6% of the gross charge for such telecommunications purchased at retail from a retailer. To prevent actual multi-state taxation of the act or privilege that is subject to taxation under this division, any taxpayer, upon proof that the taxpayer has paid a tax in another state on such event, shall be allowed a credit against any tax enacted pursuant to or authorized by this section to the extent of the amount

of such tax properly due and paid in such other state which was not previously allowed as a credit against any other state or local tax in this State.

- (c) The tax imposed by this chapter is not imposed on such act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the municipality.

(Ord. 2002-25. Passed 9-16-02.)

895.03 COLLECTION OF TAX BY RETAILERS.

(a) The tax authorized by this chapter shall be collected from the taxpayer by a retailer maintaining a place of business in this State and shall be remitted by such retailer to the Department, pursuant to the Illinois Simplified Municipal Telecommunications Tax Act (Public Act 92-526, Section 5-40).

(b) Whenever possible, the tax authorized by this chapter shall, when collected, be stated as a distinct item separate and apart from the gross charge for telecommunications. (Ord. 2002-25. Passed 9-16-02.)

895.04 RETURNS TO DEPARTMENT.

Commencing on February 1, 2003, the tax imposed under this chapter on telecommunication retailers shall be returned with appropriate forms and information as required by the Department pursuant to the Illinois Simplified Municipal Telecommunications Tax Act (Public Act 92-526, Section 5-50) and any accompanying rules and regulations created by the Department to implement this Act.

(Ord. 2002-07. Passed 3-4-02.)

895.05 RESELLERS.

(a) If a person who originates or receives telecommunications claims to be a reseller of such telecommunications, such person shall apply to the Department for a resale number pursuant to the Illinois Simplified Municipal Telecommunications Tax Act (Public Act 92-526, Section 5-45).

(b) Except as provided in the Illinois Simplified Municipal Telecommunications Tax Act (Public Act 92-526, Section 5-45), the act or privilege of originating or receiving telecommunications in this State shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number from the Department and furnishes that number to the retailer in connection with certifying to the retailer that any sale to such person is non-taxable because of being a sale for resale.

(Ord. 2002-25. Passed 9-16-02.)

CHAPTER 898
Cable/Video Service Provider Fee and PEG Access Support Fee

898.01	Definitions.	898.05	No impact on other taxes due from holder.
898.02	Cable/video service provider fee imposed.	898.06	Audits of cable/video service provider.
898.03	PEG access support fee imposed.	898.07	Late fees/payments.
898.04	Applicable principles.		

898.01 DEFINITIONS.

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

- (a) "Cable service" means that term as defined in 47 U.S.C. § 522(6).
- (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:
 - A. Recurring charges for cable or video service.
 - B. Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
 - C. Rental of set top boxes and other cable service or video service equipment.
 - D. Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.
 - E. Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
 - F. Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
 - G. 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 services 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.

- H. 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 as 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 paragraph (1)I. hereof.
 - I. 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 from its books and records that are kept in the regular course of business.
 - J. The service provider fee permitted by 220 ILCS 5/21-801(b).
- (2) Gross revenues do not include any of the following:
- A. Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(2)(i).
 - B. 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.
 - C. 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 the regular course of business and any applicable laws, rules, regulations, standards, or orders.
 - D. 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.
 - E. 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.

- F. Security deposits collected from subscribers.
 - G. 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) “PEG” means public, education and governmental.
 - (f) “PEG access support fee” means the amount paid under this chapter and 220 ILCS 5/21-801(d) by the holder to the Village for the service areas within its territorial jurisdiction.
 - (g) “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.
 - (h) “Service provider fee” means the amount paid under this chapter and 220 ILCS 5/21-801 by the holder to a Village for the service areas within its territorial jurisdiction.
 - (i) “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.
(Ord. 2007-34. Passed 12-17-07.)

898.02 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 of the holder's gross revenues.
- (c) Notice to the Village. The holder shall notify the Village at least ten 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 days after receipt of the ordinance adopting this chapter by the holder. The ordinance adopting this chapter 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 a quarterly basis, forty-five 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 subsection (b) hereof.
(Ord. 2007-34. Passed 12-17-07.)

898.03 PEG ACCESS SUPPORT FEE IMPOSED.

(a) PEG Fee Imposed. A PEG access support fee is hereby imposed on any holder providing cable service or video service in the Village in addition to the fee imposed pursuant to Section 898.02.

(b) Amount of Fee. The amount of the PEG access support fee imposed hereby shall be one percent of the holder's gross revenues or, if greater, the percentage of gross revenues that incumbent cable operators pay to the Village or its designee for PEG access support in the Village.

(c) Payment. The holder shall pay the PEG access support fee to the Village or to the entity designated by the Village to manage PEG access. The holder's liability for the PEG access support fee shall commence on the date set forth in Section 898.02(d).

(d) Payment Due. The payment of the PEG access support fee shall be due on a quarterly basis, forty-five 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.

(e) Credit for Other Payments. An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c) shall pay, at the time they would have been due, all monetary payments for PEG access that would have been due during the remaining term of the agreement had it not been terminated pursuant to that section.

All payments made by an incumbent cable operator pursuant to the previous sentence may be credited against the fees that that operator owes under Section 898.02(b).
(Ord. 2007-34. Passed 12-17-07.)

898.04 APPLICABLE PRINCIPLES.

All determinations and calculations under this chapter shall be made pursuant to generally accepted accounting principles.
(Ord. 2007-34. Passed 12-17-07.)

898.05 NO IMPACT ON OTHER TAXES DUE FROM HOLDER.

Nothing contained in this chapter 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.
(Ord. 2007-34. Passed 12-17-07.)

898.06 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 of 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 days after the Village's submission of an invoice for the sum.
(Ord. 2007-34. Passed 12-17-07.)

898.07 LATE FEES/PAYMENTS.

All fees due and payments which are past due shall be governed by ordinances adopted by this Village pursuant to the Local Government Taxpayers' Bill of Rights Act, 50 ILCS 45/1 et seq.
(Ord. 2007-34. Passed 12-17-07.)

