

ORDINANCE No. 2021-27

AN ORDINANCE AMENDING TITLE 8, CHAPTER 1 OF THE WEST DUNDEE MUNICIPAL CODE OF ORDINANCES BY ADDING SECTION 8-1-21

(Restoration of Water Tower after Rust, Corrosion, Deterioration, Paint Coating System Delamination or Failure Caused by Third Parties)

WHEREAS, the Village of West Dundee, Kane County, Illinois (the "*Village*") is a duly organized and validly existing home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and,

WHEREAS, to ensure and protect the health, safety, and welfare of its residents, as prescribed in Article 7, Section 6(a) of the 1970 Constitution of the State of Illinois, the Village has adopted certain regulations pertaining to the protection of public ways and property in Title 8 of the Village Code; and

WHEREAS, the Village is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and is amending the Village Code as an exercise of its home rule powers and functions as granted in the Constitution of the State of Illinois.

WHEREAS, it has been brought to the Village's attention that the equipment installed upon a Village water tower has caused rust, corrosion, deterioration, or paint coating system delamination or failure to and upon such tower.

WHEREAS, the President and Board of Trustees of the Village of West Dundee find that it is in the best interests of the Village and its residents to amend the Village Code as hereinafter provided.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of West Dundee, Kane County, Illinois, as follows:

Section 1. The recitals in the preambles to this Ordinance are incorporated into this Section 1 as fully set forth herein.

Section 2. The Village of West Dundee's Municipal Code is hereby amended to add a new Section 8-1-21 to Title 8, Public Ways and Property, which shall read as follows:

8-1-21 RESTORATION OF VILLAGE WATER TOWER AFTER RUST, CORROSION, DETERIORATION, PAINT COATING SYSTEM DELAMINATION OR FAILURE CAUSED BY THIRD PARTIES:

In the event that the installation of an antenna, telecommunications or radio equipment, transmission lines or other equipment which is not owned by the Village (the "Equipment") is attached to a water tower owned by the Village, has caused rust, corrosion, deterioration, paint coating system delamination or failure, to such water tower, the owner of such Equipment (the "Equipment Owner") shall remove its Equipment attached to the Village water tower, at the Equipment Owner's sole cost, upon 30 days' written notice from the Village to the Equipment

Owner to enable the Village to access and inspect the portion of the Village's water tower affected by such rust, corrosion, deterioration, paint coating system delamination or failure, and to determine if any other portion of the Village water tower for which it may not have had access because of the presence of the Equipment has also been adversely affected by rust, corrosion, deterioration, paint coating system delamination or failure, caused by the Equipment. Such written notice by the Village to the Equipment Owner shall specify the date and subsequent interval of time during which the Equipment shall be removed from such water tower owned by the Village and for which the Equipment shall remain removed from the Village water tower but which shall not exceed a 120 day interval. Time shall be of the essence relative to such requested removal of the Equipment. Beginning on the date and during the subsequent interval during which the Equipment has been removed from the water tower owned by the Village, the Village may cause any rust, corrosion, deterioration, paint coating system delamination or failure in or upon the water tower owned by the Village to be repaired, restored, resurfaced or painted.

In the event that the Equipment Owner undertakes to remove its Equipment on the Village water tower prior to the date designated by the Village in the written notice to the Equipment Owner to remove the Equipment from the Village water tower, any such action by the Equipment Owner shall not relieve the Equipment Owner of the obligation to remove its Equipment from the water tower owned by the Village on the designated date and during the interval of time set forth in the notice sent from the Village to the Equipment Owner requesting such removal of the Equipment from the Village water tower. If the Equipment Owner does not remove the Equipment after being notified to do so, on or after the date designated by the Village, the Village may remove the Equipment from the water tower owned by the Village and the Village shall be reimbursed by the Equipment Owner for the cost incurred in removing the Equipment.

The Equipment may be re-installed to the Village water tower by the Equipment Owner at the Equipment Owner's sole cost no later than 120 days after the date designated for its removal and after the Village has had an opportunity to inspect the Village water tower for any corrosion, rust, deterioration, paint coating system delamination or failure, as the case may be, and to enable the Village water tower to be maintained, repaired, repainted, treated or resurfaced or painted. The Equipment Owner shall prepare and submit plans to the Village identifying alternative equipment installation methods so as to mitigate any further damage to the water tower owned by the Village in the future. The Equipment Owner shall reimburse the Village for the cost of repairing, restoring, resurfacing and any painting of such portion of the Village water tower for which its Equipment has caused rust, corrosion, deterioration, paint coating system delamination or failure.

Notwithstanding any other Village ordinance which may be to the contrary or provide otherwise, each day for which the Equipment is not removed after the Village has sent notice to the Equipment Owner to remove its Equipment from the Village's water tower, commencing upon the date designated by the Village for the removal of the Equipment, shall constitute a separate violation punishable by a fine of \$1,000 per day for each day that the Equipment is not removed from the Village water tower plus the Village's reasonable attorney's fees and costs incurred by the Village in prosecuting any such action. In the event there is any inconsistency between this provision and any provision of the Village Ordinance, the provision in this section shall control, govern and prevail.

Notwithstanding any other Village ordinance which may be to the contrary or provide otherwise, each day for which the Equipment is re-attached or reinstalled after the Village has sent notice to the Equipment Owner to remove its Equipment from the Village's water tower, commencing upon the date designated by the Village for the removal of the Equipment, and for the subsequent interval of time for which the Village has requested that the Equipment remain removed from the water tower owned by the Village, shall constitute a separate violation punishable by a fine of \$1,000 per day for each day for which the Equipment is re-attached or re-installed upon the water tower owned by the Village, beginning with the date designated by the Village for the Equipment's removal, and during the subsequent interval of time during which such Equipment is to remain removed from the water tower owned by the Village.

Section 3. If any section, paragraph, subdivision, clause, sentence or provision of this ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. This Ordinance shall be in full force and effect ten days its passage and approval as provided bylaw.


Passed this 13th day of September, 2021, pursuant to a roll call vote as follows:

AYES: Trustees Wilbrandt, Haley, Alopogianis and Anderley
NAYS: None
ABSTAIN: None
ABSENT: Trustees Price and Yuscka



Christopher Nelson
Village President

ATTEST:



Kim Tibbetts
Deputy Village Clerk