



AGENDA

REGULAR MEETING OF THE LAWS AND ORDINANCES COMMITTEE TO BE HELD ON
TUESDAY, SEPTEMBER 3, 2019, AT 6:00 P.M. AT THE POLICE DEPARTMENT TRAINING
ROOM, 7760 QUINCY STREET, IN THE VILLAGE OF WILLOWBROOK, DUPAGE COUNTY,
ILLINOIS

Mayor

Frank A. Trilla

Village Clerk

Leroy R. Hansen

Village Trustees

Sue Berglund

Umberto Davi

Terrence Kelly

Michael Mistele

Gayle Neal

Paul Oggerino

Village Administrator

Brian Pabst

Chief of Police

Robert Schaller

Director of Finance

Carrie Dittman

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF MINUTES – July 2, 2019 (Approve)
4. UPDATES
 - a) People v. Sterigenics Case Status
 - b) Village Notifications of IEPA Reports in Conjunction with the Matt Haller Act Requirements
 - c) Alarm Notifications for Hazardous Chemicals
 - d) Good Governance Suggestions
 - i. Require a Permit for the Transfer on Village Roads of Tier II Chemicals
 - ii. Retail Occupation Tax on Tier II Chemicals
 - iii. Enact zoning Restrictions for M1 to limit the storage of Tier II Extremely Hazardous Substances to 100 Lbs.
 - iv. Update Village Fire Codes to align with zoning restrictions and limit storage to 100 lbs.
5. DISCUSSION – An Ordinance Amending Section 6-8-5 Entitled “Bills:” and Section 6-8-8 Entitled “Nonpayment:” of Chapter 8 Entitled “water System” of Title 6 Entitled “Health and Sanitation” of the Municipal Code of Ordinances of the Village of Willowbrook **(Refer to Village Board for Consideration on September 9, 2019)**
6. DISCUSSION – An Ordinance Amending Title 4 Entitled “Municipal Services”, Chapter 2 Entitled “Building Code”, Section 32 Entitled “Swimming Pool Regulations Adopted”, of the Village Code of Ordinances of the Village of Willowbrook **(Refer to Village Board for Consideration on September 23, 2019)**
7. COMMITTEE REPORTS
8. VISITOR’S BUSINESS (Public comment is limited to three minutes per person)
9. ADJOURNMENT



MINUTES OF THE REGULAR MEETING OF THE LAW AND ORDINANCES COMMITTEE
OF THE VILLAGE OF WILLOWBROOK HELD ON TUESDAY, JULY 2, 2019 AT
6:00 PM AT THE WILLOWBROOK POLICE DEPARTMENT, 7760 QUINCY STREET,
VILLAGE OF WILLOWBROOK, DUPAGE COUNTY, ILLINOIS.

1. CALL TO ORDER

The meeting was called to order at the hour of 6:00 p.m. by
Trustee Kelly.

2. ROLL CALL

Those present at roll call were Trustee Davi, Trustee Kelly,
Assistant Village Administrator Michael Mertens, Village
Attorney Tom Bastion, Building Official Roy Giuntoli. Also
present were Chris Drews from Tri-State Fire Protection
District, Village Administrator Brian Pabst, Trustee Gayle
Neal and Trustee Sue Berglund.

3. APPROVAL OF MINUTES

Minutes - June 4, 2019 meeting

Trustee Davi made a motion to approve the minutes from the
June 4, 2019 Law and Ordinance Committee meeting, the motion
was seconded by Trustee Kelly - motion carried (Approved).

4. UPDATE - Proposed Amendment to Clarify Water Bill Payment
Responsibility Section 6-8-5 Bills and 6-8-8 Nonpayment

Village Attorney Bastion discussed the reason for the
ordinance amendment. As there is often confusion in who is
responsible for the payment of a water bill (e.g. tenant or
owner). He discussed a Pre-Termination Hearing process, prior
to water service being shut-off, requiring notices to be sent
to both the property owner and tenant, advising them of the
arrearage, the opportunity to have the Pre-Termination
Hearing and other procedures. The Village Administrator will
act as the Hearing Officer and will determine whether service
will be shut off. He emphasized the importance of this type
of hearing because in other villages he represents, there
have been clerical errors (funds applied to wrong account,
payments having been made when water service was discontinued
when there may have been extenuating circumstances, for
example people with disabilities or medical conditions.

Assistant Village Administrator Mertens added we will verify
that fees are current and that the right lien coverage fees

are included. The remaining portion of the ordinance is ready, but some additional research is required.

Trustee Kelly asked when the ordinance would be ready and Assistant Village Administrator Mertens responded the estimated completion will be the second meeting in July or the first in August.

5. UPDATE - *July 17, 2019 Plan Commission Text Amendments*

Assistant Village Administrator Mertens stated that both items were discussed during the June 5th Plan Commission Meeting and moved forward to the Commissions July 17th meeting.

- a) Amends Section 9-3-15, 9-12-2 and 9-14-24 (c) to Remove Outdated Information and Bring the Zoning Code into Compliance with State and Federal Laws for the Recently Enacted Small Wireless Facilities Deployment Act, 50 ILCS 840/1 et seq. The Amendments also Clarify the Application of Certain Bulk Regulations to the Permitted Accessory Use of Amateur Radio Antennas in Residential Districts

Assistant Village Administrator Mertens stated that the first item (a) involves regulations for the telecommunications matters, like antennas, antenna structures, small cell site antennas, etc. and alters staff titles.

- b) Amends Section 9-9-7 (c) Regarding Performance Standards in the M-1 Light Manufacturing Zoning District

Assistant Village Administrator Mertens stated that the second item (b) was a bit more complicated in that it is an amendment to our performance standards in the M-1 Manufacturing district. He added that Building Official Giuntoli and Inspector Drews from Tri-State Fire Protection District were present. This ordinance has not been updated since 1997, and the amendment will update the ordinance to comply with the latest International Fire Code (IFC), adding many new definitions. The proposed amendment requires businesses involved in manufacturing, or storing, or utilizing hazardous materials to apply for a special use permit. The proposed ordinance incorporates the IFC for the Hazardous chemicals lists covers both underground and above ground storage, as well as indoor and outdoor storage.

6. DISCUSSION - Proposed Text Amendments to Clarify the Definition for Building Height - Section 9 - Chapter 2 (Recommend Referral to Plan Commission for its Consideration)

Assistant Village Administrator Mertens stated that after reviewing definitions in our code ambiguities in calculating a building height were found. The proposed amendment will clarify how height requirements should be calculated and when a variance will be required. Our attorneys are reviewing the proposed language to ensure it is grammatically correct. Staff is requesting the proposal be presented to the Plan Commission as a text amendment on July 17th.

Trustee Kelly: Discussion?

Trustee Davi asked what are the issues we are concerned about?

Assistant Village Administrator Mertens stated that staff researched nearby communities to compare their processes to calculate building height. Noting that some communities are silent when it comes to ancillary structures (i.e. chimney), and others use a multitude of criteria to calculate it. We are clarifying our calculation process.

Trustee Davi added if this was a fire code issue.

Assistant Village Administrator Mertens stated that it is not necessarily a Fire Code issue, however, there are building codes that do require a chimney to be a certain height over a portion of a roof.

The typical large footprint of a commercial building proved to be confusing to calculate this building height, this amendment will assist staff.

Trustee Kelly asked for a simple example of (an M-1 building) can be forty feet (40') and a max ten feet (10') more with ancillary equipment.

Assistant Village Administrator Mertens stated that if rooftop equipment would be greater than fifty feet (50') above grade they would have to obtain a variance for that installation, as HVAC equipment can get larger/taller. Staff also does not want to create too many non-conformities, nor do staff want everyone to have to obtain a variance for every piece of equipment. This applies to new developments. If existing structures were damaged by an act of God e.g.

lighting, they would be allowed to rebuild under the code that they were granted a permit under.

Trustee Davi made a motion to recommend the proposed changes to Title 9 of the Village Code: the motioned was seconded by Trustee Kelly - motion carried (Approved).

7. DISCUSSION - Code Enhancement to Require Hazardous Materials Reporting and Operational Permits

Assistant Village Administrator Mertens stated that the Village of Willowbrook (WB) uses the services of a company called TPI Building Code Consultants (TPI) for plan reviews and inspections. One of their current employees was the former Fire Marshall with the village of Lombard. Lombard has a "Operation Permit" (OP) program for the industrial areas that requires hazardous material reporting and a yearly permit. Willowbrook staff contacted current Lombard Village management and requested a copy of their Operational Permit documentation. Lombard's population ~43,000, the number of Operational Permits is ~30. Staff is requesting this modification to our Building Code to allow for an Operational Permit. Willowbrook is anticipating 10-15 Operational Permits, staff considers this not to be overly burdensome. Staff will send a letter to all businesses in the M-1 district to determine if their business will be required to obtain an Operational Permit. Tri-State Fire Protection District (Tri-State) personnel has offered assistance to Willowbrook staff in administering this program. There is some overlap in Tri-State's annual duties (annual Life Safety inspections) in the district that can assist Willowbrook with this program. The intent of this program is to obtain information from business regarding what materials (type, quantity, locations, etc.) that they have onsite. This information can assist First Responders in dealing with any potentially hazardous condition that can arise. Staff is currently tentatively scheduled to start meeting with TPI, Tri-State to start working on this program, should this committee approve it. this program should link with the prior Title 9 changes made recently.

Trustee Kelly asked will this program allow the Village to inspect Sterigenics?

Assistant Village Administrator Mertens stated if they met the criteria that they would. Other possible businesses would likely apply to this as well. He reiterated that this program

is separate from the annual life safety inspection that Tri-State currently performs.

Trustee Kelly asked if it was the Village's intentions to inspect every business with an Operational Permit?

Assistant Village Administrator Mertens stated yes. adding that staff may utilize the services of a 3rd party inspectional service for them, possibly TPI or others and fees will be assessed as a pass-through fee.

Trustee Kelly requested if Trustee Davi had any questions? He did not. Trustee Kelly stated he thought it was a good idea.

Trustee Kelly asked staff what they needed. Assistant Village Administrator Michael Mertens stated that this was slated to be in front of the Board on July 22nd.

Staff is requesting a recommendation to proceed, Trustee Kelly and Trustee Davi approved.

8. DISCUSSION - Code Enhancement to Require Third Party Alarm Notification for Hazardous Chemicals

Assistant Village Administrator Mertens stated that this was an interesting one topic. Countless meetings have been held with Tri-State and TPI since becoming Home Rule and he thanked Chris Drews and Tri-State for attending tonight. Currently two businesses in Willowbrook have a 3rd party Alarm Notification system, Highline Auto and the Willowbrook Ice Arena. These companies were required to connect the systems as part of their initial Occupancy Inspections that were prompted from the field inspectors identifying a potential risk. Staff thinks this is a good idea to codify the requirement for any applicable company. The system would detect the problem, the alarm would notify their monitoring company, the monitoring company would notify Tri-State. Sterigenics currently has detection systems in their buildings, and this ordinance would require them to notify Tri-State of any problems or incidents.

Trustee Kelly asked if the Village could be directly notified as well as Tri-State.

A male audience visitor asked if for example a business was under negative pressure, if that system failed, would it be a notifiable matter?

Assistant Village Administrator Mertens stated that this was a matter that will be researched.

Staff is requesting a recommendation to proceed, Trustee Kelly and Trustee Davi approved.

9. COMMITTEE REPORT - VISITOR'S BUSINESS

Per Trustee Kelly, the committee did not have a report. Trustee Kelly did ask Village Attorney Bastion for an update of what they were working on.

Per Village Attorney Tom Bastion:

- 1) Adoption of a recent state legislation, the Matt Haller Act includes reporting requirements to the state, we are proposing to amend Title 6 Chapter 7, "open burning" to be re-titled "air pollution", allowing the village to impose the same, reporting requirements as to the state. For example, Companies must report negative pressure failures to the state, the proposed ordinance would require companies to notify village as well.
- 2) To determine whether or not the village has the authority to regulate the transportation of hazardous chemicals, there is not an express preemption. Determine if there is a state wide concern, states such as Texas have determined non-hazardous chemical routes. If passes, non-reporting could result in citations and fines. It will remain to be determined if the village has any jurisdiction over the state routes. Research just started.

Trustee Kelly, RE topic Item 9/1 is topic broad enough to require plans or reports filed with the IEPA/USEPA to be filed with us as well? Tom added that it can be added and researched.

10. VISITOR'S BUSINESS

(Public comment is limited to three minutes per person)

Q1) A male visitor: Many ordinances have been discussed, do any of these limits the amount of hazardous storage?

A) Per Village Attorney Bastion: Yes, Building Code Title 4 amendment passed last month, limits the storage of Ethylene Oxide (E/O) to one hundred (100) pounds, also the current amount cannot increase, if quantities voluntary drop, they cannot be increased (an act of God does not constitute / initiate a voluntary drop). Assistant Village Administrator Mertens added that the topics discussed at

this meeting were not focused on reducing any one business operations or specific materials or quantities. We referred to the International Fire Code (IFC) that lists many chemicals and allowed quantities. He discussed what the Title 9 amendment was written and intended to do, narratively stated what the ordinance indicates, locations, quantities, etc.

Building Official Giuntoli stated references to the IFC in that a propane cylinder for a fork lift is regulated thought the IFC. The IFC allows for control areas and maximum quantities. Willowbrook is not further limiting these products. Assistant Village Administrator Mertens added that the IFC charts are quite comprehensive in that we will refer to them for quantities. However, feeding off the IFC, is the Operations Permit program. Whereas the annual permit is updated to current materials and quantities and if a business process is modified throughout the year, the Operational Permit is in place to record that - over the annual fire district inspection.

A male visitor continues: That the IFC boiler plate maximum quantities can be further reduced. Per Assistant Village Administrator Mertens, the ordinances brought forth in this meeting do not further limit quantities, it is possible that future ordinances can look into that.

Building Official Giuntoli added that the only chemical that was limited in the current code was E/O.

A male visitor continues: "rephrasing his question": "When will an ordinance that keeps Sterigenics shut down be coming up for a trustee vote, and when will it be effective?"

Trustee Kelly stated: That is an impossible question to answer.

A male visitor: Of any of the ordinances that we have on the table, do any of those do that?

Village Attorney Tom Bastion responded: No, they do not. They cannot because 1) it would not be enforceable and 2) it would be a taking, a condemnation - they were a permitted use 30 years ago and if we were to single them out to shut the business down, it is a taking, a condemnation.

A male visitor: You are not necessarily singling them out, they might be the only one using anything that dangerous.

Village Attorney Bastion responded: they were a permitted use that is being adversely affected. They could be amortized out over years; we do not want to do that. But to limit their storage or process would be a taking.

A female visitor asked: If drunk driver laws were to change, would drunk driving be grandfathered in?

So, I have a question for you: So, you're telling me that if we have someone driving drunk for thirty-five years, ok, and we changed the laws saying you can't drive drunk anymore they would be grandfathered in?

Both Village Attorney Bastion responded and Trustee Davi responded:

Davi: No, driving drunk is not a permitted use.

Bastion: That is a criminal offense.

A female visitor continues: Is there anything you can do to be effective?

Assistant Village Administrator Mertens stated that at this time Zoning does not affect past businesses. They would be a legal non-conforming use and they can operate until they stop operating whereas at that time they would have to come up to the current code. We are trying to make adjustments/amendments to tighten up to get a better understanding of what there is out there and get control of what we can (current materials and quantities). Everyone would like to make that happen - unfortunately we cannot. A legal non-conforming fence example was offered. Only if an existing building/business was damaged to a certain extent (a certain percentage) would said business need to conform to a current code.

A male visitor asked: So, back in the early 2000's, the State of Illinois banned smoking indoors, in restaurants. There were 10's, if not 100's of thousands of restaurants operating in the State of Illinois that allowed smoking. They were not allowed to continue that practice, that business practice, the very next day. So, there are instances in our laws, in the in the State of Illinois, and it was done by Home Rule Cities, Schaumburg, City of Chicago, before the State did it - of local municipalities passing laws in regards to emissions of substances that weren't immediately enforceable upon existing businesses. Is that correct?

Village Attorney Bastion responded: Depending on the Smoking is for example an express grant of authority to regulate smoking and so forth. However, this is a Zoning code with an ongoing business.

A male visitor continues: There was no express granting regarding smoking when those laws were passed.

Village Attorney Bastion continues: There is no preemption saying villages can't do it.

A male continues: Correct, which means that they can.

Village Attorney Bastion continues: But this is shutting down a business that is a legal conforming use.

A male visitor continues: No, it doesn't mean that, it doesn't mean that at all. You can definitely operate your business however you like, that doesn't mean that you can't set emission standards, because there is no preemption for that.

Village Attorney Bastion continues: Okay, but each village there is a matter of statewide concern. You're saying set an emission standard, are you suggesting that the village can set its own emission standard? Every village can?

A male visitor continues: Right, every village with Home Rule, yes.

Village Attorney Bastion continues: And what would that emission standard be?

A male visitor continues: Whatever the village chose to make it.

Village Attorney Bastion continues: If it was that, in my opinion, they would say it would be an unconstitutional taking.

A male visitor continues: Interesting that you would say that, because it has been challenged in the courts. It was challenged in a case against Des Plaines, IL. In regards to water pollution, not air pollution. And it was found that the village, uh. It was an interesting ruling because the village determined, or the judges determined, that that the town that was polluted was next door do that Des Plaines could not regulate what they did, but that Home Rule powers

would have given Des Plaines powers to regulate pollution within their own borders. And if you also look at the most recent case regarding the road builders, vs the state of IL, vs, or, Cook county.

Village Attorney Bastion continues: Sri, I have read that. Sri: Yeah, and what did it say? That was a circuit court decision on a motion to dismiss motion for motion summary judgment, and it was immediately appealed. It was appealed on April 4th and the circuit court; there were two issues, whether or not the builders had standing to bring the action and the court said: well that that particular constitutional amendment which reported to have monies raised to build safe roads said there was no preemption in that particular event.

A male visitor continues: Correct. Just like there is no preemption, in regards to... (unknown...)

Trustee Kelly: This has been a very informative legal discussion. Does anyone else have any questions?

A male visitor asked: I have a question in terms of penalties. In terms of, if a company does not conform to the new storage standards or any other new rule that are passed with alarm systems or whatever, what are the penalties that any such company refuses to comply with these standards?

Village Attorney Bastion responded: Absolute penalty under the state statute of \$750.00 per day. For an ordinance violation. You can declare to be a business offense that could be higher, could be up to a couple thousand.

A male visitor continues: Is it, in the State of Illinois, this is a general question, it could be for anything they do, is a company allowed to violate an ordinance daily and then pay the fine in infinity or is there a certain point?

Village Attorney Bastion responded: Depending on what the violation is. If it's an ongoing violation, the court can enter an injunction enjoining them from the business from any future violations.

A male visitor asked: But they can just continue to violate?

Village Attorney Bastion responded: If the court enters an order an injunction then those operators are subject to contempt.

A female visitor asked: Any of these ordinances that are being drafted, um, are, is the ability, is it the ability for the village to include in there that if you are a company that does pollute the air, or has a chemical that is hazardous, that you have to pay the village for testing and monitoring? Village Attorney: Retesting? Monitoring the air?"

Village Attorney Bastion responded: That is already included in the state statute.

A female visitor continues: Well the state statute requires them to do it picking their own person every quarter of a year.

Village Attorney Bastion responded: That we will look into this matter.

11. ADJOURNMENT

Trustee Kelly made a motion to adjourn, the motion was seconded by Trustee Davi - motion carried (Approved). The meeting adjourned at 6:51 pm.

PRESENTED, READ and APPROVED

_____, 2019

CHAIRMAN

[DRAFT] Minutes transcribed by Building Official Giuntoli

LAW AND ORDINANCES COMMITTEE MEETING

AGENDA ITEM SUMMARY SHEET

AGENDA ITEM DESCRIPTION

DISCUSSION – Resident suggested enhancements to our Village Code entitled “Good Governance”

- I. Require a Permit for the Transfer on Village Roads of Tier II Chemicals**
- II. Retail Occupation Tax on Tier II Chemicals**
- III. Enact zoning Restrictions for M1 to limit the storage of Tier II Extremely Hazardous Substances to 100 Lbs.**
- IV. Update Village Fire Codes to align with zoning restrictions and limit storage to 100 lbs.**

COMMITTEE REVIEW

- ☐ Finance/Administration
- ☐ Municipal Services
- ☐ Public Safety
- ☒ Law & Ordinances

Meeting Date:

September 3, 2019

- | | |
|---|---|
| <input checked="" type="checkbox"/> Discussion Only
<input type="checkbox"/> Seeking Feedback
<input type="checkbox"/> Regular Report | <input type="checkbox"/> Approval of Staff Recommendation (for consideration by Village Board at a later date)
<input type="checkbox"/> Approval of Staff Recommendation (for <u>immediate</u> consideration by Village Board)
<input type="checkbox"/> Report/documents requested by Committee |
|---|---|

BACKGROUND

The Village has received four suggestions to enhance our Village Code from a local resident. **The items for discussion below are submitted as they were received by the resident and are not presented as staff suggestions or legal opinions of the Village of Willowbrook:**

- I. Require a permit for the transfer on Village roads of Tier II Chemicals that are designated as Extremely Hazardous Substances (EHS) for any quantity larger than 100 lbs. Permit each delivery. Charge an incremental rate, based on total pounds transported.

This tax would fund first responders, to better prepare them for handling a chemical disaster. This would include equipment, not limited to Haz Mat gear, which must be custom fitted for each responder (fire & police), various Haz Mat equipment and training.

Support: Home Rule has been found in court to supersede amendments to the Illinois Constitution.
<http://municipalminute.ancelglink.com/2019/03/court-finds-that-home-rule-units-are.html?m=1>

The Court found that a provision contained in another section of the Constitution, such as the Safe Roads Amendment contained in Article IX, cannot limit home rule powers, as only Section 6 (a) of Article VII can do so. Following that logic, the Court noted that the drafters means “to limit home rule powers (i.e., under Section (a) of Article VII), but the drafters chose not to use those means. So, Cook County’s home rule power are not contained by the Safe Roads Amendment. If the decision is County’s Home Rule powers are not constrained by the Safe Roads Amendment. If the decision is upheld (likely to be appealed), there would be precedent for home rule units to enact policies that conflict with the Illinois Constitution, unless such powers are expressly limited in Article VII, Section 6.

By this, as CS 30/ Illinois Hazardous Materials Transportation Act does not expressly limit Home Rule Powers, the municipality has the authority regulate the transportation of Hazardous Materials on Village roads. List EHS:

<https://www.ecfr.gov/cgibin/textidx?SID=e208a869f7ca033d3fec0b908fc6065&node=ap40.28.355161.a&rgn=div9>

- II. Enact a Retailer's Occupation Tax on Tier II Chemicals, using Cook County Sugar Tax as a model. Require this tax to be collected and paid to the Village by the Chemical Distributor. As Tier II chemicals are used as part of performing a service and not as a manufacturing ingredient, it would fall under: "General merchandise" includes sales of most tangible personal property including the sales of
 - i. Soft drinks and candy;
 - ii. Prepared food such as food purchased at a restaurant;
 - iii. Photo processing (getting pictures developed);
 - iv. Prewritten and "canned" computer software;
 - v. Prepaid telephone calling cards and other prepaid telephone calling arrangements;
 - vi. Repair parts and other items transferred or sold in conjunction with providing a service under certain circumstances based on the actual selling prices;
- III. Enacting zoning restrictions for M1 to limit the storage of Tier II Extremely Hazardous Substances to 100 lbs.
- IV. Update village fire codes to align with zoning restrictions and limit storage to 100 lbs.

STAFF RECOMMENDATION

Receive input from the Village Attorney and Building Code Official on the suggested items.

← Good Governance

1. Require a permit for the transfer on village roads of Tier II Chemicals that are designated as an Extremely Hazardous Substance (EHS) for any quantity larger than 100 lbs. Permit each delivery. Charge an incremental rate, based on total pounds transported.

This tax would fund first responders, to better prepare them for handling a chemical disaster. This would include equipment, not limited to Haz Mat gear, which must be custom fitted for each responder (fire & police), various haz mat equipment and training.

Support: Home Rule has been found in court to supersede amendments to the Illinois Constitution. <http://municipalminute.anceglink.com/2019/03/court-finds-that-home-rule-units-are.html?m=1>

The Court found that a provision contained in another section of the Constitution, such as the Safe Roads Amendment contained in Article IX, cannot limit home rule powers, as only Section 6(a) of Article VII can do so. Following that logic, the Court noted that the drafters of the Safe Roads Amendment had "a ready, straightforward, specifically prescribed means" to limit home rule powers (i.e., under Section 6(a) of Article VII), but the drafters chose not to use those means. So, Cook County's home rule powers are not constrained by the Safe Roads Amendment. If the decision is upheld (likely to be appealed), there would be precedent for home rule units to enact policies that conflict with the Illinois Constitution, unless such powers are expressly limited in Article VII, Section 6.

By this, as [CS 30/ Illinois Hazardous Materials Transportation Act](#), does not expressly limit Home Rule Powers, the municipality has the authority regulate the transportation of Hazardous Materials on Village roads. List EHS: https://www.ecfr.gov/cgi-bin/text-idx?SID=e208a869f7ca033d3fecf0b908fc6065&node=ap40.28.355_161.a&rgn=div9

2. Enact a Retailer's Occupation Tax on Tier II Chemicals, using the Cook County Sugar Tax as a model. Require this tax to be collected and paid to the Village by the Chemical Distributor. As Tier II chemicals are used as part of performing a service and not as a manufacturing ingredient, it would fall under: "General merchandise" includes sales of most tangible personal property including sales of

- soft drinks and candy;
- prepared food such as food purchased at a restaurant;
- photo processing (getting pictures developed);
- prewritten and "canned" computer software;
- prepaid telephone calling cards and other prepaid telephone calling arrangements;
- *repair parts and other items transferred or sold in conjunction with providing a service under certain circumstances based on the actual selling price;*

3. Enact zoning restrictions for M1 to limit the storage of Tier II Extremely Hazardous Substances to 100 lbs.

4. Update village fire codes to align with zoning restrictions and limit storage to 100 lbs.

**LAW AND ORDINANCES COMMITTEE MEETING
AGENDA ITEM SUMMARY SHEET**

AGENDA ITEM DESCRIPTION

AN ORDINANCE AMENDING SECTION 6-8-5 ENTITLED “BILLS:” AND SECTION 6-8-8 ENTITLED “NONPAYMENT:” OF CHAPTER 8 ENTITLED “WATER SYSTEM” OF TITLE 6 ENTITLED “HEALTH AND SANITATION” OF THE MUNICIPAL CODE OF ORDINANCES OF THE VILLAGE OF WILLOWBROOK

COMMITTEE REVIEW

- ☐ Finance/Administration
☐ Municipal Services
☐ Public Safety
☒ Law & Ordinances

Meeting Date:

September 3, 2019

- | | |
|---|---|
| <input type="checkbox"/> Discussion Only | <input checked="" type="checkbox"/> Approval of Staff Recommendation (for consideration by Village Board at a later date) |
| <input type="checkbox"/> Seeking Feedback | <input type="checkbox"/> Approval of Staff Recommendation (for <u>immediate</u> consideration by Village Board) |
| <input type="checkbox"/> Regular Report | <input type="checkbox"/> Report/documents requested by Committee |

BACKGROUND

At the June 4, 2019 Law and Ordinance Committee staff and Village attorney presented the current Village of Willowbrook code, 6-8, for billing requirements for disconnection, final billing, new and existing users, non-payment and lien process. Staff proposed that the Committee consider enhancements to sections 6-8-5, 6-8-6, 6-8-6.1, 6-8-8 and 6-8-11 to clarify that the property owner has the underling responsibility for all water bills, regardless of any lease or renter private arrangement. Clarifications will help with the understanding of the code, the process and ensure that the Village receives full payment for services rendered.

Attorney Tom Bastion advised the Committee of a federal case that provides that an owner has a right to water and they should be afforded a hearing. Albeit one is not often requested, a hearing is offered to avoid litigation. A due process hearing can reveal various extenuating circumstance that would preclude the shut-off.

The code was reviewed by the Village Attorney and adjustments were made to clarify the payment responsibilities of the property owner. Additionally, the code was reviewed to verify that a process is in place for an owner to petition a review of a shut-off. A draft proposal of the updated code sections is attached.

Lastly, staff has provided a comparison of surrounding communities with respect to late fees, shut-off fees, as well as lien fees, to ensure the Village is covering all applicable costs associated with this subject. The survey finds that the Village rates are within the norm of our surrounding communities and no fee modifications are recommended at this time.

STAFF RECOMMENDATION

Staff recommends the Committee concur with the suggested changes as prepared by the Village Attorney. Should the Committee concur, the item would be presented to the Village Board at their September 9, 2019 board meeting for formal consideration.

ORDINANCE NO. 19-0-__

AN ORDINANCE AMENDING SECTION 6-8-5 ENTITLED "BILLS;" AND SECTION 6-8-8 ENTITLED "NONPAYMENT;" OF CHAPTER 8 ENTITLED "WATER SYSTEM" OF TITLE 6 ENTITLED "HEALTH AND SANITATION" OF THE MUNICIPAL CODE OF ORDINANCES OF THE VILLAGE OF WILLOWBROOK

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Willowbrook, DuPage County, Illinois, that the Village Code of the Village of Willowbrook be amended as follows:

SECTION ONE. Section 6-8-5 entitled "Bills;" of Chapter 8 entitled "Water System;" of Title 6 entitled "Health and Sanitation" as amended is hereby further amended in its entirety to read as follows:

6-8-5: BILLS; LIABILITY FOR SERVICE:

- A. All bills for residential water usage shall be rendered on a quarterly basis. The Director of Municipal Services shall cause the Village to be divided into three (3) districts having approximately the same number of residential water customers in each district. Each month, through the Office of the Director of Municipal Services, quarterly water bills shall be issued for one of the three (3) residential districts so established. All bills for nonresidential water usage shall be rendered on a monthly basis. All bills issued pursuant to this section shall be paid not later than thirty (30) days after the date of billing. If payment of the full amount of the bill is not made within said period, then a penalty of ten percent (10%) of the amount of the bill shall be added thereto. If the payment of the full amount of the bill, including any penalty thereon, is not made within forty-five (45) days after the date of billing, then an additional penalty of twenty-five (\$25.00) dollars shall be added thereto.
- B. The owner of the premises, any occupant thereof, and the user of the water service shall be jointly and severally liable to pay for such service to such premises, and such service is furnished to the premises by the Village only upon the condition that the owner of the premises, occupant and user of such service are jointly and severally liable therefor to the

Village. The owner(s), occupant(s) and user(s) of the system shall be liable to pay for all water delivered to the premises and measured by the meter, including any water consumed due to a leak or faulty equipment on the user's property.

SECTION TWO. Section 6-8-8 entitled "Non-Payment;" of Chapter 8 entitled "Water System;" of Title 6 entitled "Health and Sanitation" as amended is hereby further amended in its entirety to read as follows:

6-8-8: NON PAYMENT; DISCONTINUATION OF SERVICE; HEARING:

- A. Water service may be shut off to any premises for which the water bill, including any penalties thereon, remains unpaid any time after the period of forty-five (45) days after the date of billing. Water service shall not be reinstated until all past due bills, including penalties thereon, are paid in full together with payment of seventy dollars (\$70.00) to cover the costs of reinstating said water service.
- B. Prior to discontinuation of water service, a written notice of water service shut off shall be served, by personal service or first class mail, postage prepaid, upon the person(s) liable for the water bill. The notice shall contain the following information:
 - 1. The date by which payment or other action must be made to avoid discontinuation of water service, which discontinuation shall not be less than ten (10) days after service of the notice of discontinuation; and
 - 2. The name, address and phone number of the Village Administrator or his/her designee, to contact for a hearing on the discontinuation of water service. The person(s) liable for the water bill shall have ten (10) business days from the date the notice of discontinuation was mailed or personally served to request, in writing, a hearing to contest water service discontinuation. The written request for hearing shall state the reasons for contesting the discontinuation of water service. If no request for hearing is made as herein provided, water service may thereafter be discontinued. No service shall be discontinued on a holiday or weekend day. If a hearing is requested, water service shall be continued pending the outcome of the hearing. The hearing shall be convened within seven (7) business days of the

date a request for hearing is received by the Village. The decision of the Village Administrator or his/her designee as to the discontinuation of water service shall be made at the hearing.

SECTION THREE: This Ordinance shall be in full force from and after its passage, approval and publication, in pamphlet form, in the manner provided by law.

PASSED and APPROVED this 26th day of August, 2019.

APPROVED:

Frank A. Trilla, Mayor

ATTEST:

Leroy R. Hansen,
Village Clerk

ROLL CALL VOTE: AYES: _____

NAYS: _____

ABSTENTIONS: _____

ABSENT: _____

Current:

6-8-5: BILLS:

All bills for residential water usage shall be rendered on a quarterly basis. The Director of Municipal Services shall cause the Village to be divided into three (3) districts having approximately the same number of residential water customers in each district. Each month, through the Office of the Director of Municipal Services, quarterly water bills shall be issued for one of the three (3) residential districts so established. All bills for nonresidential water usage shall be rendered on a monthly basis. All bills issued pursuant to this section shall be paid not later than thirty (30) days after the date of billing. If payment of the full amount of the bill is not made within said period, then a penalty of ten percent (10%) of the amount of the bill shall be added thereto. If the payment of the full amount of the bill, including any penalty thereon, is not made within forty-five (45) days after the date of billing, then an additional penalty of twenty-five dollars (\$25.00) shall be added thereto. (Ord. 03-O-20, 7-28-2003; amd. Ord. 05-O-32, 11-14-2005)

6-8-6: DISCONNECTION AND FINAL BILLING:

After proper notification to the Village, the Village will make a final reading of a customer's meter, shut off the water supply, if applicable, and submit a final bill to the customer.

All bills issued pursuant to this section shall be paid not later than thirty (30) days after the date of billing. If payment of the full amount of the bill is not made within said period, then a penalty of ten percent (10%) of the amount of the bill shall be added thereto and a delinquent notice shall be sent to the customer. If the payment of the full amount of the bill, including any penalty thereon, is not made within forty five (45) days after the date of billing, a notice shall be sent to the customer indicating that unless the full amount of the bill, including any penalty thereon, is paid within fifteen (15) days from the date of said notice, the delinquent account may be turned over to a collection agency. (Ord. 87-O-7, 2-23-1987)

The Director of Municipal Services is authorized to place delinquent water billing accounts with a collection agency approved by the President and Board of Trustees. (Ord. 87-O-7, 2-23-1987; amd. Ord. 05-O-32, 11-14-2005)

6-8-6.1: NEW USERS; INITIAL BILL, EXISTING ACCOUNTS; FINAL BILL, PRORATION; WAIVER OF CERTAIN BILLS:

- (A) The initial bill for new users of the water system of the Village, whether for residential usage or nonresidential usage, shall be based upon the rates set forth in section 6-8-3 of this chapter. Notwithstanding any provision contained hereinabove to the contrary, if such initial bill shall be for the minimum charge as set forth in section 6-8-3 of this chapter, such initial bill shall be prorated based upon the number of days of service provided.

- (B) The final bill for existing users of the water system of the Village, whether for residential usage or nonresidential usage, shall be based upon the rates set forth in section 6-8-3 of this chapter. Notwithstanding any provision contained hereinabove to the contrary, if such final bill shall be for the minimum charge as set forth in section 6-8-3 of this chapter, such final bill shall be prorated based upon the number of days of service provided.

(C) Any final bill of less than three dollars fifty cents (\$3.50) shall be waived. (Ord. 89-O-13, 3-27-1989)

6-8-8: NONPAYMENT:

Water service may be shut off to any premises for which the water bill, including any penalties thereon, remains unpaid any time after the period of forty-five (45) days after the date of billing and the giving of any required notice and/or hearing as may be required by law. Water service shall not be reinstated until all past due bills, including penalties thereon, are paid in full together with payment of seventy dollars (\$70.00) to cover the costs of reinstating said water service. (Ord. 03-O-20, 7-28-2003)

6-8-11: LIEN:

Charges for water shall be a lien upon the premises as provided by statute. Whenever a bill for water service remains unpaid sixty (60) days after it has been rendered, the Clerk may file with the Recorder of DuPage County, a statement of lien claim. This statement shall contain the legal description of the premises served, the amount of the unpaid bill, and a notice that the Village claims a lien for this amount as well as for all charges for water served subsequent to the period covered by the bill.

If the consumer of water whose bill is unpaid is not the owner of the premises, the Clerk has notice of this, then notice shall be mailed to the owner of the premises, if his address is known to the Clerk, whenever such bills remain unpaid for a period of sixty (60) days after it has been rendered.

The failure of the Clerk to record such lien claim or to mail such notice, or the failure of the owner to receive such notice, shall not affect the right to foreclose the lien for unpaid water bills as mentioned in the following section. (Ord. 68-O-10, 7-25-1968)

VILLAGE	BILLING FREQUENCY	LATE FEE / PAST DUE	SHUTOFF LETTER	SHUTOFF/TURN ON FEE	LIEN
BURR RIDGE	bi-monthly	10%	No	Mon-Fri 8-2pm \$75 Mon-Fri 2pm-8pm \$115 Weekends/Holidays \$115	
CLARENDON HILLS	bi-monthly	10%	\$75 red tag posting fee	included in red tag fee	No charges if they lien. Just pay bill in full to turn on.
DARIEN		*ALL BILLING THROUGH DUPAGE COUNTY			
DUPAGE COUNTY	bi-monthly	8%	No	\$100	No charges if they lien. Just pay bill in full to turn on.
HINSDALE	bi-monthly	n/a	No	\$50 7:30-3:30 Mon-Fri \$100 after hours/weekends	No charges if they lien. Just pay bill in full to turn on.
WESTERN SPRINGS	bi-monthly	10%	No	\$25	Lien filed after 40 days past due
WESTMONT	bi-monthly	10%	No	\$70	Lien filed 45 days past due No charges if they lien. Just pay bill in full to turn on.
WILLOWBROOK	quarterly	10%	\$25	\$70	Lien can be filed 60 days after non-payment

**LAW AND ORDINANCES COMMITTEE MEETING
AGENDA ITEM SUMMARY SHEET**

AGENDA ITEM DESCRIPTION

AN ORDINANCE AMENDING TITLE 4 ENTITLED “MUNICIPAL SERVICES”, CHAPTER 2 ENTITLED “BUILDING CODE”, SECTION 32 ENTITLED “SWIMMING POOL REGULATIONS ADOPTED”, OF THE VILLAGE CODE OF ORDINANCES OF THE VILLAGE OF WILLOWBROOK

COMMITTEE REVIEW

- ☐ Finance/Administration
- ☐ Municipal Services
- ☐ Public Safety
- ☒ Law & Ordinances

Meeting Date:

September 3, 2019

- | | |
|---|---|
| <input type="checkbox"/> Discussion Only | <input checked="" type="checkbox"/> Approval of Staff Recommendation (for consideration by Village Board at a later date) |
| <input type="checkbox"/> Seeking Feedback | <input type="checkbox"/> Approval of Staff Recommendation (for <u>immediate</u> consideration by Village Board) |
| <input type="checkbox"/> Regular Report | <input type="checkbox"/> Report/documents requested by Committee |

ITEM HISTORY (PREVIOUS VILLAGE BOARD REVIEWS, ACTIONS RELATED TO THIS ITEM, OTHER HISTORY)

In late June of this year, the Village of Willowbrook Building & Zoning Division / Building Department completed a comprehensive update to Title 4, Chapter 2 of our Village Code. Title 4, Chapter 2 encompasses primarily Building & Property Maintenance Codes, as well as rules & regulations for the Building Department and establish overall construction regulations within the village. However, it was recently discovered that certain provisions of the 2018 International Swimming Pool and Spa Code (ISPSC) drastically changed the barrier requirements, to the point where we believe public life safety is compromised. There are also several sections that needed to be corrected from the initial adoption process, mainly concerning Permit Expirations, Extensions and Penalties.

ITEM COMMENTARY (BACKGROUND, DISCUSSION, RECOMMENDATIONS, ETC.)

In past cycles of the ‘pool’ code, a surrounding protective barrier was required for any pool with walls less than four feet (4’) above grade (a common barrier is typically a fence, or wall of a structure/residence/building, or a combination thereof). As ‘In-Ground’ pools have no walls above grade, they have *always* been required to have a barrier to surround them to protect from accidental fall ins. The new 2018 ISPSC code now allows for a certain type of ‘mechanical cover’ to be used as an alternate to a barrier. Staff considers this code change a step back from the safe barriers required in years past. Staff will alter the code wording to remove ‘swimming pools’ from the wording, subsequently reinstating the pool barrier/fence requirement. Staff also reworded several sections to be more consistent with other the other adopted codes, i.e. IBC (Building Code) and the IRC (Residential Code).

ACTION PROPOSED: Adopt Ordinance.

4-2-32: SWIMMING POOL REGULATIONS ADOPTED:

(A) Code Adopted: Swimming pool installations shall comply with the provisions of the 2018 International Swimming Pool and Spa Code, Second Printing, as prepared and published by the International Code Council, Inc., together with the additions, insertions, deletions and changes hereinafter set forth, one (1) copy of which has been for a period of more than thirty (30) days prior to the effective date hereof and now is on file in the office of the Village Clerk.

(B) Amendments to Code: The following additions, insertions, deletions and changes are hereby made to the 2018 International Swimming Pool and Spa Code, Second Printing:

1. Section 101.1 Title. Delete in its entirety and in lieu thereof substitute with the following new Section 101.1:

Section 101.1 Title. These regulations shall be known as the International Swimming Pool and Spa Code of the Village of Willowbrook, and shall be cited as such. It is referred to herein as "this code".

2. Section 105.5.3. Expiration. Delete this section in its entirety and in lieu thereof substitute the following new section:

Section 105.5.3 Expiration: Every permit issued by the Building Official under the provisions of this Code shall expire by limitation and become null and void if the work authorized by such permit shall not have been started within six (6) months after the date of issuance of said permit. Where, under authority of a permit, work has begun and has not been processed for a continuous or cumulative period of six (6) months, all rights under such permits shall thereupon terminate and work can be continued only after application for and issuance of a new permit. Where, under authority of a permit, work has not been completed within eighteen (18) months after the issuance of such permit and an occupancy permit issued, all rights under such permit shall thereupon terminate and work can be continued only after application for and issuance of a new permit. The fee for said new permit shall be equivalent to the fee applicable to the original building permit obtained.

3. Section 105.5.4 Extensions. Delete this section in its entirety.
4. Section 105.6.2 Fee schedule. Delete this section in its entirety and in lieu thereof substitute the following new Section 106.6:

Section 105.6.2 Fees. A Permit shall not be Issued until the review process has been completed and Approved and the fees prescribed in Title 4, Section 4-2-11 of the Village Municipal Code have been paid and accepted, nor shall an Amendment to a Permit be released until the additional fee, if any, due to an increase of the installation, has been paid and accepted.

5. Section 107.4 Violation penalties. Delete this section in its entirety and in lieu thereof substitute the following new Section 107.4:

Section 107.4 Violation penalties. Any person who shall violate a provision of this section or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter or repair a building or structure in violation of an approved plan or a directive of the Building Official, or of a permit or certificate issued under the provisions of this section shall be punishable by a fine of not less than seventy five dollars (\$75.00) nor more than seven hundred fifty dollars (\$750.00). Each day that a violation continues shall be deemed a separate offense.

6. Section 107.5 Stop work orders. Delete the last sentence of this section and in lieu thereof substitute the following new sentence:

"... Any person who shall continue any type of work in or about the structure after having been served with a stop work order, except such work as that person is directed by the building official to perform to remove a violation or unsafe conditions, shall be liable to a fine of not less than that prescribed by Title 4, Section 4-2-13(B).

(Ord. 97-O-13, 5-27-1997)

7. Section 108 MEANS OF APPEALS. Delete this section in its entirety and in lieu thereof substitute the following new Section 108:

Section 108 BOARD OF APPEALS.

Section 108.1 Application for appeal: Each owner and occupant who is affected by this section shall have the right to appeal from the decision of the Village made pursuant to this section. All appeals shall be made to the Board of Appeals of the Village of Willowbrook as hereinafter constituted and within ten (10) days after receipt of notice of the decision of the Village.

Section 108.2 Membership of the board. The Board of Appeals shall be the Plan Commission of the Village of Willowbrook. A majority of the members of the Plan Commission then holding office shall constitute a quorum.

Section 108.3 Board actions. All actions of the Board must have the concurrence of a majority of those members then holding office. Action on an appeal brought before the Board may be taken by a written vote of a majority of the members upon each voting member certifying that he has read and considered the transcript of the hearing proceedings held by the Board in his absence.

Section 108.4 Procedure. The rules of procedure during a hearing on an appeal shall be similar to the procedures for zoning appeals as adopted by the Plan Commission. In any event, all evidence that is relevant and material and of probative value shall be admitted. Hearsay evidence alone shall not support any decision of the Board.

Section 108.5 Board recommendation. Recommendation to the corporate authorities from the Board shall be made within such time as may be set by the chairman, but, in any event, not later than thirty (30) days after receipt of the transcript of proceedings.

Section 108.6 Powers of the Board: The Board of Appeals shall have the following powers:

- a. To make fact findings and to review fact findings of the Village, provided that fact findings of the Village shall be presumed to be correct until rebutted by a clear preponderance of the evidence to the contrary.
- b. An application for appeal shall be based on a claim that the intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equivalent method of protection or safety is proposed. The board shall have no authority to waive requirements of this code.

Section 108.7 Board Review: Within thirty (30) days of the receipt of the recommendations of the Board of Appeals, the corporate authorities shall grant or deny the time extension or variation, or refer the matter back to the Board of Appeals for further consideration. If the Board of Appeals favorably recommends the granting of a time extension or variation, that time extension or variation may be granted by resolution by a majority vote of the corporate authorities. If the Board of Appeals does not favorably recommend the granting of a time extension or variation, that time extension or variation may be granted only by favorable vote of two-thirds (2/3) of the corporate authorities. The corporate authorities shall not grant a time extension or variation unless they have made findings of fact based upon evidence adduced by the hearing held by the Board of Appeals.

8. Section 301 General. Amend by adding the following new Section 301.2:

Section 301.2 Location. All outdoor swimming pools and equipment accessory thereto shall be located on any lot in conformance with all applicable zoning regulations contained in Title 9 of this code. (Ord. 97-O-13, 5-27-1997)

9. Section 302.2 Water service and drainage. Amend by adding the following new Sections 302.2.1 and 302.2.2:

Section 302.2.1. Water Supply. No source of water other than that secured from the village waterworks distribution system or from an individual's privately owned well shall be used to fill any swimming pool.

Section 302.2.2. Pool Fill Notice. Village employees will no longer be available to fill swimming pools as they have in the past. Pools can now be easily filled with a typical garden hose without concern for the sanitary sewer charges. Both the Flagg Creek Water Reclamation District and the DuPage Sanitary District have programs to help offset the sanitary sewer charges for water utilized outside the home. You are encouraged to contact your sanitary sewer provider to learn more about their programs. A backflow prevention device is required on all hose bib connections.

10. Section 305.1 General. Delete this section in its entirety and in lieu thereof substitute the following new Section 305.1:

305.1 General. The provisions of this section shall apply to the design of barriers for restricting entry into areas having pools and spas. Where spas or hot tubs are equipped with a lockable safety cover complying with ASTM F1346, the area where the spa or hot tub is located shall not be required to comply with Sections 305.2 through 305.7.

11. Section 305.1 General. Amend by adding the following new Section 305.1.1:

Section 305.1.1: Said barrier shall also conform in all respects with the regulations contained in Title 9 of the Village Code.

12. Section 323 Safety. Amend by adding the following new Section 323.4:

Section 323.4. Safety Precautions. Every swimming pool shall be equipped with one or more throwing ring buoys not more than fifteen inches (15") in diameter and having sixty feet (60') of three-sixteenths inch (3/16") manila line attached, and one or more light but strong poles with blunted ends being not less than twelve feet (12') in length, for making reach assists or rescues. (Ord. 97-O-13, 5-27-1997)