

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 originally entered into on August 9, 1999, by the Village and the Village of Palatine, as amended and restated by the Amended and Restated Intergovernmental Agreement between the Village of Palatine and the Village of Deer Park Relative to Water Supply for Certain Property within the Village of Deer Park, dated August 8, 2022, as may be subsequently amended (“the Palatine Agreement”); and (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.

§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

For purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. 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 (or to the Village) 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.

Eligible Property: All lands lying within the Service Area as defined in the Palatine Agreement, as may be amended.

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 or for 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, as amended and restated by the Amended and Restated Intergovernmental Agreement between the Village of Palatine and the Village of Deer Park Relative to Water Supply for Certain Property within the Village of Deer Park, dated August 8, 2022, 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.

Reallocation: A change in the original Allocation from one Subject Property to another within the Eligible Property if approved by the Village Board pursuant to this Chapter.

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 (the "Transferor") to another Subject Property (the "Transferee") or from the Village (the "Transferor") to a Subject Property (the "Transferee").

Village: The Village of Deer Park, Illinois.

§52.04 CONFORMANCE WITH PALATINE REGULATIONS.

In addition to complying with this Code, 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, as amended, including but not limited to regulations regarding the watering of lawns and other water conservation measures imposed by Palatine.

§52.05 WELLS.

- (A) No connection of Wells to Palatine System. 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) Existing Potable Water Wells. 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 and maintain 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 after August 9, 1999; and
 - (3) The use is not connected or interconnected to the Palatine Water System in any way.
- (C) New Wells for Potable Water. It shall be unlawful and a violation of this Section 52.05 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. 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.
- (D) Water Wells in Excess of Total Allocation Under the IGA. If an Owner requires additional water capacity in excess of that provided for in Exhibit 9 of the Palatine Agreement (as those amounts may be subsequently amended by Village updates made pursuant to this Code and the Palatine Agreement), the Owner shall follow the requirements of Section 6 of the Palatine Agreement to request an additional supply of water from Palatine. Only (i) if Palatine refuses that request, and (ii) if Owner has been unable to obtain additional Allocation from the Village, then the Owner may construct a water well, but only according to the terms of Section 6 of the Palatine Agreement and Village Code, including, but not limited to agreement to the metering of the well by Palatine, granting of necessary easements, and payment to Palatine of the rates required by that Section 6.
- (E) Existing and New Irrigation Wells. Nothing in this Section 52.05 is intended to prohibit the construction, maintenance or use of wells for irrigation purposes only, provided (i) such wells are not connected or interconnected in any way with the Palatine Water System, and (ii) for wells constructed after August 9, 1999, each has been reviewed and approved by Palatine pursuant to Section 6 of the Palatine Agreement.

§52.06 ALLOCATIONS OF PALATINE WATER.

- (A) General Requirements. 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. Any change or division of the Allocation for a Subject Property shall be valid or enforceable only if approved by the Village Board of Trustees
- (1) (a) Any part of any Allocations or Reallocation approved by the Village Board after December 15, 2022 may be recouped from the Owner and returned to the Village, if after four years from the date of approval of the Allocation or Reallocation by the Village Board, the Village Board determines that some or all of the Allocation has been unused by the

Owner and is not reasonably anticipated to be used for any approved purpose on the Property in the upcoming 365 days. In the event of such a reduction, the Village Board shall ensure that any Owner currently using at least 10% of their Allocation is permitted to keep an additional 20% more than their current actual annual use (based upon the highest previous use by the Owner) to allow for reasonable growth or variations in use by the Owner. (b) Notwithstanding the provision of subsection (a) of this section, any Allocations or Reallocations made prior to or on December 15, 2022 shall not be subject to modification under this Chapter.

- (2) All Allocations and Reallocations made after December 15, 2022 shall not be considered personal rights or property interests severable from the land in any way nor will they run with the land except to the extent specifically provided by the Village Board. All such Allocations and Reallocations shall remain subject to such conditions as the Village Board may impose as a condition of such Allocation or Reallocation.
- (3) All Allocations and Reallocations shall be subject to such other terms and conditions as the Village Board may impose.

(B) Reallocation of Existing Allocation. 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 this Chapter and 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 \$4,000 which shall be used by the Village to reimburse itself for all of the Village's expenses of reviewing and documenting the proposed Transfer of 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, and acknowledging that any allocation shall be subject to reduction pursuant to this Chapter, and agreeing to such other terms and conditions as the Village Board may impose;

(C) Requests for Village Allocation. 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, Exhibit 9 (as those amounts may be subsequently amended by Village updates made pursuant to this Code and the Palatine Agreement).

- (1) All such applications and Transfers shall be considered and administered in accordance with the procedures set forth in this Chapter, including the applicable procedures of Sections (A) and (B) above, and shall be subject to reduction pursuant to this Chapter and to such other terms and conditions as the Village Board may impose.
- (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 undertaking the expense of bringing water from Palatine to the Eligible Property;
 - (g) Whether the proposed use would be lawful and in compliance with all applicable ordinances, laws and regulations;
 - (h) Whether the proposed use is economically feasible;
 - (i) 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;
 - (j) The priority in time of the application as compared to applications for other lands within the Eligible Property;
 - (1) 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; and
 - (o) Whether the applicant will pay such fees as required by the Village to help defray the Village's costs in negotiating and administering the amended and restated Palatine Agreement (which resulted in additional Village allocation capacity) in addition to other fees. For any Property receiving its initial allocation of water under the Palatine Agreement, the fee shall be \$845 per acre.
- (D) Procedural Requirements for All Allocations and Reallocations.
- (1) Records of all Allocations and any Reallocations that have been approved by the Village Board of Trustees shall be kept on file by the Village Administrator, and the Village Administrator shall certify to Palatine the amount of the Allocation or Reallocation for a Subject Property.
 - (2) A memorandum of any Allocation or Reallocation that has been approved by the Village Board of Trustees must be recorded by the Village Administrator with the Lake County Recorder of Deeds against all properties affected by the Allocation or Reallocation.
- (E) Curtailment by Palatine. Notwithstanding any other provisions of this Code, in the event of any curtailment in water supply to the Village or any Eligible Property made pursuant to the Palatine Agreement, the Village Board shall have the authority to determine the manner and amount of curtailment to each Eligible Property, considering existing and expected uses by each Owner and the health, safety, and general welfare of the Village and its residents.

§52.07 COMPLIANCE WITH ALLOCATION AMOUNTS REQUIRED.

- (A) 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.
- (B) 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.