



**VILLAGE OF ELBURN  
COMMITTEE OF THE WHOLE MEETING  
TUESDAY, SEPTEMBER 5, 2023  
IMMEDIATELY FOLLOWING THE VILLAGE BOARD MEETING  
ADJOURNMENT, OR 7:15 pm, WHICHEVER IS LATER**

1. Call to Order
2. Roll Call
3. Public Comment
4. Discuss:
  - a. Vacation of Gates Street
  - b. Boundary Agreement with the Village of Lily Lake
  - c. Food and Beverage Tax
5. Other Business
6. Adjournment



## MEMO

To: Village Board  
From: John Nevenhoven, Village Administrator  
Subject: Vacate Gates St. South of North St.  
Date: August 31, 2023  
Strategic Action Plan: Routine

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The Owners of Obscurity Brewing, Rail Splitters, LLC, have expressed interest in the portion of Gates St. south of North Street. Gates Street extends south approximately 95 feet to the old rail siding, at which point it is private property (American Bank & Trust, PIN 11-06-278-014)

The Village granted Obscurity an easement to use the portion of Gates ROW immediately adjacent to the west side of the brewery building to the curb if Gates St. Obscurity is using this space for outdoor seating, a grain bin, and bicycle parking.

The procedures for vacating Village property is outlined in State Statue <https://www.ilga.gov/legislation/ilcs/documents/006500050K11-91-1.htm>.

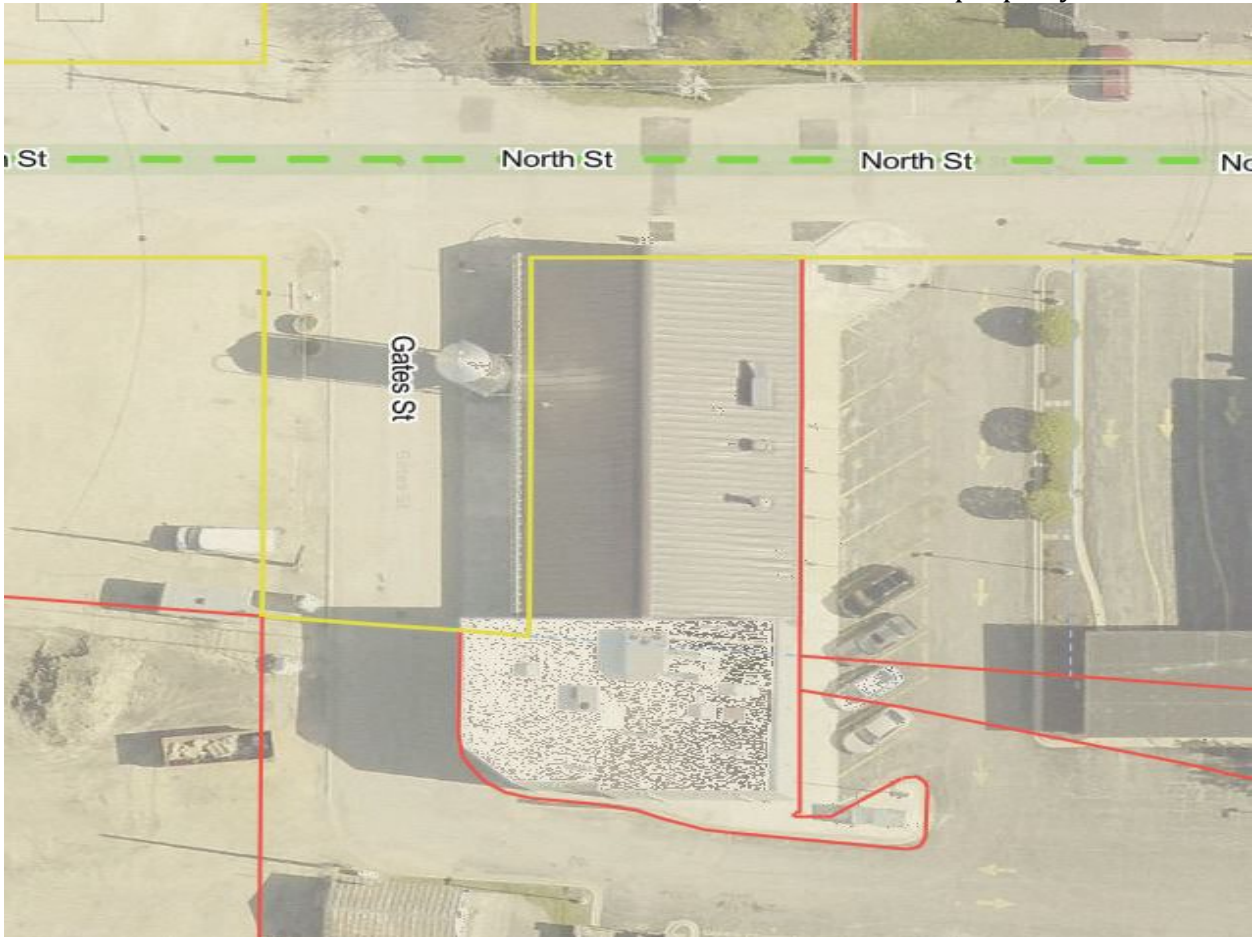
Gates Street looking south from North Street.



Part of the Gates Street ROW - Outdoor Dining and Grain Bin.



Aerial View of Gates Street – Yellow Lines are ROW, and Red lines are property lines.



Aerial View of Obscurity



**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE VILLAGE OF ELBURN AND THE VILLAGE OF LILY LAKE  
ESTABLISHING A JURISDICTIONAL BOUNDARY LINE**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the VILLAGE OF ELBURN, an Illinois Municipal Corporation located in the County of Kane, Illinois (hereinafter “Elburn”), and the VILLAGE OF LILY LAKE, an Illinois Municipal Corporation located in the County of Kane, Illinois (hereinafter “Lily Lake”).

**WHEREAS**, the portion of unincorporated Kane County lying generally between Elburn and LilyLake is one of the rapidly growing areas in Illinois; and

**WHEREAS**, developments underway, or in various stages of planning, will create economic development opportunities for Elburn and Lily Lake; and

**WHEREAS**, unincorporated territory is within 1-1/2 miles of the boundaries of Elburn and Lily Lake; and

**WHEREAS**, Elburn and Lily Lake have each adopted Official Comprehensive Plans; and

**WHEREAS**, Elburn and Lily Lake recognize that development of the unincorporated territory will be accompanied by significantly higher demands for transportation services, police power services, utility services, fire services, and other municipal services, together with the financial commitments necessary to provide such services; and

**WHEREAS**, Elburn and Lily Lake recognize that development of the land in the unincorporated territory creates problems concerning open space preservation, flood control, population density, and ecological and economic impacts; and

**WHEREAS**, Elburn and Lily Lake further recognize that growth (particularly residential growth) does, and will have, an immediate impact on school districts and fire districts located in whole or in part within their municipal boundaries, as well as other taxing districts; and

**WHEREAS**, Elburn and Lily Lake, and their respective citizens, will be vitally affected by such growth, and any attempt to solve problems created by such growth (while providing for the welfare, prosperity and enjoyment of the citizens of each community) will be aided by the mutual action and intergovernmental cooperation of the two communities; and

**WHEREAS**, Elburn and Lily Lake are “corporate authorities”, as described in 65 ILCS, Section 5/11-12-9, and are “units of local government” as defined by Article VII, Section 10, of the Constitution of the State of Illinois; and

**WHEREAS**, Article VII, Section 10, of the Illinois Constitution of 1970, provides for intergovernmental cooperation between, and authorizes, units of local government to obtain or share services to exercise, combine or transfer powers or functions in any manner not proscribed

by law or ordinance, and to use their credit, revenues and other resources to pay costs related to such intergovernmental activities; and

**WHEREAS**, the Intergovernmental Cooperation Act (5 ILCS 220/1, *et. seq.*) provides for joint exercise of powers, privileges or authority by units of government and for intergovernmental contracts; and

**WHEREAS**, Elburn and Lily Lake have authorized, by Ordinances duly considered and passed, the execution of this Agreement as an exercise of their powers under 65 ILCS, Section 5/11-12-9, and as an exercise of their intergovernmental authority under the Constitution of the State of Illinois; and

**WHEREAS**, Elburn and Lily Lake recognize the need and desirability to provide for logical municipal boundaries in areas of municipal authority between their respective municipalities; and

**WHEREAS**, the corporate authorities of Elburn and Lily Lake have given due consideration to the natural flow of stormwater, drainage, and other practical considerations, and, where possible, included all of any single tract having common ownership within the jurisdiction of one corporate authority;

**WHEREAS**, the corporate authorities of Elburn and Lily Lake have conducted all required public hearings in accordance with law;

**NOW, THEREFORE**, in consideration of the mutual promises and obligations undertaken herein, and in further consideration of the recitals hereto, it is agreed between Elburn and Lily Lake as follows:

1. The recitals set forth above are deemed a part of the terms of this Agreement, and are incorporated herein by reference.

2. A jurisdictional boundary line between Elburn and Lily Lake for municipal government planning, zoning, annexation, subdivision control, and municipal purposes, is shown on the map which is attached hereto and incorporated herein as Exhibit "A", and as also set forth in the legal description of said jurisdictional boundary line which is attached hereto and incorporated herein as Exhibit "B".

3. Except as otherwise provided herein, Elburn shall have jurisdiction with respect to property lying southerly ~~and westerly~~ of Beith Road from its western terminus to Anderson Road ~~the Francis Road extended due north~~ in the above-described boundary line, and Lily Lake shall have jurisdiction with respect to property lying northerly and easterly Anderson Road in the above-described boundary line. Commencing with the date of this Agreement, neither party shall annex territory, exercise or attempt to exercise, (including but not limited to conducting hearings

on annexation or zoning of property) or enforce any zoning, subdivision control, official map, or other municipal authority which lies within the jurisdiction of the other Municipality (as established by such boundary line), unless otherwise agreed to in writing by both Municipalities.

4. This Agreement shall not be construed so as to limit or adversely affect the right of either Municipality to file a statutory objection to proposed zoning changes within one and one-half miles of its corporate limits, as provided for by State law.

5. Each Municipality agrees to actively oppose any attempt by a land owner to effectuate an involuntary annexation to its respective Municipality if such annexation would have the effect of annexing land within one Municipality’s jurisdiction to the other Municipality. Neither party shall either directly or indirectly seek any specific addition, deletion, or modification to this Agreement through judicial action in the circuit court.

6. This Agreement shall be in full force and effect for a period of twenty (20) years from the date hereof, and for such further and additional time as the parties may hereafter mutually agree to by amendment to this Agreement, from time to time. All modifications to this Agreement must be in writing and must be signed by each party.

7. This Agreement shall be construed in accordance with the laws of the State of Illinois and such agreement shall not become effective until copies thereof, certified as to adoption by the municipal clerks of the respective municipalities, have been filed in the Recorder’s Office and made available in the office of the municipal clerk of each agreeing municipality.”.

**IN WITNESS WHEREOF**, the undersigned governmental units have caused this Agreement to be duly executed on the day and date first above written.

**VILLAGE OF ELBURN**, an Illinois  
Municipal Corporation,

**VILLAGE OF LILY LAKE**,  
an Illinois Municipal Corporation,

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Its President

Attest:

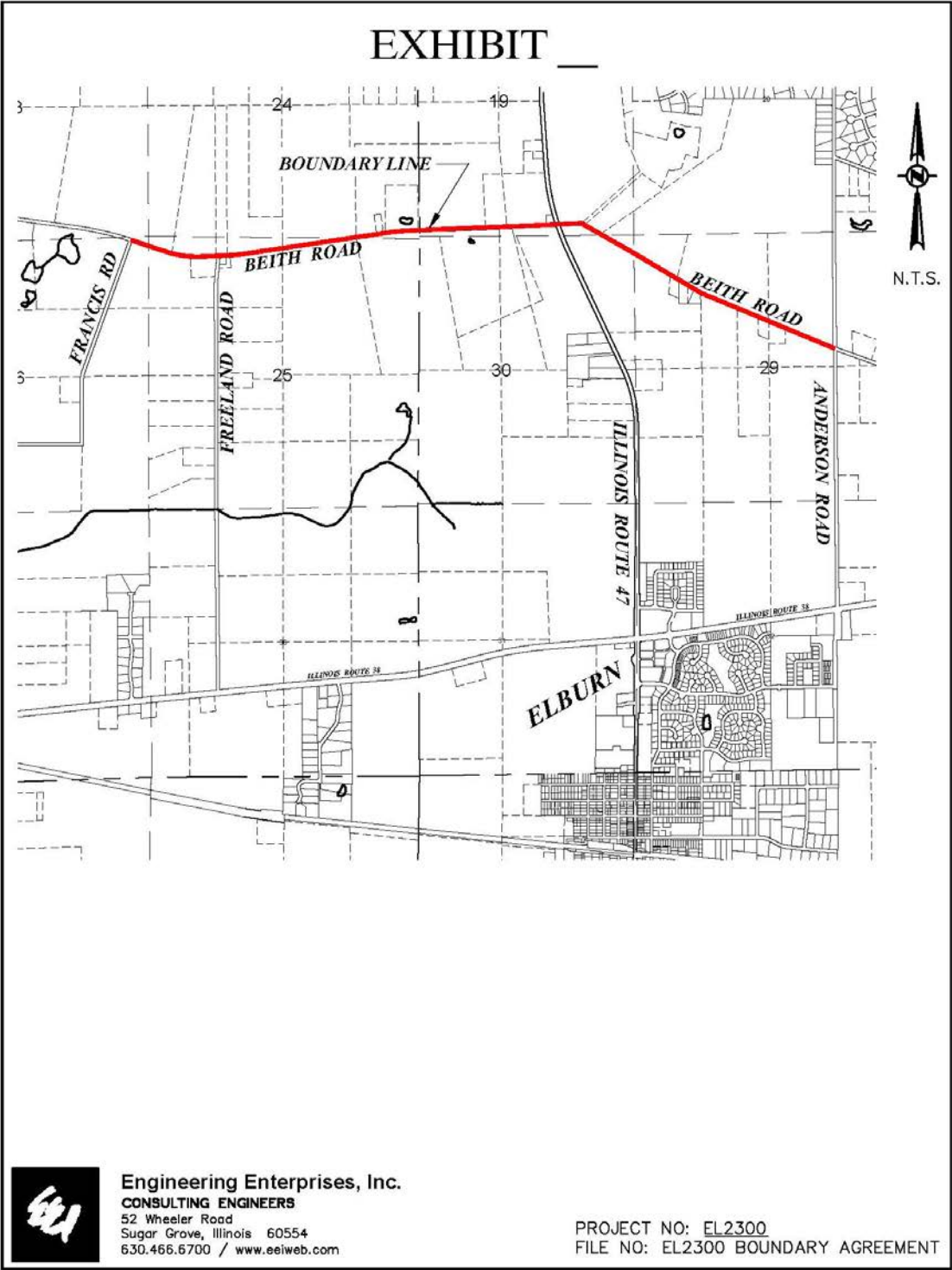
Attest:

By: \_\_\_\_\_  
Its Village Clerk

By: \_\_\_\_\_  
Its Village Clerk

**EXHIBIT "A"**

(Map of Elburn-Lily Lake Jurisdictional Boundary Line)



**Engineering Enterprises, Inc.**  
CONSULTING ENGINEERS  
52 Wheeler Road  
Sugar Grove, Illinois 60554  
630.466.6700 / www.eeiweb.com

PROJECT NO: EL2300  
FILE NO: EL2300 BOUNDARY AGREEMENT



**EXHIBIT "B"**

*(Legal Description of Elburn-Lily Lake Jurisdictional Boundary Line)*

A LINE IN PART OF SECTIONS 24, 25 AND 26 IN TOWNSHIP 40 NORTH, RANGE 6 EAST, AND IN PART OF SECTIONS 19, 29 AND 30 IN TOWNSHIP 40 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN KANE COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:

BEGINNING IN SAID SECTION 26 AT THE INTERSECTION OF THE CENTERLINE OF BEITH ROAD WITH THE CENTERLINE OF FRANCIS ROAD; THENCE EASTERLY, ALONG THE CENTERLINE OF SAID BEITH ROAD, TO THE CENTERLINE OF ANDERSON ROAD FOR THE POINT OF TERMINUS.



## MEMO

To: Village Board  
From: John Nevenhoven, Village Administrator  
Subject: Places for Eating Tax  
Date: August 31, 2023  
Strategic Action Plan: Routine

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The Village of Elburn proposed and the voters approved in 2019, a referendum to add a 1 percent Municipal Sales Tax. This tax was designated to help offset the costs of road improvements and fund park improvements.

State law permits non-home rule communities to enact a “Places for Eating Tax” “PFET” for food and beverage tax. This tax is locally administered, it does not pass through the State Department of Revenue.

Each month a business must submit to the State of Illinois a sales tax statement on a State form. The affected businesses would submit the same form to the Village with the corresponding payment each month.

The Village of Pingree Grove, Glencoe, Homewood, Westmont, and Roselle have all enacted a food and beverage tax. The ordinances enacted by these communities are remarkably similar. The Village Attorney drafted the attached ordinance.

The Village of Pingree Grove has a one (1) percent “PFET” and receives approximately \$180,000 each year from its food and beverage tax.

Staff proposes the revenue raised from the food and beverage tax be dedicated to funding a new municipal building.

The food and beverage tax would be applied to all prepared ready-to-eat food and beverages.

## PLACES FOR EATING TAX

### DEFINITIONS.

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- A. "Gross receipts" means the consideration received, valued in money, whether received in money or otherwise, including cash, credits, property and services, at a place for eating for prepared food furnished at the place for eating. Gross receipts do not include amounts paid for federal, state and local taxes, including the tax levied by this article, and do not include amounts paid as gratuities for the employees of the place for eating.
  - 1. Gross receipts shall include consideration as defined herein received for food which is prepared by a food or catering business operated within the corporate limits of the Village and which is consumed at, or which is intended for delivery to and consumption at, a location within the Village.
  - 2. Gross receipts shall include consideration as defined herein received for food which is prepared by a food or catering business operated outside the corporate limits of the Village but which is consumed at, or which is intended for delivery to and consumption at, a location within the Village.
  - 3. Gross receipts shall not include consideration as defined herein received for food which is prepared by a good or catering business operating within the corporate limits of the Village and which is consumed at, or which is intended for delivery to and consumption at, a location outside the corporate limits of the Village.
  - 4. Gross receipts shall not include consideration as defined herein for the sale of prepared food delivered or sold directly to consumers from automated vending machines.
  - 5. Gross receipts shall not include consideration, as defined herein, for prepared food which is provided to students of cooking classes where no charge is made for the prepared food other than the cost of enrollment in the class.
- B. "Owner: means any person and each person having an ownership interest in or conducting the operating of a place for eating.
- C. "Person" or "persons" means any natural individual, firm, partnership, association, joint stock company, joint venture, public or private corporation, limited liability company or the like, club, fraternal organization, or a receiver, executor, trustee, conservator or its representative appointed by order of any court.
- D. "Places for eating" or "place for eating"
  - 1. "Places for eating" or "place for eating" means all premises located within the corporate limits of the Village where prepared food is sold at retail for immediate consumption, whether consumed on the premises or not, and including but not limited to such a place with seating provided for consumption of said prepared food on the premises, and whether or not such place for eating is conducted along with any other use in a common premise or business establishment.
  - 2. "Places for eating" or "place for eating" includes, but is not limited to, those establishments commonly called a restaurant, eating place, drive-in restaurant, buffet,

bakery, banquet facility, cafeteria, café, lunch counter, fast food outlet, catering service, coffee shop, diner, sandwich shop, soda fountain, bar, cocktail lounge, video gaming establishment, soft drink parlor, ice cream parlor, tea room, delicatessen, hotel, motel, or club, or any other establishment which sells at retail prepared food for immediate consumption.

- E. "Prepared food" means and includes any solid, liquid (including both alcoholic and non-alcoholic liquid), gel, compound, powder or item used or intended to be used for human internal consumption, whether simple, compound or mixed, and which has been prepared for consumption or offered for sale by a place for eating.
- F. "Sold at retail" means to sell for use or consumption in exchange for a consideration, whether in the form of money, credits, barter or any other nature, and not for resale, with said transaction being subject to either the Illinois Retailers' Occupation Tax (ILCS Ch. 35, Act 120 §§ 1 et seq.) or the Illinois Service Occupation Tax (ILCS Ch. 35, Act 11S §§ 1 et seq.).
- G. "Unit of local government" means any municipal, township, special district, and/or school district entity with a place of operating located in the Village.
- H. "Finance Director" means the person appointed to said office, including a Village Finance Director, and/or his or her designee, deputy, or representative.
- I. "Alcoholic Liquor" shall mean any alcohol, spirits, wine, beer, ale or other alcoholic beverage which is sold for consumption on the premises where sold, or which is sold in its original packaging for consumption off the premises.

#### **TAX IMPOSED.**

- A. There is hereby levied and imposed upon the owner(s) of a place for eating a tax at the rate of one percent (1%) of gross receipts received for prepared food sold at retail at the place of eating on or after \_\_\_\_\_, 2023.
- B. The owner of a place for eating may collect an amount from persons who purchase prepared food at the place for eating which shall reimburse the owner for the tax imposed on the owner by this article. The owner and operator of a place for eating within the Village shall jointly and severally have the liability to collect and account for said tax from each purchaser at the time that the consideration for such purchase is paid.
- C. The tax levied by this article shall be paid in addition to any and all other taxes and charges.
- D. In the event the prepared food is sold at retail on credit, an owner shall not be liable for payment of the tax imposed by this article on such a sale until the owner receives payment for the sale.
- E. This tax shall not be imposed upon any unit of local government that sells prepared foods within a facility owned or operated by such unit of local government, whether such sales are made directly by the unit of local government or by a third party selling prepared food on behalf of the unit of local government pursuant to a contract between the unit of local government and the third party. For purpose of this Ordinance, a public school operating

as a charter school under the provisions of the Illinois School Code shall be considered a unit of local government.

- F. This tax shall not be imposed on nursing homes, retirement centers or similar residential care facilities which provide for the central preparation of meals to be delivered to and consumed by invalids or the elderly.
- G. The Finance Director shall be directed and authorized to generate all such forms and take all such actions as shall be necessary to implement and collect the tax contemplated herein.

#### **REGISTRATION.**

Every owner maintaining a place for eating in the Village shall on a form provided by the Village register such eating place by \_\_\_\_\_, 2023, or on the date of becoming such an owner, whichever is later.

#### **BOOKS AND RECORDS; INSPECTION; CONTENTS.**

- A. The Finance Director may enter the premises of any place for eating for inspection, examination, copying and auditing of books and records including, but not limited to, Illinois Retailers' Occupation Tax and Illinois Service Occupation Tax returns filed with the Illinois Department of Revenue, in order to effectuate the proper administration of this article, and to assure the enforcement of the collection of the tax imposed by this article. To the extent reasonably possible, said entry shall be done in a manner that is least disruptive to the business of the place for eating and during normal business hours.
  - 1. It shall be the duty of every owner to keep accurate and complete books and records to which the Finance Director shall at all times have full access, which records shall include a daily sheet showing the amount of gross receipts during that day.
    - a) The Village may, in its discretion, hire an independent party to conduct an audit of said books and records.
    - b) The costs of such audit shall be borne by the owner.
  - 2. It shall be unlawful for any person to prevent, hinder, or interfere with the Finance Director, or any independent auditor designated by them, in the discharge of their duties under this subsection.

#### **TRANSMITTAL OF TAX REVENUE BY OWNER; DELINQUENCY.**

- A. The owner or owners of each place for eating shall each calendar month file a sworn and verified tax return showing the gross receipts received during such monthly period, upon forms prescribed by the Finance Director. Such forms may be filed physically, or may be filed electronically via such website and/or application as may be approved and implemented by the Finance Director.
  - 1. At the time of the filing of said tax returns, the owner shall pay to the Village all taxes due for the period to which the tax return applies.
  - 2. Returns for each calendar month shall be due on or before the twentieth day of the next calendar month, (e.g., the return for January shall be due on or before the

- twentieth day of February; the return for February shall be due on or before the twentieth day of March; etc.).
3. Notwithstanding the foregoing, in the event that the owner of the place for eating is allowed to file Illinois Retailers' Occupation Tax and Illinois Service Occupation Tax returns with the Illinois Department of Revenue at intervals which are greater than monthly, said owner shall be allowed to file tax returns relative to the tax imposed by this article with the Village at said greater intervals.
  4. The form shall be accompanied by a copy of the Illinois Retailers' Occupation Tax and Illinois Service Occupation Tax return forms filed with the Illinois Department of Revenue to verify amounts paid to the Village and to the State of Illinois for the same period as the return filed with the Village.
- B. Any tax due pursuant to this article which is not paid when due shall accrue interest at the rate of \_\_\_ percent (\_\_%) monthly until paid.
- C. In the event collection proceedings are initiated by the Village, the owner shall be responsible for paying the costs incurred by the Village, including but not limited to reasonable attorney fees and court costs.
- D. In addition, the owner shall be subject to suspension of licenses and penalties as set forth in Sections \_\_\_\_\_ through \_\_\_\_\_ below, or as otherwise provided by Village Code.

#### **TRANSMITTAL OF EXCESS TAX COLLECTIONS.**

If any owner collects an amount upon a sale not subject to the tax imposed hereby, but which amount is purported to be the collection of said tax, or if an owner collects an amount upon a sale greater than the amount of the tax so imposed herein, and does not for any reason return the same to the purchaser who paid the same before filing the return for the period in which such occurred, said owner shall account for and pay over those amounts to the Village along with the tax properly collected.

#### **COLLECTION.**

Whenever any person shall fail to pay any amount due under this article, the Village shall initiate a voluntary request for payment coupled with a proposed settlement agreement and payment of a stipulated penalty. Should the Owner fail to accept such proposal, the Village shall bring or cause to be brought an action to enforce the payment of said amount on behalf of the Village in any court of competent jurisdiction.

#### **SUSPENSION OF LICENSES.**

- A. The Village President may suspend or revoke any or all Village licenses held by an owner, if after hearing, he shall find that such owner has willfully avoided payment of any sum due under this article.
1. The owner shall have an opportunity to be heard at such hearing.
  2. The hearing shall be held not less than ten (10) days after notice has been personally served on the owner or mailed to the owner addressed to owner's last known place of business, stating the time when and the place where the hearing is to be held.

- B. Any suspension or revocation of any license(s) shall not release or discharge the owner from his or her civil liability for the payment of any amounts due hereunder, nor from prosecution for such offense.
- C. Should the Village adopt comprehensive regulations relating to suspension or revocation of Village-issued licenses or should the Village maintain alternate suspension/revocation provisions in any Chapter of Village Code, the Village may elect to utilize the suspension provisions outlined in this Section \_\_\_\_\_ or may utilize the alternate methodology specified elsewhere in Village Code, and may seek imposition of the sanctions contemplated herein.

#### **PENALTIES.**

Any person found guilty of violating, disobeying, omitting, neglecting, or refusing to comply with or unlawfully resisting or opposing the enforcement of any of the provisions of this article upon conviction thereof shall be punished by a fine of not less than two hundred dollars (\$200.00) nor more than seven hundred fifty dollars (\$750.00). Each day upon which a person shall continue any violation of this article, or permit any such violation to exist after notification thereof, shall constitute a separate and distinct offense. Any person subjected to the penalties provided for by this subsection shall not be discharged or released from the payment of any amounts due pursuant to this article.