

CHAPTER 52: POTABLE WATER DISTRIBUTION SERVICES

Section

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§52.01 PURPOSE.

This Chapter is enacted for the purposes of (1) regulating the use of potable water within those portions of the Village of Deer Park (the “Village”) where water service is or can be made available pursuant to an Intergovernmental Agreement entered into on August 9, 1999, by the Village and the Village of Palatine (“Palatine”); (2) preserving and allocating the amount of water capacity available from Palatine in a manner which best promotes the public health, safety and general welfare; and (3) providing a means of allocating and recouping the expenses of obtaining water rights, constructing the system for water delivery and distributing potable water within certain areas of the Village.

§52.02 SHORT TITLE.

This Chapter may be known and cited as the Village of Deer Park Potable Water Distribution Service Code.

§52.03 DEFINITIONS

- (A) For purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.
- (B) Whenever a word or term defined hereafter appears in the text of this Chapter in capitalized form, its meaning shall be construed as set forth in the definition thereof.

Allocation: That portion of the maximum gallons per day of potable water which Palatine has agreed to supply to the Eligible Property which may be used by an Owner or Occupant of a Subject Property upon approval by the Village Board of Trustees and certification by the Village Administrator.

Allocation Fee. A fee calculated by the Village Administrator in accordance with the provisions of Section 52.08 of this chapter which is based on the Allocation to a Subject Property, other than property owned by the Village, not lying within any of Special Service Area No.’s 2, 3, or 4 of the Village.

Eligible Property: All lands defined in the Palatine Agreement as the “Subject Property” as that Agreement may be amended from time to time. Such lands are eligible for water service from Palatine pursuant to the Palatine Agreement.

Excess Rate: The Excess Use Rate set forth in the Palatine Agreement.

Excess Rate Allocation: An Allocation which shall be charged by Palatine at the Excess Use Rate specified in the Palatine Agreement.

Occupant: A tenant of a Subject Property or Person legally authorized to act for the tenant.

Owner: The legal titleholder of a Subject Property or such Person legally authorized to act as the legal titleholder.

Palatine: The Village of Palatine, Illinois.

Palatine Agreement: The Intergovernmental Agreement Between the Village of Palatine and the Village of Deer Park Relative to Water Supplied to Certain Property Within the Village of Deer Park, dated August 9, 1999, and recorded on October 18, 1999 by the Lake County, Illinois Recorder as Document No. 4435743, and any amendments thereto. A complete and current copy of the Palatine Agreement shall be kept on file by the Village Administrator at the Village's offices and shall be available for inspection or copying by any Village resident or Owner or Occupant of property within the Village.

Palatine Water: Water supplied to the Eligible Property by Palatine pursuant to the Palatine Agreement.

Palatine Water Customer: A Person owning or occupying a Subject Property and receiving water service from the Village of Palatine pursuant to a Palatine Water Customer Service Agreement.

Palatine Water Customer Service Agreement: An agreement between the Village of Palatine and a Person owning or occupying a Subject Property setting forth the terms and conditions of water service to the Subject Property.

Palatine Water System: All water distribution facilities owned and operated by the Village of Palatine wherever located, including but not limited to locations within the Village of Deer Park or any unincorporated land.

Person: An individual or individuals or an entity or entities legally formed and existing, including but not limited to corporations, partnerships and limited liability companies.

Standard Rate: The rate which Palatine has agreed to charge for all Standard Rate water delivered to the Eligible Property in accordance with the terms and provisions of the Palatine Agreement.

Standard Rate Allocation: An Allocation which shall be charged by Palatine at the Standard Rate specified in the Palatine Agreement.

Subject Property: A specific property or parcel within the Eligible Property.

Transfer: A Transfer of all or part of an Allocation from one Subject Property to another Subject Property.

Village: The Village of Deer Park, Illinois.

§52.04 CONFORMANCE WITH PALATINE REGULATIONS.

All persons lawfully receiving water service from Palatine as a Palatine Water Customer for Eligible Property shall comply with all requirements of the Palatine Agreement, the Palatine Water Customer Service Agreement, and the ordinance and regulations of Palatine regarding water services as set forth in Chapter 19 of the Palatine Code of Ordinances or otherwise, including but not limited to regulations regarding the watering of lawns and other water conservation measures imposed by Palatine.

§52.05 WATERING OF LAWNS.

Sprinklering or watering lawns with water from the Palatine Water System or any other source, including wells or detention or retention ponds, shall be prohibited from noon until 6:00 p.m. from May 15 of each year until 6:00 p.m. on September 15 of each year. For the purposes of this section, "Lawn" shall be that portion of any land under cultivation with grass, trees, shrubs, bushes or types of vegetation not occupied by the principal or accessory building, but shall not include vegetation constituting the inventory of a business.

§52.06 WELLS.

- (A) No Owner or Occupant of a Subject Property within the Eligible Property shall permit or cause any interconnection between the Palatine Water System and any pipes, pumps, or other means of connection with water drawn from a well servicing that Subject Property.
- (B) A Subject Property within the Eligible Property being serviced by a lawfully permitted and existing well as of August 9, 1999 may continue to utilize the existing well or a lawfully permitted replacement thereof as the source of potable water for the Subject Property only under the following circumstances:
 - (1) The Village has not, on or after August 9, 1999, given final approval to a Plat of Subdivision or a Planned Development Special Use Ordinance for the Subject Property; and
 - (2) The use of the Subject Property, as defined in the Village Zoning Code, has not changed subsequent to August 9, 1999.
- (C) (1) All Owners or Occupants of a Subject Property within the Eligible Property which do not qualify for well service as set forth in subsection (B) above and which require potable water shall take all necessary steps required by the Village and by Palatine to obtain a permitted connection to the Palatine Water System within thirty (30) days after service is available to the Subject Property and, if applicable, prior to applying for any certificate of occupancy or business license from the Village. It shall be unlawful and a violation of this Section 52.06 for any person to occupy or use a Subject Property within the Eligible Property without a validly permitted connection to the Palatine Water System unless such property qualifies for well use as set forth in subsection (B) above.
 - (2) Nothing in this Section 52.06 is intended to:
 - (a) prohibit the construction, maintenance or use of wells for irrigation purposes only, provided such wells are not connected or interconnected in any way with the Palatine Water System and which, for wells constructed after August 9, 1999, have been approved by Palatine as required by the Palatine Agreement and are in accordance with all applicable laws, ordinances and regulations; or

- (b) require connection to the Palatine Water System when the unallocated daily water capacity reserved and retained by the Village under the Palatine Agreement is insufficient to meet the reasonable requirements of the Subject Property for a use or proposed use which is allowed or specially permitted for the Subject Property in accordance with the Village Zoning Code, and Palatine has failed or refused to provide sufficient additional water capacity for such use in accordance with the terms and provisions of the Palatine Agreement.

§52.07 ALLOCATIONS OF PALATINE WATER.

- (A) All potable water which Palatine has agreed to provide to the Eligible Property by or pursuant to the Palatine Agreement shall be allocated to lands within the Eligible Property by the Village's Board of Trustees, except as may be reserved or retained by the Village for future allocations. Allocations shall be for Standard Rate water, Excess Rate water, or a combination of both.
- (B) Records of all Allocations and any changes thereto approved by the Village Board of Trustees shall be kept on file by the Village Administrator and, upon request, the Village Administrator shall certify to Palatine the amount of the Allocation for a Subject Property. All Allocations shall run with the land and shall not be a personal right or property interest of the Owner or Occupant of a Subject Property severable from the land except as may otherwise be provided in this Section 52.07.
- (C) All Allocations set forth in Exhibit 9 of the Palatine Agreement are hereby deemed to have been allocated by the Village as of August 9, 1999 for purposes of this Section 52.07. No proposed change or division of the Allocation for a Subject Property shall be valid or enforceable unless approved by the Village Board of Trustees and a memorandum of such change or division, certified by the Village Administrator, is recorded with the Lake County Recorder of Deeds against all properties affected by the change or division.
- (D) Unless otherwise restricted by private agreement, the owner of a Subject Property may transfer all or part of an Allocation from the Subject Property to other lands within the Eligible Property. Any purported transfer shall not become valid or effective, however, except in accordance with the following procedures and conditions:
 - (1) Application shall be made to the Village Board of Trustees for approval of a transfer of Allocation. Such application shall identify the legal description and tax parcel number for each of the transferor and transferee properties. Such application also shall provide such supporting information as may be requested by the Village Engineer to demonstrate that the resulting Allocations shall be sufficient to meet the potable water needs of the proposed uses for both the transferor property and the transferee property. Such information may include but is not limited to floor plans, equipment lists and data, historical water usage records for the same or comparable properties or uses, irrigation plans, and occupancy projections;
 - (2) The applicant shall make a deposit in the amount of \$2,500 which shall be used by the Village to reimburse it for all of the Village's expenses of reviewing and documenting the proposed transfer allocation, including but not limited to recording fees and expenses, engineering fees and expenses and legal fees and expenses. Upon exhaustion of the deposit, the Village shall require additional \$2,500 deposits as needed;

- (3) If the Village Board of Trustees approves the application to transfer all or part of an Allocation, the Village Administrator shall re-certify the Allocations for the transferor and transferee properties;
 - (4) The Owners of the transferor and transferee properties shall provide the Village with a written statement in a form which is acceptable to the Village's Attorney agreeing to limit the use of Palatine Water to the new Allocations for the respective properties;
 - (5) A memorandum of the new Allocations shall be recorded against the transferor or transferee properties in the offices of the Lake County, Illinois Recorder of Deeds; and
 - (6) The change in the Allocations shall be memorialized as an amendment to Exhibit 9 of the Palatine Agreement and such amendment shall be provided to Palatine in writing in accordance with the terms of the Palatine Agreement.
- (E) (1) Owners of lands within the Eligible Property, or any Occupant of such lands who has the written authorization of the Owner, may apply to the Village Board of Trustees for an Allocation from the water capacity which has been reserved and retained by the Village as set forth in the Palatine Agreement. All such applications and transfers shall be administered in accordance with the procedures set forth in Subsection (D) above, but shall not be certified by the Village Administrator until the Allocation Fee, as provided for in Section 52.08 of this chapter, has been paid in full.
- (2) All applications for an Allocation from the water capacity reserved and retained by the Village shall be approved, modified or denied by the Village Board of Trustees in consideration of the promotion of the public health, safety and general welfare, including but not limited to the following factors:
- (a) Whether the use or proposed use of the Subject Property complies with the Village's Zoning Code and Comprehensive Land Use Plan;
 - (b) Whether the proposed Allocation would unduly restrict the amount of allocable water capacity remaining and available for other lands within the Eligible Property which have development or redevelopment potential;
 - (c) Whether the proposed Allocation is reasonable for the proposed use of the Subject Property and whether the use will incorporate reasonable water conservation techniques;
 - (d) Whether sufficient allocable water capacity exists to accommodate sufficiently the proposed use of the Subject Property;
 - (e) Whether there are practical or engineering difficulties with extending the water distribution system to the Subject Property;
 - (f) Whether the applicant is financially capable of complying with the requirements of Section 52.08 of this chapter for payment of the fair share of the expense of bringing water from Palatine to the Eligible Property;
 - (g) Whether the applicant is willing to accept an Allocation that includes an Excess Rate Allocation;

- (h) Whether the proposed use would be lawful and in compliance with all applicable ordinances, laws and regulations;
 - (i) Whether the proposed use is economically feasible;
 - (j) The likely date of commencement of occupancy of the Subject Property in comparison with other uses or developments proposed for other lands within the Eligible Property;
 - (k) The priority in time of the application as compared to applications for other lands within the Eligible Property;
 - (l) Whether the Village already has made an Allocation to the Subject Property and, if so, the applicant's record of conservation of water and of limiting water usage to the amount of said Allocation;
 - (m) The benefits to the Village which will result from the proposed use of the Subject Property; and
 - (n) Whether, if applicable, Palatine has approved or will approve additional capacity to meet the needs of the proposed use of the Subject Property.
- (F) The Village may condition building permits, occupancy permits, or business licenses upon the compliance with the water usage limits of the Allocation applicable to a Subject Property. Whenever the consumption of Palatine Water exceeds the Allocation for a Subject Property in a billing cycle, upon request by the Village, the Occupant shall meet with the Village Engineer and such other persons as the Village may designate, at such time and place specified by the Village, to investigate the cause for the overage and to devise and implement such water conservation measures as deemed reasonably necessary by the Village Engineer to eliminate the overage. If the Occupant or any successor Occupant continues to consume more water than allocated to the Subject Property for any billing cycle commencing after the aforesaid meeting, such Occupant shall be in violation of this Section and shall be fined not more than seven hundred fifty dollars (\$750.00) per day for each violation. Each day in a billing cycle shall be a separate violation during any billing cycle in which the Allocation is exceeded by more than five percent (5%). In addition, the Village may (1) seek injunctive relief mandating the Occupant's compliance with the Allocation and (2) conduct a hearing by the Village Board of Trustees and, if supported by evidence, revoke the certificate of occupancy for all or part of the Subject Property or take other remedial measures, upon a determination that the Occupant is unwilling or incapable of complying with the Allocation. Nothing in this Subsection (F) is intended to apply to the use of Excess Rate water within the limits of a Subject Property's Excess Rate Allocation.

§52.08 WATER SYSTEM DEVELOPMENT SURCHARGE/ALLOCATION FEE.

(A) A water system development surcharge ("Allocation Fee") is hereby established to help defray the costs of necessary construction and agreements to convey water from Palatine to the Eligible Property. The Allocation Fee shall be in addition to all other fees and charges required under this chapter or required by Palatine. Except for lands owned by governmental entities, including but not limited to the Village, all lands within the Eligible Property which are not, as of the date of application for an Allocation, contributing to said costs through inclusion in any of Special Service Areas No.'s 2, 3 or 4 established by the Village, shall pay an Allocation Fee as a condition of the Village's approval of an Allocation. A Subject Property contributing to said costs through inclusion in any of said Special Service Areas also shall be subject to such fee only to the

extent of its receipt of an Allocation in excess of the Allocation amounts applicable to the Subject Property as set forth in the Palatine Agreement as of August 9, 1999. Payment of the Allocation Fee shall be a prerequisite to the effectiveness of any Allocation. The Village Administrator shall not certify the amount of any Allocation for the Subject Property or any amendment thereof prior to payment of the Allocation Fee.

- (B) The Allocation Fee shall be calculated by the Village Administrator and shall be based on the gallons per day allocated to a Subject Property expressed as a percentage of the maximum gallons per day which Palatine has agreed to make available to the Eligible Property pursuant to the Palatine Agreement, without regard to whether such gallons are Standard Rate gallons or Excess Rate gallons. The initial maximum gallons per day which Palatine has agreed to provide is 320,000, subject to any amendment or further agreement. The percentage shall be applied to the total expenses incurred by the Village in securing the improvements and agreements necessary to convey water from Palatine to and through the Eligible Property (“Village’s Water Expenses”) as well as to all interest charges applicable to such costs as of the date of payment of the Allocation Fee. The interest costs shall be determined in accordance with the actual interest costs applicable to the bonds issued for Special Service Areas No.’s 2, 3 and 4, prorated as to the amount of the Village’s Water Expenses as a fraction of the total principal amounts of the bonds.
- (C) An applicant for an Allocation shall make a written request to the Village Administrator for the calculation of the Allocation Fee as of a date certain, but not later than ten (10) working days prior to said date certain. The Allocation Fee calculated by the Village Administrator shall be valid only with respect to the date specified in the request by the applicant. Any Allocation Fee not timely paid will be subject to recalculation.
- (D) In the event the costs for determining the Allocation Fee have not been fully determined and liquidated as of the date of application for an Allocation or a request for an Allocation Fee calculation, then the Village Administrator shall assess and collect a fee deposit from the applicant in an amount sufficient to cover an estimated Allocation Fee. If the final Allocation Fee is in excess of the amount of the deposit, the applicant shall pay the difference within seven (7) days of request by the Village. If the final Allocation Fee is less than the amount of the deposit, the Village shall refund the excess amount to the party which paid the fee, unless otherwise directed in writing by said party.
- (E) Upon receipt of the full amount of the Allocation Fee or fee deposit from the applicant, providing all other requirements for an Allocation have been met and satisfied as set forth in Section 52.07 of this chapter, the Village Administrator shall make a certification in writing to the Village of Palatine specifying the Allocation made by the Village for the Subject Property.
- (F) All Allocation Fees collected by the Village Administrator shall be used and disbursed solely in the manner set forth and required in Village Ordinance No.’s 99-31, 99-32 and 99-33 authorizing the issuance and sale of bonds for Special Service Areas No.’s 2, 3 and 4 respectively, as well as any subsequent ordinances authorizing the issuance of additional bonds for said Special Service Areas.
- (G) Prior to certifying an Allocation, the Village Administrator shall collect from the applicant, or shall obtain a deposit from the applicant, an amount sufficient to reimburse the Village for all costs actually incurred by the Village for reviewing and processing the Allocation application, including engineering expense, legal expense and recording fees.

(Ord. 00-3, passed 2-21-00)