

## CHAPTER 110: BUSINESS AND OCCUPATIONAL TAXES

### Section

#### *Municipal Occupation Taxes*

- §110.01 Non-Home Rule Municipal Retailers' Occupation Tax and Service Occupation Tax
- §110.02 Use of Tax Revenues for Public Infrastructure
- §110.03 Collection of Taxes
- §110.10 Municipal Cannabis Retailers' Occupation Tax
- §110.11 Collection Of Tax By Retailers

#### *Utilities Tax and Fees*

- §110.15 Definitions
- §110.16 Imposition of Tax; on Whom Imposed
- §110.17 Exemptions
- §110.18 Compensation for Use of Streets, Alleys or Other Public Places
- §110.19 Tax Returns
- §110.25 Definitions
- §110.26 Tax Imposed
- §110.27 Collection of Electric Utility Tax
- §110.28 Tax Remittance and Return for Electric Utilities Tax
- §110.29 Resale of Electricity
- §110.30 Books and Records for Electric Utilities Tax
- §110.31 Credits and Refunds for Electric Utilities Tax
- §110.50 Cable/Video Service and Customer Protection Regulations
- §110.99 Penalty

### **MUNICIPAL OCCUPATION TAXES**

#### **§110.01 NON-HOME RULE MUNICIPAL RETAILERS' OCCUPATION TAX AND SERVICE OCCUPATION TAX.**

A tax is hereby imposed upon all persons engaged in the business of selling tangible personal property, other than an item of tangible personal property titled and registered with an agency of this State's government, at retail in this municipality at the rate of 0.5% of the gross receipts from such sales made in the course of such business while this Ordinance is in effect; and a tax is hereby imposed upon all persons engaged in this municipality in the business of making sales of service, at the rate of 0.5% of the selling price of all tangible personal property transferred by such serviceman as an incident to a sale of service. This "Non-Home Rule Municipal Retailers' Occupation Tax" and this "Non-Home Rule Municipal Service Occupation Tax" shall not be applicable to the sales of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and non-prescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics.

The imposition of these non-home rule taxes is in accordance with and subject to the provisions of Sections 8-11-1.1, 8-11-1.2, 8-11-1.3 and 8-11-1.4 of the Illinois Municipal Code (65 ILCS 5/8-11-1.1, 8-11-1.2, 8-11-1.3 and 8-11-1.4).

## **§110.02 USE OF TAX REVENUES FOR PUBLIC INFRASTRUCTURE**

All revenues resulting from the imposition of any Non-Home Rule Municipal Retailers' Occupation Tax and Service Occupation Tax imposed pursuant to this Chapter shall be used by the Village for expenditure on public infrastructure, as that term is defined in Section 8-11-1.2 of the Illinois Municipal Code, which includes municipal roads and streets, access roads, bridges, and sidewalks; waste disposal systems; and water and sewer line extensions, water distribution and purification facilities, storm water drainage and retention facilities, and sewage treatment facilities.

## **§110.03 COLLECTION OF TAXES.**

The Non-Home Rule Municipal Retailers' Occupation Tax and Service Occupation Tax imposed pursuant to Section 110.01 of this Chapter, and all civil penalties that may be assessed as an incident of these taxes, shall be collected and enforced by the State of Illinois Department of Revenue. To the extent that the State of Illinois Department of Revenue does not collect any of such taxes, the Village Administrator shall be authorized to establish such rules and procedures as may be necessary or convenient for the collection of such taxes. (Ord. 10-18 passed 12/20/10)

(Ord. 18-03; Am. Ord. 19-07 passed 4/18/19)

## **MUNICIPAL CANNABIS RETAILERS' OCCUPATION TAX**

### **§110.10 MUNICIPAL CANNABIS RETAILERS' OCCUPATION TAX.**

A tax is hereby imposed upon all persons engaged in the business of selling cannabis, other than cannabis purchased under the Compassionate Use of Medical Cannabis Pilot Program Act, at retail in the Village at the rate of three percent (3%) of the gross receipts from these sales made in the course of that business.

### **§110.11 COLLECTION OF TAX BY RETAILERS.**

The Municipal Cannabis Retailers' Occupation Tax imposed pursuant to Section 110.10 of this Chapter shall be remitted by such retailer to the State of Illinois Department of Revenue. Any tax required to be collected pursuant to or as authorized by Section 110.10 of this Chapter and any such tax collected by such retailer and required to be remitted to the State of Illinois Department of Revenue shall constitute a debt owed by the retailer to the State of Illinois. A retailer may reimburse itself for its seller's tax liability hereunder by separately stating that tax as an additional charge, which charge may be stated in combination, in a single amount, with any State of Illinois tax that seller is required to collect.

The taxes imposed pursuant to Section 110.10 of this Chapter, and all civil penalties that may be assessed as an incident of these taxes, shall be collected and enforced by the State of Illinois Department of Revenue. The State of Illinois Department of Revenue shall have full power to administer and enforce the provisions of this Section 110.11.

(Ord. 20-13 passed 11/19/20)

## **UTILITIES TAX AND FEES**

### **§110.15 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**GROSS RECEIPTS.** The consideration received for the transmission of messages, or for distributing, supplying, furnishing or selling gas or electricity, for 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 the 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.

**PERSON.** Any natural individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, municipal corporation or political subdivision of this state, or a receiver, trustee, conservator or other representative appointed by order of any court.

(‘77 Code, §32.01) (Am. Ord. 02-09 passed 9/16/02)

### **§110.16 IMPOSITION OF TAX; ON WHOM IMPOSED.**

A tax is imposed on all persons engaged in the following occupations or privileges:

- (A) Repealed by Ordinance 02-21 effective 11/18/02.
- (B) Persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the Village, and not for resale, at the rate of 5% of the gross receipts therefrom.
- (C) Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use or consumption within the corporate limits of the Village, and not for resale, at the rate of 5% of the gross receipts therefrom. The tax imposed under this Section shall not apply with respect to gross receipts to bills for the distribution, supply, furnishing or sale of electricity where the use or consumption of the electricity is subject to the tax imposed under Section 110.26.

(Ord. 99-14 passed 5/15/99, 99-19 passed 6/21/99, 00-31 passed 9/18/00; Amd. Ord. 02-09 passed 9/16/02)

#### **§110.16.1 IMPOSITION OF GAS TAX.**

A tax is imposed on all persons engaged in the business of distributing, supplying, furnishing, or selling gas for use or consumption within the corporate limits of the Village, and not for resale, at the rate of 5% of the gross receipts therefrom.

**§110.16.2** Repealed by Ordinance 02-21, effective 11-18-02.

#### **§110.16.3 IMPOSITION OF UTILITY TAX ON GROSS RECEIPTS BASIS.**

A fee of 5% of the gross receipts therefrom is imposed on persons engaged in the business of distributing, supplying, furnishing, or selling electricity for use or consumption within the corporate limits of the Village. A tax is imposed by this section 110.16.3 shall not apply with respect to gross receipts pertaining to bills for the distribution, supply, furnishing, or sale of electricity where the use or consumption of the electricity is subject to the tax imposed by Section 110.26(A). (Am. Ord. 06-13 passed 9/18/06)

#### **§110.17 EXEMPTIONS.**

No tax is imposed by this subchapter 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, electricity, or engaged in the business of transmitting messages be subject to taxation under the provisions of this subchapter for such transactions as are or may become subject to taxation under the provisions of the "Municipal Retailers' Occupation Tax Act" authorized by ILCS Ch. 65, Act 5, §8-11-1, as amended. ('77 Code, §2.03)

### **§110.18 COMPENSATION FOR USE OF STREETS, ALLEYS OR OTHER PUBLIC PLACES.**

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 taxpayer's business. ('77 Code, §32.04)

### **§110.19 TAX RETURNS.**

- (A) On or before the last day of January, April, July and October of each year each taxpayer shall make a return to the Village Treasurer for the three month period ending on the last day of the previous month, stating:
- (1) His/her name;
  - (2) His/her principal place of business;
  - (3) His/her gross receipts during those months 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.
- (B) The taxpayer making the return herein provided for shall, at the time of making such return, pay to the Village Treasurer, 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.

('77 Code, §32.05) Penalty, see §110.99

### **§110.25 DEFINITIONS.**

**PERSON MAINTAINING A PLACE OF BUSINESS IN THIS STATE.** Any person having or maintaining within this State, directly or by a subsidiary or other affiliate, an office, generation, facility, distribution facility, transmission facility, sales office or other place of business, or any employee, agent, or other representative operating within this State under the authority of the person or its subsidiary or other affiliate, irrespective of whether such place of business or agent or other representative is located in this State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in this State.

**PURCHASE AT RETAIL.** Any acquisition of electricity by a purchaser for purposes of use or consumption, and not for resale, but shall not include the use of electricity by a public utility, as defined in Section 8-11-2 of the Illinois Municipal code (65 ILCS 5/8-11-2), directly in the generation, production, transmission, delivery or sale of electricity.

**PURCHASER.** Any person who uses or consumes, within the corporate limits of the Village, electricity

acquired in a purchase at retail.

**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, cellular mobile telephone services, personal wireless services, commercial radio services, paging services, or any other transmission of messages or information by electronic or other means, between or among points by wire, cable, fiber optics, laser microwave, radio, satellite, or similar facilities.

**TAX COLLECTOR.** The person delivering electricity to the purchaser.

**§110.26 TAX IMPOSED.**

(A) A tax is imposed on the privilege of using or consuming electricity acquired in a purchase at retail and used or consumed within the corporate limits of the Village of Deer Park at the following rates calculated on a monthly basis for each purchaser:

- (1) For the first 2,000 kilowatt hours used or consumed in a month; 0.5375 cents per kilowatt hour;
- (2) For the next 48,000 kilowatt hours used or consumed in a month; 0.3525 cents per kilowatt hour;
- (3) For the next 50,000 kilowatt hours used or consumed in a month; 0.3175 cents per kilowatt hour;
- (4) For the next 400,000 kilowatt hours used or consumed in a month; 0.31 cents per kilowatt hour;
- (5) For the next 500,000 kilowatt hours used or consumed in a month; 0.3 cents per kilowatt hour;
- (6) For the next 2,000,000 kilowatt hours used or consumed in a month; 0.2825 cents per kilowatt hour;
- (7) For the next 2,000,000 kilowatt hours used or consumed in a month; 0.2775 cents per kilowatt hour;
- (8) For the next 5,000,000 kilowatt hours used or consumed in a month; 0.2725 cents per kilowatt hour;
- (9) For the next 10,000,000 kilowatt hours used or consumed in a month; 0.27 cents per kilowatt hour; and
- (10) For all electricity used or consumed in excess of 20,000,000 kilowatt hours in a month; 0.265 cents per kilowatt hour.

(B) **EFFECTIVE DATE OF ELECTRIC UTILITIES TAX.** Pursuant to Section 8-1 1-2 of the Illinois Municipal Code, 65 ILCS 5/8-11-2, the rates set forth in Section 110.26.A above shall be effective: (i) on August 1, 1999, for residential customers; and (ii) on the earlier of (1) the first bill issued on or after January 1, 2001, or (2) the date of the first bill issued pursuant to 220 ILCS 5/16-104, for nonresidential customers.

(C) **MISCELLANEOUS.**

- (1) The tax imposed by Section 110.26.A is in addition to all taxes, fees and other revenue measures imposed by the Village, the State of Illinois or any other political subdivision of the State.
- (2) Notwithstanding any other provision of this Section, the tax imposed by Section 110.26.A

shall not be imposed if and to the extent that imposition or collection of the tax would violate the Constitution or statutes of the United States or the Constitution of the State of Illinois.

- (3) The tax imposed by 110.26.A shall not be imposed upon transactions involving the distributing, supplying, furnishing, or selling of electricity to the Village.
- (D) **EXISTING GROSS RECEIPTS TAX.** The tax imposed under this Section shall not apply with respect to gross receipts pertaining to bills for the distribution, supply, furnishing or sale of electricity where the use or consumption of the electricity is subject to the tax imposed under Section 110.16.

#### **§110.27 COLLECTION OF ELECTRIC UTILITY TAX.**

- (A) Subject to the provisions of Section 110.29 regarding the delivery of electricity to resellers, the tax imposed under Section 110.26 shall be collected from purchasers by the person maintaining a place of business in this State who delivers electricity to such purchasers. This tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser and is recoverable at the same time and in the same manner as the original charge for delivering the electricity.
- (B) Any tax required to be collected by Section 110.27, and any tax in fact, collected, shall constitute a debt owed to the Village by the person delivering the electricity, provided, that the person delivering electricity shall be allowed credit for such tax related to deliveries of electricity the charges for which are written off as uncollectible, and provided further, that if such charges are thereafter collected, the delivering supplier shall be obligated to remit such tax.
- (C) Persons delivering electricity shall collect tax from the purchaser by adding such tax to the gross charge for delivering the electricity. Persons delivering electricity shall also be authorized to add to such gross charge an amount equal to three percent (3%) of the tax they collect to reimburse them for their expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the Village upon request. For purposes of this Section, any partial payment of a billed amount not specifically identified by the purchaser shall be deemed to be for the delivery of electricity.

(\*77 Code, §32.06) Penalty, see §110.99

#### **§110.28 TAX REMITTANCE AND RETURN FOR ELECTRIC UTILITIES TAX.**

- (A) Every tax collector shall on a monthly basis file a return in a form prescribed by the Village Treasurer. The return and accompanying remittance shall be due on or before the last day of the month following the month during which the tax is collected or is required to be collected under Section 110.27.
- (B) If the person delivering electricity fails to collect the tax from the purchaser or is excused from collecting the tax under Section 110.29.E(ii), then the purchaser shall file a return in a form prescribed by the Village Treasurer and pay the tax directly to the Village Treasurer on or before the last day of the month following the month during which the electricity is used or consumed.

#### **§110.29 REALES OF ELECTRICITY.**

- (A) Electricity that is delivered to a person in this Village shall be considered to be for use and

consumption by that person unless the person receiving the electricity has an active resale number issued by the Village Treasurer and furnishes that number to the person who delivers the electricity, and certifies to that person that the sale is either entirely or partially nontaxable as a sale for resale.

- (B) If a person who receives electricity in the Village claims to be an authorized reseller of electricity, that person shall apply to the Village Treasurer for a resale number. The applicant shall state facts showing why it is not liable for the tax imposed by Section 110.26 on any purchases of electricity and shall furnish such additional information as the Village Treasurer may reasonably require.
- (C) Upon approval of the application, the Village Treasurer shall assign a resale number to the applicant and shall certify the number to the applicant.
- (D) The Village Treasurer may cancel the resale number of any person if the person fails to pay any tax payable under Section 110.26 for electricity used or consumed by the person, or if the number (1) was obtained through misrepresentation, or (2) is no longer necessary because the person has discontinued making resales.
- (E)
  - (i) If a reseller has acquired electricity partly for use or consumption and partly for resale, the reseller shall pay the tax imposed by Section 110.26 directly to the Village Treasurer pursuant to Section 110.28(B) on the amount of electricity that the reseller uses or consumes, and shall collect the tax pursuant to Section 110.27 and remit the tax pursuant to Section 110.28(A) on the amount of electricity delivered by the reseller to a purchaser.
  - (ii) Any person who delivers electricity to a reseller having an active resale number and complying with all other conditions of Section 110.29 shall be excused from collecting and remitting the tax on any portion of the electricity delivered to the reseller, provided that the person reports to the Village Treasurer the total amount of electricity delivered to the reseller, and such other information that the Village Treasurer may reasonably require.

### **§110.30 BOOKS AND RECORDS FOR ELECTRIC UTILITIES TAX.**

Every tax collector, and every taxpayer required to pay the Electric Utilities Tax, shall keep accurate books and records of its business or activity, including contemporaneous books and records denoting the transactions that gave rise, or may have given rise, to any tax liability under this chapter. The books and records shall be subject to and available for inspection by the Village during normal business hours.

### **§110.31 CREDITS AND REFUNDS FOR ELECTRIC UTILITIES TAX.**

Notwithstanding any other provision of this Section, in order to permit sound fiscal planning and budgeting by the Village, no person shall be entitled to a refund of, or credit for, a tax imposed under Section 110.25 unless the person files a claim for refund or credit within one year after the date on which the tax was paid or remitted to the Village Treasurer. (Ord. 00-31 passed 9/18/00)

### **§110.50 CABLE/VIDEO SERVICE AND CUSTOMER PROTECTION REGULATIONS**

- (A) DEFINITIONS: As used in this Chapter, the following terms shall have the following meanings:

**CABLE SERVICE:** That term as defined in 47 U.S.C. §522(6).

**COMMISSION:** The Illinois Commerce Commission.

**GROSS REVENUES:** All consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the holder for the operation of a cable or video system to provide cable service or video service within the holder's cable service or video service area within the Village.

- (1) Gross revenues shall include the following:
  - (i) Recurring charges for cable or video service.
  - (ii) Event-based charges for cable service or video service, including, but not limited to, pay-per-view and video-on-demand charges.
  - (iii) Rental of set top boxes and other cable service or video service equipment.
  - (iv) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.
  - (v) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
  - (vi) Late payment fees or charges, insufficient funds check charges, and other charges assessed to recover the costs of collecting delinquent payments.
  - (vii) A pro rata portion of all revenue derived by the holder or its affiliates pursuant to compensation arrangements for advertising or for promotion or exhibition of any products or services derived from the operation of the holder's network to provide cable service or video service within the Village. The allocation shall be based on the number of subscribers in the Village divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.
  - (viii) Compensation received by the holder that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are received by the holder as compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel, subject to subsection (ix).
  - (ix) In the case of a cable service or video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the holder's revenue attributable to the other services, capabilities, or applications shall be included in the gross revenue unless the holder can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
  - (x) The service provider fee permitted by 220 ILCS 5/21-801(b).
- (2) Gross revenues do not include any of the following:
  - (i) Revenues not actually received, even if billed, such as bad debt, subject to 220 ILCS 5/21-801(c)(1)(vi).
  - (ii) Refunds, discounts, or other price adjustments that reduce the amount of gross revenues received by the holder of the State-issued authorization to the extent the refund, rebate, credit, or discount is attributable to cable service or video service. Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues received from services not classified as cable service or video service, including, without limitation, revenue received from telecommunication services, information services, or the provision of directory or Internet advertising, including yellow pages, white pages,

banner advertisement, and electronic publishing or any other revenues attributed by the holder to noncable service or non-video service in accordance with the holder's books and records and records kept in the regular course of business and any applicable laws, rules, regulations, standards, or orders.

- (iii) The sale of cable services or video services for resale in which the purchaser is required to collect the service provider fee from the purchaser's subscribers to the extent the purchaser certifies in writing that it will resell the service within the Village and pay the fee permitted by 220 ILCS 5/21-801(b) with respect to the service.
  - (iv) Any tax or fee of general applicability imposed upon the subscribers or the transaction by a city, State, federal, or any other governmental entity and collected by the holder of the State-issued authorization and required to be remitted to the taxing entity, including sales and use taxes.
  - (v) Security deposits collected from subscribers.
  - (vi) Amounts paid by subscribers to "home shopping" or similar vendors for merchandise sold through any home shopping channel offered as part of the cable service or video service.
- (3) Revenue of an affiliate of a holder shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate rather than the holder has the effect of evading the payment of the fee permitted by 220 ILCS 5/21-801(b) which would otherwise be paid by the cable service or video service.

**HOLDER:** A person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.

**INCUMBENT CABLE OPERATOR:** A person or entity that provided cable services or video services in the Village of Deer Park under a franchise agreement with the Village pursuant to Section 11-42-11 of the Illinois Municipal Code (65 ILCS 5/11-42-11) on January 1, 2007.

**SERVICE:** The provision of "cable service" or "video service" to subscribers and the interaction of subscribers with the person or entity that has received authorization to offer or provide cable or video service from the Commission pursuant to 220 ILCS 5/21-401.

**SERVICE PROVIDER FEE:** The amount paid under this Chapter and 220 ILCS 5/21-801 by the holder to a Village for the service areas within its territorial jurisdiction.

**VIDEO SERVICE:** Video programming and subscriber interaction, if any, that is required for the selection or use of such video programming services, and which is provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. §332(d) or any video programming provided solely as part of, and via, service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

(B) **CABLE/VIDEO SERVICE PROVIDER FEE IMPOSED:**

- (1) **Fee Imposed.** A service provider fee is hereby imposed on any holder providing cable service or video service in the Village.
- (2) **Amount of Fee.** The amount of the service provider fee imposed hereby shall be five percent (5%) of the holder's gross revenues.

- (3) **Notice to the Village.** Unless the holder has earlier sent notice to the Village pursuant to 220 ILCS 5/21-801(a), the holder shall notify the Village at least ten (10) days prior to the date on which the holder begins to offer cable service or video service in the Village.
  - (4) **Holder's Liability.** The holder shall be liable for and pay the service provider fee to the Village. The holder's liability for the fee shall commence on the first day of the calendar month following thirty (30) days after receipt of the ordinance adopting this Chapter by the holder. The ordinance adopting this Chapter shall be sent by mail, postage prepaid, to the address listed on the holder's application notice sent pursuant to 220 ILCS 5/21-401(b)(6) to the Village. Together with this ordinance the Village shall send the holder instructions for remitting the payment and statement required hereby.
  - (5) **Payment Date.** The payment of the service provider fee shall be due on a quarterly basis, forty- five (45) days after the close of the calendar quarter. If mailed, the fee is considered paid on the date it is postmarked. Each payment shall include a statement explaining the basis for the calculation of the fee.
  - (6) **Exemption.** The fee hereby imposed does not apply to cable service or video service providers that have an existing franchise agreement with the Village, under 65 ILCS 5/11-42-11 , in which a franchise fee is paid.
  - (7) **Credit for Other Payments.** An incumbent cable operator that elects to terminate an existing agreement pursuant to 220 ILCS 5/21-301(c) with credit for prepaid franchise fees under that agreement may deduct the amount of such credit from the fees that operator owes under Section (B)2.
- (C) **PEG ACCESS CARRIAGE REQUIREMENTS:** On the date set forth in Section (B)4, but not earlier than 90 days after the holder sends notice to the Village under 220 ILCS 5/21-801(a), the holder shall: (i) designate the same amount of capacity on its network to provide for public, education, and government access use, as the incumbent cable operator is required to designate under its franchise terms in effect with a local unit of government on January 1 , 2007; and (ii) retransmit to its subscribers the same number of public, education, and government access channels as the incumbent cable operator was retransmitting to subscribers on January 1 , 2007.
- (D) **APPLICABLE PRINCIPLES:** All determinations and calculations under this Chapter shall be made pursuant to generally accepted accounting principles.
- (E) **NO IMPACT ON OTHER TAXES DUE FROM HOLDER:** Nothing contained in this Chapter shall be construed to exempt a holder from any tax that is or may later be imposed by the Village, including any tax that is or may later be required to be paid by or through the holder with respect to cable service or video service. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the Village's simplified municipal telecommunications tax or any other tax as it applies to any telecommunications service provided by the holder. A State-issued authorization shall not affect any requirement of the holder with respect to payment of the local unit of government's 9-1-1 or E9-1-1 fees, taxes or charges.
- (F) **AUDITS OF CABLE/VIDEO SERVICE PROVIDER:**
- (1) **Audit Requirement.** The Village will notify the holder of the requirements it imposes on other cable service or video service providers to submit to an audit of its books and records. The holder shall comply with the same requirements the Village imposes on other cable service or video service providers in its jurisdiction to audit the holder's books and records and to re- compute any amounts determined to be payable under the requirements of the Village. If all local franchises between the Village and cable operators terminate, the audit requirements shall be those set forth in The Local Government

Taxpayer's Bill of Rights. No acceptance of amounts remitted should be construed as an accord that the amounts are correct.

- (2) **Additional Payments.** Any additional amount due after an audit shall be paid within thirty (30) days **after** the municipality's submission of an invoice for the sum.
- (G) **LATE FEES/PAYMENTS:** All fees due and payments which are past due shall be subject to a late payment fee of \$25.00 plus interest on the unpaid balance at the statutory rate for judgments.
- (H) **CUSTOMER SERVICE AND PRIVACY PROTECTION LAW:**
- (1) **Adoption.** The regulations of 220 ILCS 5/70-501 are hereby adopted by reference and made applicable to the cable or video providers offering services within the Village's boundaries.
  - (2) **Amendments.** Any mandatory amendment to the Cable and Video Customer Protection Law that becomes effective after the effective date of this Chapter shall be incorporated into this Chapter by reference and shall be applicable to cable or video providers offering services within the municipality's boundaries. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Chapter by reference without formal action by the corporate authorities of the Village.
- (I) **ENFORCEMENT:** The Village does hereby pursuant to law declare its intent to enforce all of the customer service and privacy protection standards of the Cable and Video Protection Law.
- (J) **PENALTIES:** The Village does hereby declare that for any material breach of the standards and requirements of the Cable and Video Customer Protection Law, as incorporated by reference in this ordinance, or any applicable rights and obligations of the Illinois Cable and Video Competition Law of 2007, as enumerated in this Chapter, a cable or video provider shall be subject to monetary penalties which shall not exceed \$750.00 for each day of the material breach, and shall not exceed \$25,000.00 for each occurrence of a material breach per customer. Such penalties shall be in addition to the penalties provided in the Law and shall not represent the Village's exclusive remedy for any material breach. All monetary penalties shall apply on a competitively neutral basis.
- (1) **Material breach** means any substantial failure of a cable or video provider to comply with service quality and other applicable standards, rights and obligations specified in any provision of the law.
  - (2) The Village shall give the cable or video provider written notice of any alleged material breaches of the law and allow such provider at least 30 days from the receipt of the notice to remedy the specified material breach.
  - (3) A material breach, for the purposes of assessing penalties, shall be deemed to occur for each day that a material breach has not been remedied by the cable or video service provider after the notice in (B).
  - (4) The Board of Trustees hereby delegates authority to levy penalties to the Village Administrator.
  - (5) Any decision of the Village Administrator to levy penalties may be appealed to the Board of Trustees, which shall conduct a hearing on the alleged material breach and

penalties levied therefore within twenty-one (21) days following receipt of the cable or video providers request for an appeal.

- (K) **CUSTOMER CREDITS:** The Village hereby adopts and incorporates by reference the schedule of customer credits for violations of the Law provided for in the provisions of 220 ILCS 5/70-501(s). Those credits shall be applied on the statement issued to the customer for the next billing cycle following the violation or following the discovery of the violation. The cable or video provider is responsible for proactively providing the credits and the customer is under no obligation to request the credit.

(Ord. 07-26 passed 1/16/08)

**§110.99 PENALTY.**

- (A) Any person who violates any provision of this Chapter for which no penalty is otherwise provided shall be subject to the penalty provided in Section 10.99 of this Code.
- (B) Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violates any other provision of Sections 110.15 through 110.20 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100.00 nor more than \$500.00 and, in addition, shall be liable in a civil action for the amount of tax due and shall be responsible for the Village's cost of prosecution, including but not limited to attorney fees, court costs and other costs and expense incurred by the Village thereto.

('77 Code, §32.07) (Amd. Ord. 15-02 passed 3/16/15)