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## CHAPTER 11: OTHER BUSINESSES

### Article 1 – Amusements

**Sec. 11.101 Application:** The provisions of this Article, except as to licensing and fees, shall apply to all public shows, theatricals, circuses and other amusements in the Village whether specifically licensed in another Article in this Chapter or not.

**Sec. 11.102 Licenses:** It shall be unlawful to conduct or operate any amusement which is open to the public and for admittance to which a fee is charged, without having first secured a license therefore provided, that the provisions of this section shall not be held to apply to those amusements which are specifically licensed by any other ordinance of the Village. Applications for such licenses shall be made to the Clerk and shall comply with all of the general provisions of the Chapters relating to such application. For such licenses the following fees shall be paid:

Menageries	\$10.00/day
Carnivals	50.00/day
Exhibitions of Inanimate objects	10.00/day
Other amusements	10.00/day

**Sec. 11.103 Street Shows:** No permit shall be granted or given for any carnival, exhibition, show or other amusement to be given on a public street or sidewalk or in such place that the only main accommodation for the public or the audience will be in a public place, except on the order of the Village Council.

**Sec. 11.104 Athletic Exhibitions:** It shall be unlawful to conduct, operate or exhibit any race between persons, animals or vehicles, or any baseball games, boxing or wrestling matches or any other athletic contest or exhibition for admission to which a fee is charged without first having procured a license therefore, except such events as may be conducted by duly accredited schools. The proprietor of such exhibition shall submit to the Village Clerk a statement verified under oath of the gross receipts of each such game, contest or race, within one week after such exhibition. At the same time the proprietor or person exhibiting or operating such exhibition shall pay to the Clerk a sum equal to three percent (3%) of the gross receipts. Sufficient members of the police department shall be admitted free of charge to all such exhibitions for the purpose of preserving and maintaining order; and the Clerk may post a person or any number of persons at the box office of each such performance showing or tending to show the gross receipts.

**Sec. 11.105 Order - Crowding:** The audience of any amusement, show, or theatrical must be orderly and quiet at all times, and it shall be unlawful for any person attending such amusement, show or theatrical to create an unreasonable disturbance in the audience. It shall be unlawful to permit or gather such a crowd to witness any public show or amusement as to create a dangerous condition because of fire or other risk.

**Sec. 11.106 Inspections:** It shall be the duty of the Village Council to see that every exhibition, amusement, theatrical or other public show or amusement is inspected by a member of the police department, and to insure conformity with the provisions concerning such amusements.

**Sec. 11.107 Smoking:** It shall be unlawful to smoke or carry a lighted cigarette or pipe on or beneath the stage or in a dressing room of any building used as an assembly hall with seating accommodations for more than 100 persons or in which theatricals, shows, amusements, lectures or other entertainments

are offered, presented, operated, or exhibited.

**Sec. 11.108 Signs:** It shall be the duty of the owner of such premises or the occupant in charge to provide and place printed signs on which the words “no smoking” shall appear in letters at least four (4) inches high, in conspicuous places, at least two (2) such signs being upon the stage or in the wings thereof and in each dressing room.

**Sec. 11.109 Exit Lights:** It shall be the duty of the owner or occupant in charge of any building or hall used as an assembly hall with accommodations for one hundred persons (100) or more in which theatricals, show, amusements, lectures and other entertainments is offered, operated or presented to provide and place a sign, on which the work “Exit” shall appear in letters at least six inches (6”) high, over every door or other opening from such hall to every means of egress therefrom and a light shall be provided with a red globe and placed at or over such sign, which light shall be kept burning during the entire period that the hall is open to the public and until the audience has left the hall.

## **Article 2 - Scavengers**

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

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

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

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

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

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

**Sec. 11.207 Penalty:** Any person, firm or corporation violating any provision of this Chapter shall be fined not less than seventy five dollars (\$75.00) nor more than five hundred dollars (\$500.00) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

### **Article 3 - Solicitors**

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

- (1) "Soliciting" shall mean and include any one or more of the following activities:
  - (a) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever; or
  - (b) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character; or
  - (c) Seeking to obtain subscriptions to books, magazines, periodicals newspapers, and every other type or kind of publication; or
  - (d) Seeking to obtain gifts or contributions of money, clothing, or any other valuable thing for the support or benefit of any charitable or nonprofit association, organization, corporation or project.
- (2) "Residence" shall mean and include every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.
- (3) "Registered Solicitor" shall mean and include any person, who obtained a valid certificate of registration as hereinafter provided, which certificate is in the possession of the solicitor on his or her person while engaged in soliciting.

**Sec. 11.302 Certificate of Registration:** Every person desiring to engage in soliciting as herein defined from persons in residences within this municipality, is hereby required to make written application for a certificate of registration as hereinafter provided. Such certificate of registration shall be carried by the solicitor.

**Sec. 11.303 Application For Certificate of Registration:** Application for a certificate of registration shall be made upon a form provided by the municipality. The applicant shall truthfully state in full the information requested on the application, to-wit:

1. Name and address of present place of residence and length of residence at such address; also business address if other than present address;
2. Age of applicant;
3. Physical description of applicant;
4. Name and address of the person, firm or corporation or association whom the applicant is employed by or represents, and the length of time of such employment or representation.
5. Description sufficient for identification of the subject matter of the soliciting in which the applicant will engage;
6. Period of time for which the certificate is applied;
7. The date, or approximate date, of the latest previous application for certificate under this ordinance, if any;

8. Has a certificate of registration issued to the applicant under this ordinance ever been revoked?
9. Has the applicant ever been convicted of a violation of a felony under the laws of the State or any other state or Federal law of the United States?

All statements made by the applicant upon the application or in connection therewith shall be under oath. The applicant shall submit to finger printing by the police department of the municipality in connection with the application for the certificate. The Village Clerk shall cause to be kept in his 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, and of the denial of 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. 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 or any other state or Federal law of the United States, within five years (5) of the date of the application; nor to any person who has been convicted of a violation of any of the provisions of this ordinance, nor to any person whose certificate of registration issued hereunder has previously been revoked as herein provided.

**Sec. 11.304 Revocation of Certificate:** Any certificate of registration issued hereunder shall be revoked by the Police Department if the holder of the certificate is convicted of a violation of any of the provisions of this Chapter, or 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 Article. Immediately upon such revocation, written notice thereof shall be given by the Police Department to the holder of the certificate in person or by certified United States mail addressed to his or her residence address set forth in the application. Immediately upon the giving of such notice the certificate of registration shall become null and void. The certificate of registration shall state the expiration date thereof.

**Sec. 11.305 Notice Regulating Soliciting:** Every person desiring to secure the protection provided by the regulations pertaining to soliciting contained in this Chapter, shall comply with the following directions, to-wit: Notice of the determination by the occupant of giving invitation to solicitors, or the refusal of invitation to solicitors, to any residence, shall be given in the manner following:

A weatherproof card, approximately three inches by four inches in size, shall be exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

“Only Solicitors Registered in Deer Creek Invited” or “No Solicitors Invited”

Such card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereon.

**Sec. 11.306 Duty of Solicitors:** It shall be the duty of every solicitor upon going onto any premises in the municipality upon which a residence as herein defined is located, to first examine the notice provided for in this Chapter, if any is attached, and be governed by the statement contained on any notice. If the notice states “Only Solicitors Registered in Deer Creek Invited”, then the solicitor not possessing a valid certificate of registration as herein provided shall immediately and peacefully depart from the premises, and if the notice states “No solicitors Invited”, then the solicitor, whether registered or not, shall immediately and peacefully depart from the premises. Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

**Sec. 11.307 Uninvited Soliciting Prohibited:** It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring the door bell 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 engage in soliciting as herein defined, in defiance of the notice exhibited at the residence in accordance with the provisions of Sec. 11.305 of this Article.

**Sec. 11.308 Time Limit on Soliciting:** It is hereby declared to be unlawful and shall constitute a nuisance for any person whether registered under this Article 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 engage in soliciting as herein defined, prior to 9 a.m. or after 6 p.m. of any week day, or at any time on a Sunday or on a State or National Holiday.

**Sec. 11.309 Penalty:** Any person violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of not more than Five Hundred Dollars (\$500.00) for each offense.

#### **Article 4 – Adult Businesses**

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

1. “Adult Book Stores” An establishment having as a substantial portion of its stock in trade, books, magazines, films for sale or viewing on the premises by use of motion picture devices or any other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to ‘specified sexual activities,’ or “specified anatomical areas” or an establishment with a segment or section devoted to the sale or display of such material.

2. “Adult Motion Picture Theater” An enclosed building with a capacity of fifty (50) or more persons used regularly and routinely for presenting motion pictures having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.

3. “Adult Mini-Motion Picture Theater” An enclosed building with a capacity for less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to ‘specified sexual activities” or “specified anatomical areas” for observation by patrons therein.

4. “Adult Entertainment Cabaret” A public or private establishment, which is licensed to serve food and/or alcoholic beverages, which features topless dancers and/or waitresses, strippers, male or female impersonators, male dancers, male dancers that have human, male genitals in a discernible turgid state even if completely covered, male or female dancers, wrestlers or boxers which emphasize and seek to arouse or excite the patrons sexual desires, or similar entertainers.

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5. “Body Shop or Model Studio” Any public or private establishment which describes itself as a body shop or model studio, or where for any form of consideration or gratuity, figure models who display “specified anatomical areas” are provided to be observed, sketched, draw, painted, sculptured, photographed, or similarly depicted by persons paying such consideration or gratuity, or where for any form of consideration or gratuity, nude and seminude dancing, readings, counseling sessions, body painting, and other activities that present materials distinguished or characterized by an emphasis on matter depicting, describing, or relating to “specified sexual

activities” or “specified anatomical areas” are provided for observation by or communication to persons paying such consideration or gratuity.

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

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

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

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

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

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

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

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

(a) Less than completely and opaquely covered:

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

(ii) Buttock; and

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

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

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

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

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

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

1. An adult use shall not be allowed within six hundred (600) feet of another existing adult use.
2. An adult use shall not be located within six hundred (600) feet of any zoning district which is zoned for residential use, whether such residential use is for single family, two-family or multi-family use.
3. An adult use shall not be located within six hundred (600) feet of a pre-existing school, place of worship, or municipal park.
4. An adult use shall not be located in a building structure, which contains another business that sells or dispenses in some manner alcoholic beverages, should such a use for selling or dispensing alcoholic beverages later be at any time authorized within the Village.

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

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

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

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

*Revised: November 1997 Ord. #425*

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

1. Name and address.
2. Written proof that the individual is at least eighteen (18) years of age.
3. The exact nature of the adult use to be conducted and the proposed place of business and facilities thereto.
4. The legal description of the property upon which such proposed adult use business will be conducted and a statement of whether or not such usage is prohibited by the terms of any lease of said premises or by any covenant running with the land.

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

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

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

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

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

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

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

**Sec. 11.409 Automatic Suspension:**

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

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

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

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

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

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

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

**Sec. 11.415 Violation and Penalty:** Any person who shall violate any of the provisions of this Article shall be fined as provided herein. A person who is convicted shall be punished by a fine of not less than One Hundred Dollars (\$100.00) or more than Five Hundred Dollars. (\$500.00)

*Revised: November 1993 Ord. #375*

## **Article 5 – Utility Tax**

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

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

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

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

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

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

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

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

1. His name
2. His principal place of business
3. His gross receipts during those months upon the basis of which the tax was imposed
4. Amount of tax

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

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

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

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

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

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

*Revised: February 1994 Ord. #377*

## **Article 6 – Telecommunications Infrastructure Maintenance Fee**

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

1. “Gross Charges” means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the Village, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. “Gross charges” for private line service shall include charges imposed at each channel point within the Village, charges for the channel mileage between each channel point within the Village, and charges for that portion of the interstate inter-office channel provided within the Village. However, “gross charges” shall not include:
  - (a) any amounts added to a purchaser’s bill because of a charge made under: (i) the fee imposed by this Section, (ii) additional charges added to a purchaser’s bill under Section 9-221 or 9-222 of the Public Utilities Act, (iii) amounts collected under Section 8-11-17 of the Illinois

- Municipal Code, (iv) the Tax imposed by the Telecommunications Excise Tax Act, (v) 911 surcharges, or (vi) the tax imposed by Section 4251 of the Internal Revenue Code;
- (b) charges for a sent collect telecommunication received outside the Village;
  - (c) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;
  - (d) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;
  - (e) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Village;
  - (f) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;
  - (g) bad debts (“bad debt” means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);
  - (h) charges paid by inserting coins in coin-operated telecommunications devices; or
  - (i) charges for telecommunications and all services and equipment provided to the Village.
2. “Public Right-of-Way” means any municipal street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the Village has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. “Public Right-of-Way” shall not include any real or personal Village property that is not specifically described in the previous sentence and shall not include Village buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.
  3. “Retailer maintaining a place of business in this State”, or any like term, means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.
  4. “Sale of telecommunications at retail” means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.
  5. “Service address” means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, “service address” shall mean the

location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

6. "Telecommunications" includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47U.S.C. Sections 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the Village through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 7b.1550 and following) as now or hereafter amended.
7. "Telecommunications provider" means (1) any telecommunications retailer; and (2) any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right-of-way that is used or designed to be used to transmit telecommunications in any form.
8. "Telecommunications retailer" or "retailer" or "carrier" means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The Village may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Village, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the Village.
9. "Wireless telecommunications" includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 U.S.C. §332(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

#### **Sec. 11.602 Registration of telecommunications providers:**

1. Every telecommunications provider as defined by this Article shall register with the Village within 30 days after the effective date of this Article or becoming a telecommunications provider, whichever is later, on a form to be provided by the Village, provided, however, that any telecommunications retailer that has filed a return pursuant to 15.604(c) this Article shall be deemed to have registered in accordance with this Section.
2. Every telecommunications provider who has registered with the Village pursuant to Section 11.602 (1) has an affirmative duty to submit an amended registration form or current return as required by Section 11.604(3), as the case may be, to the Village within 30 days from the date of the

occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the Village.

**Sec.11.603 Municipal telecommunications infrastructure maintenance fee:**

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

2. Upon the effective date of the infrastructure maintenance fee authorized in this Article, the Village infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights-of-way within the Village by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this Article does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.

3. The Village telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in Section 11.604 of this Article.

**Sec. 15.604 Collection, enforcement, and administration of telecommunications infrastructure maintenance fees:**

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

2. The infrastructure maintenance fee shall be remitted by the telecommunications retailer to the Village not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the Village infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee. However, in the event that the total amount to be remitted to the Village is less than \$10.00 per month the telecommunications retailer shall remit to the Village not later than the last day of each January the infrastructure maintenance fee for the preceding calendar year that was collected pursuant to this Section after deduction of the foregoing two percent (2%) fee that may be retained by the telecommunications retailer.

*Revised: December 1998 Ord. #439*

3. Remittance of the municipal infrastructure fee to the Village shall be accompanied by a return, in a form to be prescribed by the Village, which shall contain such information as the Village may reasonably require.

4. Any infrastructure maintenance fee required to be collected pursuant to this Article and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the Village. The charge imposed under Section 11.604(1) by the telecommunications retailer pursuant to this Article shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.

5. If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this Article, whether as a result of a mistake or tact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this Article, from the telecommunications retailer who made the erroneous payment; provided, however, the Village may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than three years after the date of the erroneous payment unless, (1) the credit is used only to offset a claim or underpayment made by the Village within the applicable statutory period of limitations, and (2) the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of

limitations.

6. Amounts paid under this Article by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:

- (a) “gross charges” for purposes of the Telecommunications Excise Tax Act;
- (b) “gross receipts” for purposes of the municipal utility tax as prescribed in Section 8-11-2 of the Illinois Municipal Code;
- (c) “gross charges” for purposes of the municipal telecommunications tax as prescribed in Section 8-11-17 of the Illinois Municipal Code;
- (d) “gross revenue” for purposes of the tax on annual gross revenue of public utilities prescribed in Section 2-202 of the Public Utilities Act.

7. The Village shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Article to determine whether the telecommunications retailer has properly accounted to the Village for the Village infrastructure maintenance fee. Any underpayment of the amount of the Village infrastructure maintenance fee due to the Village by the telecommunications retailer shall be paid to the Village plus five (5%) percent of the total amount of the underpayment determined in an audit, plus any costs incurred by the Village in conducting the audit, in an amount not to exceed five (5%) percent of the total amount of the underpayment determined in an audit. Said sum shall be paid to the Village within twenty-one (21) days after the date of issuance of an invoice for same.

8. The Village may promulgate such further or additional regulations concerning the administration and enforcement of this Article, consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to Section 11.602 of this Article of such regulations.

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

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

**Sec. 11.606 Existing Franchises and Licenses:** Any franchise, license, or similar agreements between telecommunications retailers and the Village entered into before the effective date of this Article regarding the use of public rights-of-way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived.

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

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

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

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

**Sec. 11.611 Waiver and Fee Implementation:**

1. The Village hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the Village by a telecommunications retailer pursuant to any existing Village franchise, license, or similar agreement with a telecommunications retailer during the time the Village imposes the Telecommunications Infrastructure Maintenance Fee. This waiver shall only be effective during the time the Infrastructure Maintenance Fee provided for in this Article is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

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

3. The Village infrastructure maintenance fee provided for in this Article shall become effective and imposed on the first day of the month not less than ninety (90) days after the Village provides written notice by certified mail to each telecommunications retailer with whom the Village has an existing franchise, license, or similar agreement that the Village waives all compensation under such existing franchise, license, or similar agreement during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the Village. The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence.

*Revised: January 1998 Ord. #429*

**Article 7 – Municipal Utility Tax for Electricity Only**

**Sec. 11.701 Tax Imposed:**

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

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

(x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month; .195 cents per kilowatt-hour.

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

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

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

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

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

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

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

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

imposed.

4. Amount of tax.

5. Such other reasonable and related information as the corporate authorities may require.

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

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

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

**Sec. 11.708 Penalty:** Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of this Article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) in addition, shall be liable in a civil action for the amount of tax due. (See 65 ILCS 5/8-11-2)

*Revised: June 1999 Ord. #442*