

Chapter 28

UTILITIES*

* **Cross References:** Administration, ch. 2; buildings and building regulations, ch. 6; businesses, ch. 8; environment, ch. 12; solid waste management, ch. 20; streets, sidewalks and other public places, ch. 22; subdivisions and other divisions of land, ch. 24.

State Law References: Public utilities, MCL 460.54 et seq.

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ARTICLE I.
IN GENERAL

Sec. 28-1. Dwelling occupancy; service by public water and sewer required.

No person shall occupy for residential or commercial purposes any dwelling or structure within the village unless such building or structure is served by public water and sewer.
(Comp. Ords. 1987, § 25.301)

Sec. 28-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Served by public water and sewer means that running water and sewer are at all times available to the inhabitants or occupants of the structure, and have not been terminated or disconnected for any reason.

(Comp. Ords. 1987, § 25.302)

Cross References: Definitions generally, § 1-2.

Sec. 28-3. Penalty for violation of chapter.

A person violating the provisions of this chapter, may, upon conviction, be punished in accordance with section 1-12.

(Comp. Ords. 1987, § 25.303)

Secs. 28-4--28-35. Reserved.

ARTICLE II.
WATER

Sec. 28-36. Purpose and policy of article.

(a) This article shall provide for the public health by operation of the village's water supply system under the provisions of Public Act No. 94 of 1933 (MCL 141.101 et seq., MSA 5.2731 et seq.), and to prescribe the charge rates for the use of such facilities, and to provide for other matters pertaining to such system.

(b) The purpose of this article is to establish standards, rules and regulations concerning the use of the village's water system; to provide for the rates and charges for the connection to and use of the system; and to repeal all existing village ordinances pertaining to the same expressed purposes.
(Ord. No. 97-1, § 1, 5-5-1997)

Sec. 28-37. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

AWWA means American Water Works Association.

Commercial user means any user of the system other than a residential user or buildings used primarily as a domicile.

Commodity charge means a variable unit charge payable by a user based on the actual water consumption as determined in this article.

Connection charge means a charge for the privilege of receiving water service from the water distribution system.

Consumer means the person, or legal entity, served by or using water supplied by the village.

Consumer's installation means all pipes, valves, stops, plumbing and contrivances of every kind and nature used in connection with, or forming a part of, the consumer's installation for using water for any purpose, connected directly or indirectly with the corporation stop at the main.

Corporation stop means a valve which is inserted into the main for the connection of the water supply service pipes in sizes up to and including two inches in diameter.

Cross connection means a connection or arrangement of piping or appurtenances through which water of questionable quality, wastes or other contaminants could possibly flow back into the water distribution system because of a reversal of flow.

Curb box means a box or metal housing which encloses, protects and provides access to the curbstop.

Curbstop means a valve for insertion in the service pipes, in the size of three-fourths of an inch to two inches in diameter, inclusive, at or near the curblin.

Department means the department of public works of the village.

Inspector means the village plumbing inspector or designee.

Lot means a parcel of land occupied or intended to be occupied by a main building. A lot may or may not be specifically designated as such on public records.

Meter box means any approved box or vault for the housing of a water meter.

Permittee means a consumer or its agent receiving a permit from the village allowing a connection to be made to the water system.

Premises means each lot or parcel of land or building having any connection to the water system.

Readiness to serve means a charge for the anticipated water supply demand based on meter size.

Revenues and *net revenues* means as defined in Public Act No. 94 of 1933 (MCL 141.101 et seq., MSA 5.2731 et seq.).

Service cock means a valve for installation in water service pipes, located at or near the main.

Service control valve box means a box or metal housing which encloses, protects and provides access to the service control valve.

Stop and waste valve means a valve installed at the termination of the water supply service pipe of three-fourths-inch and one-inch sizes, and at the beginning of the consumer's installation.

Superintendent means the superintendent of the department of public works or an authorized representative. The superintendent is the person designated by the village to supervise

the operation of the village's water system.

System means the water system.

Tap means the drilling and threading of an opening in a main for insertion of a corporation stop.

Water connection means that part of the water distribution system connecting the water main to a point terminating at a meter or meter pit or vault.

Water distribution system means the entire system for distribution of potable water in the village.

Water service pipe means that pipe connecting the water main with the premises served. This includes the connection to the water main or the corporation cock, the shutoff valve and the valve on the inlet side of the meter.

Water main means that part of the water distribution system located within easement lines or streets and designed to supply more than one water connection.

Water system means the complete facilities of the village's water supply system including all wells, wellhouses, pumps, water storage facilities and transmission lines, including all appurtenances thereto and including all extensions and improvements thereto, which may hereafter be acquired. It shall also consist of all plants, works, instrumentalities, lines and properties, now or hereafter existing, used or useful in obtaining a water supply, its treatment, distribution and all other necessary functions, whether such installation is owned outright or used under lease, or otherwise, by the consumer. The system may comprise separate facilities located in separate water supply districts.

(Ord. No. 97-1, § 2, 5-5-1997)

Cross References: Definitions generally, § 1-2.

Sec. 28-38. Penalty for violation of article.

All violations of this article shall be civil infractions and, upon conviction, shall be punishable in accordance with section 1-12.

(Ord. No. 97-1, § 16, 5-5-1997)

Sec. 28-39. Provisions deemed incorporated in all contracts.

(a) *Contract for service.* All provisions and sections of this article about the village water system and sale and use of water and/or amendments or additions which may be subsequently adopted shall be considered a part of the contract with every person that is supplied with water through the water system of the village, and every person by taking water shall be considered to express their consent to be bound thereby, and whenever any provision or section of this article about the water system is violated, the water may be cut off from the building or place of violation at the discretion of the village council and shall not be turned on again except on correction of the violation and payment of the expenses of shutting off and turning on.

(b) *Save harmless clause.* The consumer shall indemnify, save harmless and defend the village against all claims, demands, costs or expenses for loss, damage or injury to persons or property in any manner, directly or indirectly, growing out of the transmission and use of water by the consumer from water service pipes installed by the consumer on the consumer's premises. (Ord. No. 97-1, § 2, 5-5-1997)

Sec. 28-40. Administration; management.

(a) *Supervision and control.* The operation and management of the water system shall be under the immediate supervision and control of the village council.

(b) *Rights.* The village has the exclusive right to establish, maintain and collect rates and charges for water supply service from the water system. The village council may make such rules, orders or regulations as it deems advisable and necessary to ensure the efficient management and operation of the system. The village may employ such persons in the capacities it deems advisable to carry out the efficient management and operation of the water system.

(c) *Operating year.* The system operation shall be based on an operating fiscal year commencing on July 1 and ending on June 30 the next year following.

(d) *Compliance with state and federal standards and regulations.* Standards and regulations established in this article, or pursuant hereto, are deemed to be the minimum standards consistent with the preservation of the public health, safety and welfare, and are necessary to fulfill the obligations of the village concerning state and federal law and the rules and regulations adopted pursuant thereto.

(e) *Additional regulations.* The village council may by resolution make additional rules and regulations concerning the water distribution system, connections thereto, meter

installations and maintenance, hydrants and water mains and appurtenances thereto, which are not inconsistent herewith.

(f) *Restricting water use.* The village council may regulate, limit or prohibit the use by a consumer of village-supplied water for any purpose. Such regulations may limit use of water by a consumer to the extent deemed necessary to ensure an adequate supply for essential needs and for firefighting.

(Ord. No. 97-1, § 3, 5-5-1997)

Sec. 28-41. Village liability exemption.

(a) The village shall not be responsible for interruptions of service because of natural calamities, equipment failures or actions of the system users. It shall be the responsibility of the consumer that all connected equipment remain in good working order. No claim or cause of action may be asserted against the village by reason of the breaking away of any pipe, service cock or for any other interruption of the water supply.

(b) The village shall not be liable for any expense incurred by a permittee in locating mains, services, curbstops and water records.

(Ord. No. 97-1, § 4, 5-5-1997)

Sec. 28-42. Access.

(a) *Inspection.* The superintendent and other duly authorized representatives of the village bearing proper credentials and identification shall be permitted to enter upon all properties served by the water system at reasonable times for the purpose of inspection, observation, measurement, sampling and testing to determine compliance with the provisions of this article. Any person who requests water supply and/or receives water from the water system under this article shall be deemed to have consented to inspections pursuant to this section, including entrance upon such person's property at reasonable times to make inspections.

(b) *Meter reader access.* Any duly authorized agent or employee of the village shall have access to the consumer's premises at all reasonable hours for the purpose of reading meters, inspections, doing repairs or installing or removing any or all village-owned apparatus used for providing service to the consumer.

(Ord. No. 97-1, § 5, 5-5-1997)

Sec. 28-43. Use.

(a) *Consumer's use of the water system.* Any person owning property within a water supply district established by the village and conforming to the standards, rules and regulations established in or under the terms of this article shall be permitted to receive water from the water system provided necessary water supply lines are in existence and abut the consumer's property.

- (1) *Required connection.* Each residential, commercial or industrial premises and/or each new structure built, other than sheds, residential garages, and/or additions to existing structures, abutting the system or contained within a village water district within the village, shall be required to connect to the system within 60 days of delivery of notice to do so.
- (2) *Turning on water service.* No person other than an authorized employee of the village shall turn water service on or off at the curbstop.
- (3) *Turning off water service.* The village reserves the right to terminate service to a consumer after due notice has been given where payment for water supply has not been timely received, and/or for violation of this article or any rules and regulations adopted pursuant thereto. The village may shut off the water in any main to make repairs or extensions, or for any other necessary purpose at any time without notice to consumers. The consumer shall maintain all service pipes free from leaks at all times. Whenever a leak which allows water to escape without registering upon the meter appears in a consumer's installation, the village shall give the consumer written notice. The consumer shall immediately proceed to repair such service pipe. If such repairs have not been completed within 48 hours after notice has been given, the village may stop the service by shutting off the water at the curbstop or by excavating to such curbstop and closing, or by the corporation stop. The costs incurred by the village for excavating and shutting off such service shall be paid by the consumer or by the owner of the property before service is restored. If, in the determination of the village, any leak on the consumer's installation is of such nature that endangers public safety or constitutes a nuisance or a source of waste, the village may shut off or stop such service until such leak is repaired.
- (4) *Change of consumer.* When premises are to be vacated or there is a change of owner, occupant or agent, prompt written notice shall be given to the village clerk's office. The consumer may discontinue service by giving not less than 24 hours' written notice to the village clerk's office during its regular office hours.

- (5) *Outside service connections.* Water main extensions and domestic water connections to premises outside water districts are prohibited except where approved by the village council.
- (6) *Water extensions.* The total expense of extending water mains shall be borne by the benefited property owners in accordance with provisions of a contract or by special assessments levied by the village in accordance with state law.
 - (b) *Connection permits required; applications; deposits; contents.*
 - (1) *Application.* Any person desiring to connect to the water system shall file a written application to the village clerk and pay the water connection fee established by resolution of the village council.
 - (2) *Application contents; approval; issuance.* No person in the village shall connect to the water system unless the proposed connection has been approved by the village or its designated representative. Such application shall be made on forms provided by the village and shall contain the street name, house number, lot number, the name of the plumber or contractor, the names of the applicant and the owner, the size of the service pipe required by the consumer, and any other pertinent information which may be required by the village. An application must be made and approval obtained from the village at least 24 hours before the time a tap is to be made. Connection permits will be issued to building contractors if the prospective lessee or owner consents in writing to the obtaining of such permit by the contractor.
 - (3) *Installation of connections and meters; costs.* Water connections and village-approved water meters shall be installed in accordance with the applicable building code and the regulations of this article and upon the payment of the required charges and fees. The consumers shall install the water meter at their own expense. The expense of water pipe installation shall be paid by the consumer.
 - (c) *Use of connection; limitations.* Unless written approval is granted by the village, separate premises shall have separate curbstops and service pipe installations and shall be separately metered. Whenever water is to be supplied to more than one consumer located in a single building and supplied through one service, the property owner shall be responsible for the payment of water bills. In no event shall a consumer extend service pipes or plumbing across any

public way, or to an adjacent property, in order to furnish service thereto, even though such adjacent property is owned by the consumer.

(d) *Existing private wells.* Construction of private wells in established water service districts is prohibited. Private water wells that are located within a water supply district and are in operation before the establishment of the water supply district shall be abandoned by the property owner in accordance with procedures established by the county health department before connection to the village water system.

(Ord. No. 97-1, § 6, 5-5-1997)

Sec. 28-44. Prohibited acts.

No person in the village shall:

- (1) Willfully, negligently or maliciously break, damage, destroy, uncover, deface or tamper with or alter any structure, property, appurtenance, equipment or any other item which is part of the water system.
- (2) Remove any water meter, water pipe, other equipment or tools.
- (3) Prevent or circumvent a water meter from measuring water supplied by the water system.
- (4) Fraudulently obtain water from the water system, or wastewater from the water system.

(Ord. No. 97-1, § 7, 5-5-1997)

Sec. 28-45. Establishment of rates.

(a) *Purpose of charges; village resolution; publication.* Charges for the installation and use of the water system are hereby established to recover the costs of administration, construction, reconstruction and maintenance of the system as are necessary to preserve the system in good working order; operation and replacement of the system; and provision for the payment of any debt service obligations of the village as such payment becomes due. Such charges shall be made in accordance with the provisions set forth in this section and shall be made against all premises which use the water system. The rates for water service charges are to be established by resolutions of the village council and may be established separately from time to time as necessary to ensure sufficiency of revenues in meeting the expenses of the water system. Rates need not be uniform for any separate water supply districts. Following approval by

the village council of the rates to be charged for the water service under this article, the rate schedule shall be published. The notice is to be published in a newspaper of general circulation in the village within 30 days following approval by the village council.

(b) *Types of water service rates.*

- (1) *Commodity charge.* All the water use of residential, commercial, industrial and other consumers connected to the system shall be measured by meter, and the consumers shall be charged a commodity charge for water usage.
- (2) *Readiness-to-serve charge.* Consumers of the water system shall be charged a readiness-to-serve charge. All consumers of the water system, whether residential or nonresidential, shall be charged a flat rate based on anticipated water supply demand.
- (3) *Connection charge.* The village shall charge, and the consumer shall pay as a precondition to connecting to the water mains of the system, a connection charge. The connection charge shall include the cost of a meter acquired by the village. Such charge shall be paid at the time that an application for permission to connect to the water mains of the system is requested.
- (4) *Special service charges.* The village may charge its customers and the customers shall pay for special services for which a rate shall be established.
- (5) *The cost of turn-on/turnoff charges.* The village may establish a charge to the customer, and the customer shall pay the charge whenever the village is requested to turn water services on or off; provided, however, that whenever the village is requested to provide turn on or off service at times other than the regular business hours of the village, the charge will be made on a time and material basis. The established fee to turn water on shall be charged to a customer whose service has been disconnected because of nonpayment of a charge or fee due the village.

(Ord. No. 97-1, § 8, 5-5-1997)

Sec. 28-46. Payment for use of the system.

(a) *Responsibility for payment.* The owner of the premises served by the water system shall be liable to the village for any charges and fees authorized to be charged by this article. When a single water service pipe serves two or more consumer units, the owner of the premises shall be responsible for payment of water used on the premises. No free service shall be

furnished by the water supply system to the village or to any person, firm or corporation, public or private, or to any public agent, agency or instrumentality.

- (b) *Billing, collections and customer's payments.*
 - (1) *Meter reading.* Meters shall be read quarterly and annually as deemed necessary.
 - (2) *Bills.* The village shall render bills for water service and all other charges in connection therewith quarterly. Bills for water service shall be sent to consumers by first class mail, quarterly. Quarterly water bills for users of the system shall be based on metered water consumption as set forth in the rate resolution.
 - (3) *Due date of charges.* All bills shall be payable by the due date specified on the bills and shall be paid at the office of the village in person or by mail.
 - (4) *Collections.* The village treasurer shall collect all moneys due for water service and all other charges in connection with the water system.
 - (5) *Late charges.* If any charge for the services of the water which has been billed to a customer of the water system shall not be paid on or before the due date specified on the bill, a delayed payment charge of ten percent of the amount of the bill shall be added thereto and collected therewith.
 - (6) *Unpaid bills.* If any bills for the service of the water system shall remain unpaid after 30 days following the due date specified on the bill therefor, the water supply for the lot, parcel of land or premises affected may be cut off and, if cut off, shall not be turned on again except on payment in full of the delinquent charges therefor, and the fee charged for resumption of service. The village shall send a notice to its customers of intent to terminate service. If payment is not received, or satisfactory arrangements have not been made within ten days after the shutoff notice is sent to the consumer, the water service shall be shut off. No water service that has been discontinued because of nonpayment shall be restored until all past due bills are paid or satisfactory arrangements for such payment are made.
 - (7) *Nonreceipt of bill.* Failure of the consumer to receive any bill shall not relieve him of the liability for the charges incurred, and the consumer shall notify the village clerk if a bill has not been received by the 15th day of the end of a billing period.

- (8) *Charges to become a lien upon premises.* The village shall have as security for the collection of water supply rates, assessments or charges due or to become due for the use and installation, repair or maintenance to any house, building or premises, a lien upon the building or premises or lots upon which the water system service was supplied. This lien shall become effective immediately upon providing the water system service to the premises or property supplied.
- a. The lien created by this section shall have a priority over all other liens except taxes or special assessments. The lien created by this section shall not apply if a written lease has been legally executed containing a provision that the lessor shall not be liable for payment of water use charges, providing the lease was executed prior to the supply of water for which the charges are made and providing that the lessor has filed an affidavit with the village clerk verifying the execution of a lease containing such a provision. The affidavit shall contain a notation of the expiration date of the lease. The lessor shall give the village 30 days advance written notice of any cancellation, change or termination of the lease.
- b. Charges for water services which are under the provisions of Public Act No. 94 of 1933 (MCL 144.101 et seq., MSA 5.2731 et seq.) shall be made a lien on all premises served thereby. The charges for water furnished to any premises are hereby recognized to constitute such lien, and whenever any such charge against any piece of property or premises shall be delinquent for six months, or more, that fact shall be certified on March 1 of each year to the tax assessing officer of the village. Whereupon, such charge shall be by the assessing officer entered upon the next tax roll as a charge against such piece of property or premises, and the charges shall be collected and the lien thereof enforced in the same manner as general village taxes against such premises.

(Ord. No. 97-1, § 9, 5-5-1997)

Sec. 28-47. Meters.

(a) *Required; use.* All village water used on any premises must pass through a water meter. Any bypass between the meter and the main is prohibited. All premises using village water shall be metered and shall pay for water at the rates specified. Water meters shall be obtained from the village. All water meters existing and installed before May 5, 1997, shall be maintained at the expense of the property owner and/or tenant. Each water meter shall be served

by its own water connection and water service pipe unless another system incorporating exterior valves to control water flow to each meter is approved by the village.

(b) *Type; size determination.* Unless otherwise authorized by the county, all meters shall be of the disc type. All meters shall be under the control of the village and shall be equipped with an instrument capable of being remotely connected and read away from the meter itself. Such instrument shall be installed on the exterior of the building as directed by the village. All new inside meters will require remote registers. When requesting connection to the water system, the consumer shall furnish information about the amount of contemplated water supply demand, and the village shall determine the size and type of meter to be installed.

- (1) For usual single-family domestic use and consumption of water, a three-quarters-inch meter shall be installed by the consumer.
- (2) For multiple dwellings the meter size shall be one inch for two to four dwellings, and 1 1/2 inches for five to ten dwellings.
- (3) Except as stated in subsection (b)(1), of this section where an application is made for a meter larger than three-quarters of an inch, the village shall determine whether a meter of such size is required or authorized.
- (4) The use of meters larger than 1 1/2 inches will be permitted only upon specific written approval by the village after due consideration of pertinent factors such as the probable effect of their demand on the installed capacity of water mains and water supply and the means of sewage disposal.

(c) *Installation; location; regulations.* Meters shall be installed in a readily accessible location and in a manner satisfactory to the village. A meter shall not be installed in a place where it cannot be readily reached by the meter reader. All meters shall be installed horizontally in dry, clean, sanitary locations and in such places that small leaks and the spilling of water will do no damage. All meters shall be in a suitable location to prevent the pipes and meters from freezing in cold weather. If a suitable and readily accessible location is provided in a dry basement sufficiently well heated to prevent freezing of the meter during the winter, the meter may be placed in the basement. Where the premises contains no basements or cellar, the meter shall be installed in a location approved by the superintendent. Where it is necessary to install the meter in a pit inside a building, such pit shall be built as directed by the village. With superintendent approval and when a sump pump or drain is provided, meters may be installed below grade line in a brick or first floor meter pit. All meter pits shall be of brick or concrete, built in accordance with specifications furnished by the village, with cover openings directly

over meters.

(d) *Failure to register; estimate of amount of water usage.* If any meter or metering system fails to register properly or if a meter is inaccessible for reading, the department shall estimate consumption based on former consumption. Should a meter become defective or fail to register correctly, the quantity of water used shall be determined by the amount used during the corresponding period of the preceding year, or at the option of the village, by averaging the amount for the period immediately preceding and subsequent to the period wherein the meter registered quantities of water usage.

(e) *Tests and inspections.* The accuracy of the meter on any premises will be tested by the village upon written request of the owner and/or user, who shall pay in advance a fee to cover the cost of the test. If, on such test, the meter shall be found to register over three percent more water than passes through it, another meter will be substituted therefor. The fee will be refunded, and the water bill will be adjusted for the preceding and current billing periods.

(f) *Repairs.* The expense of maintaining meters will be borne by the village.

(g) *Seals; tampering.* Meters shall be sealed by the village, and no person, except an authorized employee of the village, shall break such seals. No unauthorized person shall change the location of, alter or interfere in any way with any meter.

(Ord. No. 97-1, § 10, 5-5-1997)

Sec. 28-48. Connections.

(a) *Required conditions.* Water connections shall not be made unless the water main extends across the total frontage of a lot to be served, or across the total frontage of the lot facing one street in the case of a corner lot.

(b) *Tapping mains: applications; requisites.* All taps shall be made after proper application for service by consumers or their authorized agents. All connections to the water system shall be made by a state licensed contractor with the proper tools and equipment for performing connections to the water system's mains. All taps and connections to the water main shall be installed at the main. Before an owner, user or contractor installs a water service pipe, they shall obtain from the village the location for the making or connection of the water service. The terminus of the water service pipe shall be located such that the water service pipe is installed to the water main in a straight line perpendicular to the main, and there are no obstructions such as driveways, manholes, trees, fire hydrants or any other obstacles. Single corporation stops or pipe saddles will be used to supply services or private mains. Connection of

services up to 1 1/4 inches to the village main shall be through a corporation stop with branch connections making an angle of 45 degrees to the water main service proper. On 1 1/2-inch and two-inch services, a saddle will be required. On approved three-inch services, a four-inch connection at the main and a four-inch valve shall be required. Approved services four inches and over shall have the same size connection as the service. No permittee shall turn water off or on at the corporation or stop cock to any service pipe, except to make repairs and test work, after which they shall leave it off or on as finding it. No unauthorized person shall turn the water off or on at the corporation or stop cock. Pipe from the main to the curbstop shall be of minimum grade type K soft temper copper not less than three quarters of an inch in diameter. All holes or trenches in the public streets or roads shall be backfilled to a minimum of 95 percent density by thoroughly tamping dry sand in layers not to exceed six inches. All excavated material shall be entirely removed from the street. Excavated material that is wet, or otherwise unfit for backfill, shall be removed and the backfilling done with suitable dry sand hauled in for that purpose. Tunneling under streets will be prohibited except by special permission of the superintendent. Open cuts shall be allowed in graveled streets with prior superintendent approval. Connections under hard-surfaced paving shall be made only by boring or jetting with prior approval of the superintendent.

(c) *Service control valves and curb boxes.* The customer will provide and install a shutoff valve in the form of a service cock and curb box one foot outside the outer sidewalk line, or as near the road right-of-way line as may be convenient. An approved type round way, inverted core, Minneapolis-pattern, tee head curbstop of good bronze material shall be installed on all three-fourths-inch, one-inch, 1 1/2-inch, and two-inch service lines at a point as near the road right-of-way line as practical and permissible. Valves of nonrising stem gate valves or plug-type valves may be used for the larger size connections. They shall be of approved standard manufacture and housed in approved type service or roadway valve boxes. A cast iron extension curb box of an approved pattern shall be centered over the curbstop so that it is readily accessible for turning on and off by village representatives. Curbstop boxes shall be Buffalo-type, with 2 1/2-inch shaft, 4 1/2 feet to six feet long, in two sections with a lid. The top of the stop box shall be so placed that it never is below the grade nor over three inches above grade and must be set on a brick or concrete foundation to prevent settlement. No person is permitted to turn water on or off at the curbstop except for testing their work, in which event the person shall leave the curbstop in the same condition and position as it was found.

(d) *Water service pipe; installation; requirements.* Water service connections shall be installed in accordance with state and local building regulations. The connection of the type K copper service pipe to the corporation stop shall be made by using an approved adapter fitting. Water connections and water service pipes shall be installed in a separate trench from the sewer service. The water service pipe may not be placed in the same trench with the building drain. The

water service pipe and the building sewer must be ten feet apart. All water service pipe on either private or public property shall be laid on a solid bottom not less than 4 1/2 feet underground or below the established grade. The consumer shall continue the water service pipe connection from the valve at the sidewalk line to the riser pipe and valve inside the building entirely at the consumer's expense. The service line from the main to the premises shall have an inside diameter no smaller than three-fourths of an inch. All service pipes of two inches or less in diameter shall be of U.S. government specification type K copper tubing; other service pipe materials must be approved by AWWA. Those over two inches in diameter may be of ductile iron. The water service pipe shall be laid to provide for earth settlement and for contraction and expansion through arching or bending to form an expansion loop in the form of a half S bend, and shall contain at least six inches of excess material to provide for settlement and flexibility. There shall be no joints between the curbstop and the meter unless commercial lengths are not available to allow for this provision (say, because of excessive building setbacks). Only three-part flared unions shall be used for connections in copper pipes, and all other types of flared unions are prohibited. Plugged tees or other accessible outlets between the meter and the main are prohibited. No connections or outlets shall be made on this line other than for sprinkler heads or fire fittings. It shall be unlawful for the customer, or any employee or agent of the customer, to make any connections on or use such sprinkler system for any other purpose than for fire protection; any other use thereof shall be and constitute a violation of this article and also the general ordinances of the village. Any repairs to any water service pipe shall be made at the expense of the owner whose premises are served by the water service pipe.

(e) *Completion of work; inspection required.* Upon completion of any new service pipe installation or repairs, it shall be the duty of the permittee to obtain approval by the village plumbing inspector before covering such installation or repairs. The service trench shall not be covered, backfilled or floored until the tap has been completed, and the village plumbing inspector has approved the installation. Clean earth or sand shall be carefully tamped every two feet above the top of the service line. This material shall be carefully and solidly rammed with proper tools. The use of clay for such purpose is prohibited. If any building drainage or plumbing system or part thereof which is installed, altered or repaired is covered, it shall be uncovered for inspection after notice to the plumber, contractor, owner or other person to uncover the work that has been issued by the village plumbing inspector.

(f) *Repair.* Water service pipe from main to curb, the curbstop and all water service pipe from the property line to the meter shall be the responsibility of the owner of the premises. Any plumber called upon to shut off water and drain pipes in any premises shall do so inside the building only. Persons taking water must keep their service pipe and their meter protected from frost and hot water at their own expense. Where the service pipe or meter is damaged by frost or hot water, the service pipe shall be repaired by a licensed plumber to be employed and paid by

the customer. The water meter shall be repaired by the customer.
(Ord. No. 97-1, § 11, 5-5-1997)

Sec. 28-49. Hydrants and use.

On private property, all water mains six inches or larger with fire hydrants shall be installed at the property owner's expense, and shall be conveyed to the village by the property owner and, at the property owner's expense, shall provide a recorded easement sufficient for maintenance and repair of the hydrant.
(Ord. No. 97-1, § 12, 5-5-1997)

Sec. 28-50. Cross connections.

(a) *Prohibited generally; adoption of state rules.* Cross connections shall be prohibited. It shall be unlawful for any person to make, permit to be made or permit to exist any cross connection on any lot or parcel of land owned or occupied by that person. The village hereby adopts by reference the water supply cross connection rules of the state department of public health, being R325.11401 to R325.11407 of the Michigan Administrative Code.

(b) *Inspections.* It shall be the duty of the village to cause inspections to be made of all properties served by the public water supply where a cross connection with the public water supply is deemed probable. The frequency of inspections and reinspections based on potential health hazards involved shall be established by the village.

(c) *Entry rights.* The superintendent, or the superintendent's designee, shall have the right to enter at any reasonable time any property served by a connection to the public water supply of the village for the purposes of inspecting the piping systems for cross connections. On request, the owner, lessees, or occupants of any property so served shall furnish to the inspection agency any pertinent information regarding the piping systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed prima facie evidence of the presence of cross connections.

(d) *Shutoff.* Where contamination of any water main is an immediate possibility or where contamination of any main occurs and a cross connection is found, the village may order the water to be immediately shut off without giving notice to the owner or occupant of land as prescribed in subsection (f) of this section.

(e) *Correction required.* Water service to such property shall not be restored until the cross connection has been eliminated in compliance with the provisions of this section.

(f) *Protection and notification.* The potable water supply made available on the properties served by the water supply system shall be protected from possible contamination as specified by this section and by the state and village plumbing code. Any water outlet which could be used for potable or domestic purposes and which is not supplied by the potable system must be labeled in a conspicuous manner as:

WATER UNSAFE FOR DRINKING

(g) *Supplemental nature of section.* This section does not supersede any state or village plumbing code or ordinance, and it shall be supplementary to such other lawful regulations as may from time to time be adopted.

(h) *Other remedies.* The village is authorized and directed to take such other precautionary measures as may be deemed necessary to eliminate any danger of contamination of the water system. Water service to the land in question shall not be restored until either the cross connection has been eliminated or evidence furnished and access permitted to enable the village to determine that no cross connection prohibited by this section exists.
(Ord. No. 97-1, § 13, 5-5-1997)

Sec. 28-51. Refunding Bonds.

(1) *Definitions.* Whenever used in this Ordinance, except when otherwise indicated by the context, the following terms shall have the following meanings:

(a) "Act 94" means Act 94, Public Acts of Michigan, 1933, as amended.

(b) "Additional Bonds" shall mean any additional bonds secured by the Net Revenues of the System issued in accordance with Section 19 of this Ordinance.

(c) "Adjusted Net Revenues" means for any operating year the excess of revenues over expenses for the System determined in accordance with generally accepted accounting principles, to which shall be added depreciation, amortization, interest expense on Bonds and payments to the Issuer in lieu of taxes, to which may be made the following adjustments: (i) Revenues may be augmented by the amount of any rate increases adopted prior to the issuance of additional Bonds or to be placed into effect before the time principal or interest on the additional Bonds becomes payable from Revenues as applied to quantities of service furnished during the operating year or portion thereof that the increased rates were not in effect. (ii) Revenues may be augmented by amounts

which may be derived from rates and charges to be paid by new customers of the System. The adjustment of revenues and expenses by the factors set forth in (i) and (ii) above shall be reported upon by professional engineers or certified public accountants or other experts not in the regular employment of the Issuer.

(d) "Authority" means the Michigan Municipal Bond Authority.

(e) "Authorized Officers" means the President, Clerk, and Treasurer of the Issuer.

(f) "Bond" or "Bonds" means the Series 2004 Bonds, together with any Additional Bonds hereafter issued.

(g) "Issuer" or "Village" means the Village of Capac, County of St. Clair, State of Michigan.

(h) "Prior Ordinance" means Ordinance No.89-1 adopted by the Village Council of the Issuer on February 6, 1989, authorizing the issuance of the Series 1989 Bonds.

(i) "Refunded Bonds" means all or a portion of the Issuer's Series 1989 Bonds, as shall be finally identified in the Sales Resolution referred to herein.

(j) "Revenues" and "Net Revenues" means the revenues and net revenues of the System and shall be construed as defined in Section 3 of Act 94, including with respect to "Revenues", the earnings derived from the investment of moneys in the various funds and accounts established by this Ordinance.

(k) "Sales Resolution" means the Sales Resolution to be adopted by the Issuer respecting the final Series 2004 Bonds details, or in the alternative, the order of any of the Authorized Officers setting forth the final Series 2004 Bonds details within the parameters of this Ordinance.

(l) "Series 1989 Bonds" means the Issuer's Water Supply System Revenue Refunding Bond, Series 1989, dated March 23, 1989, which bond matures or is subject to mandatory redemption on November 1 of each of the years 2004 to 2018, inclusive.

(m) "Series 2004 Bonds" means the Water Supply System Revenue Refunding Bond, Series 2004, in the aggregate principal amount of not to exceed \$600,000 issued pursuant to this Ordinance.

(n) "Sufficient Government Obligations" means direct

obligations of the United States of America or obligations the principal and interest on which is fully guaranteed by the United States of America, not redeemable at the option of the issuer, the principal and interest payments upon which without reinvestment of the interest, come due at such times and in such amounts as to be fully sufficient to pay the interest as it comes due on the Bonds and the principal and redemption premium, if any, on the Bonds as it comes due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations shall be placed in trust with a bank or trust company, and if any of the Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given to the paying agent.

(o) "System" means Water Supply System of the Issuer, including all additions, extensions and improvements hereafter acquired.

(2) *Necessity and Statement of Public Purpose.* It is hereby determined to be a necessary public purpose of the Issuer to refund the Refunded Bonds.

(3) *Costs; Useful Life.* The cost of refunding the Refunded Bonds is estimated to be not more than Six Hundred Thousand Dollars (\$600,000), including the payment of incidental expenses as specified in Section 4 of this Ordinance, which estimate of cost is hereby approved and confirmed. The period of usefulness of the project financed or refinanced with the proceeds of the Refunded Bonds is estimated to be not less than fifteen (15) years.

(4) *Payment of Costs; Bonds Authorized.* To pay part of the cost of refunding the Refunded Bonds, including legal, financial and other expenses incident thereto and incident to the issuance and sale of the Series 2004 Bonds, the Issuer shall borrow the sum of not to exceed Six Hundred Thousand Dollars (\$600,000) and issue the Series 2004 Bonds therefor pursuant to the provisions of Act 94. The remaining cost of refunding the Refunded Bonds, if any, shall be defrayed from Issuer funds on hand and legally available for such use.

(5) *Issuance of Series 2004 Bonds; Details.* The Series 2004 Bonds of the Issuer, to be designated WATER SUPPLY SYSTEM REVENUE REFUNDING BOND, SERIES 2004, are authorized to be issued in the aggregate principal sum of not to exceed Six Hundred Thousand Dollars (\$600,000) as finally determined in the Sales Resolution, including the costs incidental to the issuance, sale and delivery of the Series 2004 Bonds. The Series 2004 Bonds shall be payable out of the Net Revenues, as set forth more fully herein. The Series 2004 Bonds shall be in the form of a single fully-registered, nonconvertible bond of the denomination of the full principal amount thereof, dated as of the date of delivery of the Series 2004 Bonds,

and payable in principal installments as finally determined in the Sales Resolution. Principal of and interest on the Series 2004 Bonds shall be payable on the dates provided in the Sales Resolution. Final determination of the principal amount of and interest on the Series 2004 Bonds and the payment dates and amounts of principal installments of the Series 2004 Bonds shall also be evidenced by execution of a Purchase Contract (the "Purchase Contract") between the Issuer and the Authority providing for sale of the Series 2004 Bonds, and any Authorized Officer is authorized and directed to execute and deliver the Purchase Contract when it is in final form and to make the determinations set forth above; provided, however, that the final principal installment shall be due no later than November 1, 2018 and the total aggregate principal amount of the Series 2004 Bonds shall not exceed \$600,000.

The Series 2004 Bonds shall bear interest at the rate or rates per annum determined in the Sales Resolution, but in any event not to exceed the maximum rate permitted by law, and the Village President and Village Clerk are authorized to execute and deliver the Series 2004 Bonds in accordance with the delivery instructions of the Authority. The Series 2004 Bonds shall be signed with the manual or facsimile signatures of the Village President and Village Clerk and shall have the Issuer's seal impressed or printed thereon.

The Series 2004 Bonds shall not be convertible or exchangeable into more than one fully registered bond. Principal of and interest on the Series 2004 Bonds shall be payable as provided in the Series 2004 Bond form set forth in this Ordinance.

The Series 2004 Bonds shall be subject to optional or mandatory redemption by the Issuer with the prior approval of the Authority in the manner and at the times as provided in the Sales Resolution.

The Village Treasurer shall record on the registration books payment by the Issuer of each installment of principal or interest or both when made and the cancelled checks or other records evidencing such payments shall be returned to and retained by the Village Treasurer.

Upon payment by the Issuer of all outstanding principal of and interest on the Series 2004 Bonds, the Authority shall deliver the Series 2004 Bonds to the Issuer for cancellation.

(6) *Registration and Transfer.* Any Bond may be transferred upon the books required to be kept pursuant to this section by the person in whose name it is registered, in person or by the registered owner's duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the transfer agent. Whenever any

Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the transfer agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount. The transfer agent shall require payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The Issuer shall not be required (i) to issue, register the transfer of or exchange any Bond during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Bonds selected for redemption as described in the form of Series 2004 Bonds contained in Section 16 of this Ordinance and ending at the close of business on the day of that giving of notice, or (ii) to register the transfer of or exchange any Bond so selected for redemption in whole or in part, except the unredeemed portion of Bonds being redeemed in part. The Issuer shall give the transfer agent notice of call for redemption at least 20 days prior to the date notice of redemption is to be given.

The transfer agent shall keep or cause to be kept at its principal office sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the Issuer; and upon presentation for such purpose the transfer agent shall under such reasonable regulations as it may prescribe transfer or cause to be transferred on said books Bonds as hereinbefore provided.

If any Bond shall become mutilated, the Issuer, at the expense of the holder of the Bond, shall execute, and the transfer agent shall authenticate and deliver, a new Bond of like tenor in exchange and substitution for the mutilated Bond, upon surrender to the transfer agent of the mutilated Bond. If any Bond issued under this Ordinance shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the transfer agent and, if this evidence is satisfactory to both, and indemnity satisfactory to the transfer agent shall be given, and if all requirements of any applicable law including Act 354, Public Acts of Michigan, 1972, as amended ("Act 354"), being sections 129.131 to 129.134, inclusive, of the Michigan Compiled Laws have been met, the Issuer, at the expense of the owner, shall execute, and the transfer agent shall thereupon authenticate and deliver, a new Bond of like tenor and bearing the statement required by Act 354, or any applicable law hereafter enacted, in lieu of and in substitution for the Bond so lost, destroyed or stolen. If any such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond the transfer agent may pay the same without surrender thereof.

(7) *Payment of Series 2004 Bonds; Security.* Principal of and interest on the Series 2004 Bonds shall be payable from the Net Revenues, and to secure such payment, there is hereby created a statutory lien upon the whole of the Net Revenues which shall be a first lien to continue until payment in full of the principal of and interest on the Series 2004 Bonds payable from the Net Revenues, or, until sufficient cash or Sufficient Government Obligations have been deposited in trust for payment

in full of the Series 2004 Bonds then outstanding, principal and interest on such Series 2004 Bonds to maturity, or, if called for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any. Upon deposit of cash or Sufficient Government Obligations, as provided in the previous sentence, the statutory lien shall be terminated with respect to the Series 2004 Bonds, the holders of the Series 2004 Bonds shall have no further rights under this Ordinance except for payment from the deposited funds, and the Series 2004 Bonds shall no longer be considered to be outstanding under this Ordinance.

So long as the Series 2004 Bonds are owned by the Authority, the Issuer shall pledge its limited tax full faith and credit for the payment of the principal of and interest on the Series 2004 Bonds. Should the Net Revenues of the System at any time be insufficient to pay principal and interest on the Series 2004 Bonds, as the same become due, then the Issuer shall advance from any funds available therefor, or, if necessary, levy taxes upon all taxable property in the Issuer, subject to applicable constitutional and statutory limitations, such sums as may be necessary to pay said principal and interest. The Issuer shall be reimbursed for any such advance from the Net Revenues of the System subsequently received which are not otherwise pledged or encumbered by this Ordinance.

(8) *Management.* The operation, repair and management of the System shall continue to be under the supervision and control of the Village Council. The Village Council may employ such person or persons in such capacity or capacities as it deems advisable to carry on the efficient management and operation of the System. The Village Council may make such rules and regulations as it deems advisable or necessary to assure the efficient management and operation of the System.

(9) *Rates and Charges; No Free Service.* The rates and charges for service furnished by the System and the methods of collection and enforcement of the collection of the rates shall be those in effect on the date of adoption of this Ordinance. No free service or use of the System, or service or use of the System at less than cost, shall be furnished by the System to any person, firm, or corporation, public or private, or to any public agency or instrumentality, including the Issuer.

(10) *Fixing and Revising Rates; Rate Covenant.* The rates now in effect are estimated to be sufficient to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the System in good repair and working order, to provide for the payment of the principal of and interest on the Series 2004 Bonds as the same become due and payable, and to provide for all other obligations, expenditures and funds for the System required by law and this Ordinance. The rates shall be fixed and revised from time to time as may be necessary to produce these amounts, and it is

hereby covenanted and agreed to fix and maintain rates for services furnished by the System at all times sufficient to provide for the foregoing.

(11) *Funds and Accounts; Flow of Funds.* Commencing on the date of delivery of the Series 2004 Bonds, all funds belonging to the System shall be transferred as herein indicated and all Revenues of the System shall be set aside as collected and credited to the fund created under the Prior Ordinance and designated WATER SUPPLY SYSTEM RECEIVING FUND (the "Receiving Fund"). In addition, all Revenues in any accounts of the System shall be transferred to the Receiving Fund and credited to the funds and accounts as provided in this Section. The Revenues credited to the Receiving Fund are pledged for the purpose of the following accounts and shall be transferred or debited from the Receiving Fund periodically in the manner and at the times and in the order of priority hereinafter specified:

(a) OPERATION AND MAINTENANCE ACCOUNT: Out of the Revenues credited to the Receiving Fund there shall be first set aside in, or credited to, a fund designated OPERATION AND MAINTENANCE ACCOUNT (the "Operation and Maintenance Account"), monthly a sum sufficient to provide for the payment of the next month's expenses of administration and operation of the System and such current expenses for the maintenance thereof as may be necessary to preserve the same in good repair and working order.

A budget, showing in detail the estimated costs of administration, operation and maintenance of the System for the next ensuing operating year, shall be prepared by the Village Council at least 30 days prior to the commencement of each ensuing operating year. No payments shall be made to the Issuer from moneys credited to the Operation and Maintenance Account except for services directly rendered to the System by the Issuer or its personnel.

(b) BOND AND INTEREST REDEMPTION ACCOUNT:

There shall be established and maintained a separate depository account designated BOND AND INTEREST REDEMPTION ACCOUNT (the "Redemption Account"), the moneys on deposit therein from time to time to be used solely for the purpose of paying the principal of, redemption premiums (if any) and interest on the Bonds. The moneys in the Redemption Account shall be kept in a separate depository account.

Out of the Revenues remaining in the Receiving Fund, after provision for the Operation and Maintenance Account, there shall be set aside each month commencing February 1, 2004 in the Redemption Account a sum proportionately

sufficient to provide for the payment when due of the current principal of and interest on the Bonds, less any amount in the Redemption Account representing accrued interest on the Bonds or investment income on amounts on deposit in the Redemption Account, (including investment income on amounts held as part of the Bond Reserve Account). Commencing November 1, 2004, the amount set aside each month for interest on the Bonds shall be 1/6 of the total amount of interest on the Bonds next coming due. The amount set aside each month for principal, commencing November 1, 2004, shall be 1/12 of the amount of principal next coming due by maturity. If there is any deficiency in the amount previously set aside, that deficiency shall be added to the next succeeding monthly requirements. The amount to be set aside for the payment of principal and interest on any date shall not exceed the amount which, when added to the money on deposit in the Redemption Account, including investment income thereon, is necessary to pay principal and interest due on the Bonds on the next succeeding principal payment date.

There is hereby established a separate account in the Redemption Account designated BOND RESERVE ACCOUNT (the "Bond Reserve Account"). Any ordinance authorizing the issuance of a series of Bonds may provide for deposits to the Bond Reserve Account to be made from the proceeds of such series of Bonds or from some other source in an amount that will result in the funds or other assets on deposit in the Bond Reserve Account being equal to the "Reserve Amount" for the Bonds. The Reserve Amount shall be the lesser of (1) the maximum annual debt service due in the current or any future year, (2) 125% of the average annual debt service, or (3) 10% of the principal amount of the Bonds. Interest on the Bond Reserve Account shall be transferred into the Redemption Account once the Reserve Amount has been reached.

Except as otherwise provided in this section, the moneys or other funding sources credited to the Bond Reserve Account shall be used solely for the payment of the principal and redemption price (if any) of and interest on the Bonds as to which there would otherwise be a default or on the final maturity date for the Bonds of the series to which moneys in the Bond Reserve Account relate. If at any time it shall be necessary to use moneys credited to the Bond Reserve Account for such payment, then the moneys so used shall be replaced from the Revenues first received thereafter in the Receiving Fund which are not required to be deposited in the Operation and Maintenance Account or the Redemption Account.

(c) REPLACEMENT AND IMPROVEMENT ACCOUNT:

There shall next be established and maintained a separate depository account, designated REPLACEMENT AND IMPROVEMENT ACCOUNT (the "Replacement Account"), the money credited thereto to be used solely for the

purpose of making repairs, replacements, improvements, enlargements or extensions to the System, including any buildings or structures related to said System. Out of the Revenues and moneys of the System remaining in the Receiving Fund at the end of each month after provision has been made for the deposit of moneys in the Operation and Maintenance Account and the Redemption Account (including the Bond Reserve Account), there may be deposited in the Replacement Account such additional funds as the Issuer may deem advisable. If at any time it shall be necessary to use moneys in the Replacement Account for the purpose for which the Replacement Account was established, the moneys so used shall be replaced from any moneys in the Receiving Fund which are not required by this Ordinance to be used for the Operation and Maintenance Account or the Redemption Account, including the Bond Reserve Account.

(d) GENERAL OBLIGATION DEBT ACCOUNT:

There is hereby established a separate account known as the GENERAL OBLIGATION DEBT ACCOUNT (the "G.O. Debt Account"). Out of the remaining Revenues in the Receiving Fund, there may be next set aside in or credited to monthly after meeting the requirements of the foregoing Accounts, to the G.O. Debt Account, or from other available moneys such sums as shall be necessary to pay debt service on presently existing or future general obligation bond issues of the Issuer or general obligations or contractual obligations of the Issuer incurred or to be incurred for System purposes.

(e) SURPLUS MONEYS:

Thereafter, any Revenues in the Receiving Fund after satisfying all the foregoing requirements of this Section may, at the discretion of the Issuer, be used for any of the following purposes:

- (i) Transferred to the Replacement Account, the G.O. Debt Account, or both.
- (ii) Any other use permitted by law.

(12) *Priority of Funds.* In the event the moneys in the Receiving Fund are insufficient to provide for the current requirements of the Operation and Maintenance Account or the Redemption Account, any moneys or securities in other accounts of the System, except the proceeds of sale of the Bonds, shall be credited or transferred, first, to the Operation and Maintenance Account, and second to the Redemption Account.

(13) *Depositary and Funds on Hand.* Moneys in the funds and accounts established pursuant to this Ordinance, except moneys in the Redemption Account (including the Bond Reserve Account) and moneys derived from the proceeds of sale of the Bonds, may be kept in one or more bank accounts at a bank or banks designated by resolution of the Issuer, and if kept in one bank account the moneys shall be allocated on the books and records of the Issuer in the manner and at the times provided in this Ordinance.

(14) *Investments.* Moneys in the funds and accounts established herein and moneys derived from the proceeds of sale of the Bonds, may be invested by the Issuer in United States of America obligations or in obligations the principal of and interest on which is fully guaranteed by the United States of America and any investments hereafter permitted by law, and moneys derived from the proceeds of sale of the Bonds may also be invested in certificates of deposit of any bank whose deposits are insured by the Federal Deposit Insurance Corporation. Investment of moneys in the Redemption Account being accumulated for payment of the next maturing principal or interest payment of the Bonds shall be limited to obligations bearing maturity dates prior to the date of the next maturing principal or interest payment on the Bonds. Investment of moneys in the Bond Reserve Account shall be limited to obligations bearing maturity dates or subject to redemption, at the option of the holder thereof, not later than five years from the date of the investment. In the event investments are made, any securities representing the same shall be kept on deposit with the bank or trust company having on deposit the fund or funds or account from which the purchase was made. Profit realized or interest income earned on investment of funds in the Receiving Fund, Operation and Maintenance Account and Replacement Account shall be deposited in or credited to the Receiving Fund at the end of each fiscal year. Profit realized on interest income earned on investment of moneys in the Redemption Account including income derived from the Bond Reserve Account shall be credited as received to the Redemption Account.

(15) *Bond Proceeds; Escrow Fund.* The proceeds of the Series 2004 Bonds shall be used to pay the costs of issuance of the Series 2004 Bonds and to refund the Refunded Bonds all as provided in this Section 15. Upon receipt of the proceeds of sale of the Series 2004 Bonds the accrued interest, if any, shall be deposited in the Redemption Account, and the premium, if any, shall be deposited in the Redemption Account, or, if determined advisable by any Authorized Officer, used to pay valid issuance costs of the Series 2004 Bonds to the extent permitted by law. From the proceeds of the Series 2004 Bonds there shall next be set aside a sum sufficient to pay the costs of issuance of the Series 2004 Bonds in a fund designated the 2004 Bond Issuance Fund, which may be established by the Issuer or by an escrow agent. Moneys in the 2004 Bond Issuance Fund shall be used solely to pay expenses of issuance of the Series 2004 Bonds. Any amounts remaining in the 2004 Bond

Issuance Fund after payment of issuance expenses shall be transferred to the Redemption Account for the Series 2004 Bonds.

The balance of the proceeds of the Series 2004 Bonds, together with any moneys transferred by the Issuer, shall be held in a separate escrow fund (the "Escrow Fund") consisting of cash and investments in direct obligations of or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America or other obligations the principal of and interest on which are fully secured by the foregoing not redeemable at the option of the issuer in amounts fully sufficient to pay the principal, interest and redemption premiums, if any, on the Refunded Bonds. The Escrow Fund shall be held by an escrow agent pursuant to an escrow agreement (the "Escrow Agreement") which shall irrevocably direct the escrow agent to take all necessary steps to pay the principal of and interest on the Refunded Bonds when due and to call the Refunded Bonds for redemption on the first call date, as specified by the Issuer. The amounts held in the Escrow Fund shall be such that the cash and investments and income received thereon will be sufficient without reinvestment to pay the principal, interest and redemption premiums, if any, on the Refunded Bonds when due at maturity or by call for redemption.

Any of the Authorized Officers is authorized and directed to select a financial institution qualified to act as escrow agent and to negotiate, execute and delivery an Escrow Agreement on behalf of the Issuer. Alternatively, the Escrow Fund may be established with either the Authority or a financial institution designated by the Authority.

(16) *Bond Form.* The Series 2004 Bonds shall be in substantially the following form with such changes or completions as necessary or appropriate to give effect to the intent of this Ordinance:

STATE OF MICHIGAN
COUNTY OF ST. CLAIR

VILLAGE OF CAPAC

WATER SUPPLY SYSTEM REVENUE REFUNDING BOND,
SERIES 2004

REGISTERED OWNER: Michigan Municipal Bond Authority
PRINCIPAL AMOUNT: \$600,000.00 Dollars
DATE OF ORIGINAL ISSUE: February 18, 2004

The VILLAGE OF CAPAC, County of St. Clair, State of Michigan (the "Village"), for value received, hereby promises to pay, out of the hereinafter described Net Revenues of the Village's Water Supply System (hereinafter defined), to the Michigan Municipal Bond Authority (the "Authority"), or registered assigns, the Principal Amount shown above, in lawful money of the United States of America, unless prepaid prior thereto as hereinafter provided, on the dates and in the annual principal installment amounts set forth in Schedule A attached hereto and made a part hereof, as such Schedule may be adjusted if a portion of the Principal Amount is prepaid as provided below, with interest on said principal installments from the Date of Original Issue shown above, until paid, at the Interest Rate(s) per annum set forth in Schedule A attached hereto and made a part hereof. Interest is first payable on November 1, 2004, and semiannually thereafter, and principal is payable on the first day of November commencing November 1, 2004 and annually thereafter.

[This bond may be subject to redemption prior to maturity by the Village only with the prior written consent of the Authority and on such terms as may be required by the Authority].

Notwithstanding any other provision of this bond, as long as the Authority is the owner of this bond, (a) this bond is payable as to principal, premium, if any, and interest at the corporate trust office of National City Bank of Michigan/Illinois or at such other place as shall be designated in writing to the Village by the Authority (the "Authority's Depository"); (b) the Village agrees that it will deposit with the Authority's Depository payments of the principal of, premium, if any, and interest on this bond in immediately available funds at least five business days prior to the date on which any such payment is due whether by maturity, redemption or otherwise; and (c) written notice of any redemption of this bond shall be given by the Village

and received by the Authority's Depository at least 40 days prior to the date on which such redemption is to be made.

Additional Interest

In the event of a default in the payment of principal or interest hereon when due, whether at maturity, by redemption or otherwise, the amount of such default shall bear interest (the "additional interest") at a rate equal to the rate of interest which is two percent above the Authority's cost of providing funds (as determined by the Authority) to make payment on the bonds of the Authority issued to provide funds to purchase this bond but in no event in excess of the maximum rate of interest permitted by law. The additional interest shall continue to accrue until the Authority has been fully reimbursed for all costs incurred by the Authority (as determined by the Authority) as a consequence of the Village's default. Such additional interest shall be payable on the interest payment date following demand of the Authority. In the event that (for reasons other than the default in the payment of any municipal obligation purchased by the Authority) the investment of amounts in the reserve account established by the Authority for . the bonds of the Authority issued to provide funds to purchase this bond fails to provide sufficient available funds (together with any other funds which may be made available for such purpose) to pay the interest on outstanding bonds of the Authority issued to fund such account, the Village shall and hereby agrees to pay on demand only the Village's pro rata share (as determined by the Authority) of such deficiency as additional interest on this bond.

For prompt payment of principal and interest on this bond, the Village has irrevocably pledged the revenues of the Water Supply System of the Village, including all appurtenances, extensions and improvements thereto (the "Water Supply System"), after provision has been made for reasonable and necessary expenses of operation, maintenance and administration (the "Net Revenues"), and a statutory lien thereon is hereby recognized and created.

This bond is a single, fully-registered, non-convertible bond in the principal sum indicated above issued pursuant to Ordinance No___ duly adopted by the Village Council of the Village (the "Ordinance"), and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of paying part of the cost of refunding certain outstanding revenue refunding bonds of the Village.

For a complete statement of the revenues from which and the conditions under which this bond is payable, a statement of the conditions under which additional bonds of equal standing may hereafter be issued, and the general covenants and provisions pursuant to which this bond is issued, reference is made to the Ordinance.

This bond is primarily a self-liquidating bond, payable, both as to principal and interest, primarily from the Net Revenues of the Water Supply System. The principal of and interest on this bond are secured by the statutory lien hereinbefore mentioned. As additional security, the

Village has pledged its limited tax full faith and credit for payment of the principal of and interest on this bond, which includes the Village's obligation to levy taxes, if necessary, within applicable constitutional and statutory tax limitations.

The Village has covenanted and agreed, and does hereby covenant and agree, to fix and maintain at all times while any bonds payable from the Net Revenues of the Water Supply System shall be outstanding, such rates for service furnished by the Water Supply System as shall be sufficient to provide for payment of the principal of and interest on this bond, as and when the same shall become due and payable, and to maintain a bond redemption account therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the Water Supply System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the Water Supply System as are required by the Ordinance.

This bond is transferable only upon the books of the Village by the registered owner in person or the registered owner's attorney duly authorized in writing, upon the surrender of this bond together with a written instrument of transfer satisfactory to the transfer agent, duly executed by the registered owner or the registered owner's attorney duly authorized in writing, and thereupon a new bond or bonds in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in the Ordinance, and upon payment of the charges, if any, therein prescribed.

It is hereby certified and recited that all acts, conditions and things required by law to be done precedent to and in the issuance of this bond have been done and performed in regular and due time and form as required by law.

IN WITNESS WHEREOF, the Village of Capac, County of St. Clair, State of Michigan, by its Village Council, has caused this bond to be executed with the manual signatures of its President and its Village Clerk and the corporate seal of the Village to be impressed hereon, all as of the Date of Original Issue.

VILLAGE OF CAPAC

President

Village Clerk

(d) The Issuer will not sell, lease or dispose of the System, or any substantial part, until all of the Bonds have been paid in full, both as to principal and interest or provision made thereof as herein provided. The Issuer will operate the System as economically as possible, will make all repairs and replacements necessary to keep the System in good repair and working order, and will not do or suffer to be done any act which would affect the System in such a way as to have a material adverse effect on the security for the Bonds.

(e) The Issuer will not grant any franchise or other rights to any person, firm or corporation to operate a System that will compete with the System and the Issuer will not operate a system that will compete with the System.

(19) *Additional Bonds.* Except as hereinafter provided, the Issuer shall not issue additional Bonds of equal or prior standing with the Series 2004 Bonds.

The right is reserved in accordance with the provisions of Act 94, to issue additional Bonds payable from the Revenues of the System which shall be of equal standing and priority of lien on the Net Revenues of the System with the Series 2004 Bonds but only for the following purposes and under the following terms and conditions:

(a) For subsequent repairs, extensions, enlargements and improvements to the System or for the purpose of refunding part of any Bonds then outstanding and paying costs of issuing such additional Bonds including deposits which may be required to be made to the Bond Reserve Account. Bonds for such purposes shall not be issued pursuant to this subparagraph (a) unless the Adjusted Net Revenues of the System for the preceding twelve-month operating year shall be equal to at least one hundred percent (100%) of the maximum amount of principal and interest thereafter maturing in any operating year on the then outstanding Bonds and on the additional Bonds then being issued. If the additional Bonds are to be issued in whole or in part for refunding outstanding Bonds, the annual principal and interest requirements shall be determined by deducting from the principal and interest requirements for each operating year the annual principal and interest requirements of any Bonds to be refunded from the proceeds of the additional Bonds. For purposes of this subparagraph (a) the Issuer may elect to use as the last preceding operating year any operating year ending not more than sixteen months prior to the date of delivery of the additional Bonds. Determination by the Issuer as to existence of conditions permitting the issuance of additional Bonds shall be conclusive. No additional Bonds of equal standing as to the Net Revenues of the System shall be issued pursuant to the authorization contained in this subparagraph if the Issuer shall then be in default in making its required payments to the Operation and Maintenance Account or the Redemption Account.

(b) For refunding a part of the outstanding Bonds and paying costs of issuing such additional Bonds including deposits which may be required to be made to the Bond Reserve Account. No additional Bonds shall be issued pursuant to this subsection unless the maximum amount of principal and interest maturing in any operating year after giving effect to the refunding shall be less than the maximum amount of principal and interest maturing in any operating year prior to giving effect to the refunding.

(20) *Sale of Bonds.* Any of the Authorized Officers is authorized to approve the sale of the Series 2004 Bonds to the Authority in accordance with the terms of this Ordinance. Any of the Authorized Officers is authorized and directed to take any and all actions, and to execute and deliver any and all contracts, documents and certificates as may be necessary or advisable to complete the sale and delivery of the Series 2004 Bonds to the Authority, including the execution and delivery of a Purchase Contract and Issuer's Certificate. In the event of a sale of the Series 2004 Bonds to the Authority, any Authorized Officer is hereby authorized to make such changes to the form of Series 2004 Bond contained in this Ordinance as may be necessary to conform to the requirements of Act 227, Public Acts of Michigan 1985, as amended ("Act 227"), including, but not limited to, changes in the principal maturity and interest payment dates and references to additional security required by Act 227.

(21) *Covenant Regarding Tax Exempt Status of the Bonds.* The Issuer shall, to the extent permitted by law, take all actions within its control necessary to maintain the exemption of the interest on the Series 2004 Bonds from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditure and investment of Series 2004 Bond proceeds and moneys deemed to be Series 2004 Bond proceeds.

(22) *Approval of Bond Counsel.* The representation of the Issuer by Miller, Canfield, Paddock and Stone, P.L.C. ("Miller Canfield"), as bond counsel is hereby approved, notwithstanding the representation by Miller Canfield of the Authority with respect to this borrowing.

(23) *Approval of Bond Details.* Any of the Authorized Officers is hereby authorized to adjust the final bond details set forth herein to the extent necessary or convenient to complete the transaction authorized herein, and in pursuance of the foregoing is authorized to exercise the authority and make the determinations authorized pursuant to Section 7a(1)(c) of Act 94, including, but not limited to, determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights, the place of delivery and payment, and other matters, provided that the principal amount of Series 2004 Bonds issued shall not exceed the principal amount authorized in this Ordinance, the interest rate per annum on the Series 2004

Bonds shall not exceed six percent (6.00%) per annum, and the Series 2004 Bonds shall mature not later than November 1, 2018.

(24) *Severability; Paragraph Headings; Conflict; Repeal of Ordinance No. 89-1.*

All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed, and each section of the Ordinance and each subdivision of any section thereof is hereby declared to be independent, and the finding or holding of any section or subdivision thereof to be invalid or void shall not be deemed or held to affect the validity of any other section or subdivision of the Ordinance. Effective upon delivery of the Series 2004 Bonds, Ordinance No. 89-1 of the Issuer, adopted on February 6, 1989, is repealed.

Sec. 28.52. Improvements to System.

(1) *Definitions.* The following words and terms used in this Ordinance shall have the meanings assigned in this Section, unless the context clearly indicates otherwise.

"Acquired," as used in this Ordinance, shall be construed to include acquisition by purchase, construction or by any other method.

"Act 94" shall mean Act 94, Public Acts of Michigan, 1933, as amended.

"Additional Bonds" shall mean the bonds issued pursuant to Section 17 and subject to the terms of this Ordinance.

"Bond" or "Bonds" shall mean the Water Supply System Junior Lien Revenue Bond, Series 2006, in the principal amount of \$2,652,000 authorized to be issued by this Ordinance, together with any Additional Bonds hereafter issued.

"Depository Bank" shall mean CAPAC STATE BANK, 206 N Main, Capac, Michigan, a member of the Federal Deposit Insurance Corporation, or other financial institution qualified to serve as depository bank and designated by resolution of the Issuer.

"Engineer" shall Tetra Tech, Inc., Brighton, Michigan.

"Fiscal Year" shall mean the fiscal year of the Issuer and the operating year of the System, commencing July 1 and ending June 30 of the subsequent year, as such year may be changed from time to time.

"Government" shall mean the government of the United States of America or any agency

thereof.

"Issuer" shall mean the Village of Capac, County of St. Clair, State of Michigan.

"Junior Lien Bond Reserve Account" shall mean the subaccount in the Junior Lien Bond and Interest Redemption Account established in accordance with Section 12 of this Ordinance.

"Ordinance" shall mean this ordinance and any ordinance or resolution of the Issuer amendatory or supplemental to this ordinance, including ordinances or resolutions authorizing issuance of Additional Bonds.

"Outstanding Bonds" shall mean, collectively, the Issuer's outstanding Water Supply System Revenue Refunding Bonds, Series 2004, dated February 18, 2004, issued pursuant to the Outstanding Ordinance.

"Outstanding Ordinance" shall mean Ordinance No. 2004-01 of the Issuer duly adopted by the Village Council of the Issuer on January 19, 2004, and authorizing the issuance of the Outstanding Bonds.

"Project" shall mean improvements to the Village's water supply system, consisting generally of improvements to the Issuer's water supply system, consisting generally of improvements to the existing water tower, construction of a new well or wells, construction of a new watermain, construction, acquisition and installation of a new water tower, construction, acquisition and installation of an iron/arsenic removal facility, and acquisition and installation of related equipment and other water system related appurtenances to serve the users of the Issuer's water supply system.

"Public improvements," shall be understood to mean the public improvements, as defined in Section 3 of Act 94, which are authorized to be acquired and constructed under the provisions of this Ordinance.

"Reserve Amount" shall mean with respect to the Bonds the lesser of (1) the maximum annual debt service due on the Bonds in the current or any future year, (2) 125% of the average annual debt service on the Bonds, or (3) 10% of the outstanding principal amount of the Bonds on the date of issuance of the Bonds.

"Revenues" and "Net Revenues" shall mean the revenues and net revenues of the Issuer derived from the operation of the System and shall be construed as defined in Section 3 of Act 94, including with respect to "Revenues," the earnings derived from the investment of moneys in

the various funds and accounts established by this Ordinance.

"Series 2006 Bond" shall mean the Water Supply System Junior Lien Revenue Bond, Series 2006, in the principal amount of \$2,652,000 authorized to be issued pursuant to this Ordinance.

"System" shall mean the Issuer's water supply system including such facilities thereof as are now existing, are acquired and constructed as the Project, and all enlargements, extensions, repairs and improvements thereto hereafter made.

"Transfer Agent" shall mean the transfer agent and bond registrar for the Series 2006 Bonds as appointed from time to time by the Issuer as provided in Section 6 of this Ordinance and who or which shall carry out the duties and responsibilities as set forth in Sections 6 and 7 of this Section.

(2) *Necessity; Approval of Plans and Specifications; Conditions of Outstanding Bonds Met.* It is hereby determined to be a necessary public purpose of the Issuer to acquire and construct the Project in accordance with the plans and specifications prepared by the Issuer's Engineer and on file with the Issuer, which plans and specifications are hereby approved. Except as changed by this Ordinance, all the provisions of the Outstanding Ordinance shall apply to the Bonds issued pursuant to this Ordinance, the same as though each of said provisions were repeated in this Ordinance in detail; the purpose of this Ordinance being to authorize the issuance of junior lien revenue bonds to finance the cost of acquiring additions, extensions and improvements to the System.

(3) *Costs; Useful Life.* The total cost of the Project is estimated to be not less than Two Million Seven Hundred Six Thousand Dollars (\$2,706,000) including the payment of incidental expenses as specified in Section 4 of this Ordinance, which estimate of cost is hereby approved and confirmed, and the period of usefulness of the Project is estimated to be not less than forty (40) years.

(4) *Payment of Cost; Bonds Authorized.* To pay part of the cost of acquiring and constructing the Project and legal, engineering, financial and other expenses incident to said acquisition and construction, and incident to the issuance and sale of the Series 2006 Bonds, it is hereby determined that the Issuer borrow the sum of not to exceed Two Million Six Hundred Fifty-Two Thousand Dollars (\$2,652,000) and that junior lien revenue bonds be issued therefor pursuant to the provisions of Act 94. Any remaining costs of the Project shall be paid from other funds available to the Issuer.

(5) *Series 2006 Bond Details.* The Series 2006 Bond shall be designated WATER SUPPLY SYSTEM JUNIOR LIEN REVENUE BOND, SERIES 2006, shall be dated as of the date of delivery of the first installment, shall consist of one fully-registered nonconvertible bond of the denomination of \$2,652,000 and shall be payable in principal installments on August 1 of each year, as follows:

Year	Amount	Year	Amount
2007	\$27,000	2027	\$61,000
2008	28,000	2028	63,000
2009	29,000	2029	66,000
2010	31,000	2030	69,000
2011	32,000	2031	72,000
2012	33,000	2032	74,000
2013	35,000	2033	78,000
2014	36,000	2034	81,000
2015	37,000	2035	84,000
2016	39,000	2036	88,000
2017	41,000	2037	91,000
2018	42,000	2038	95,000
2019	44,000	2039	99,000
2020	46,000	2040	103,000
2021	48,000	2041	107,000
2022	50,000	2042	112,000
2023	52,000	2043	116,000
2024	54,000	2044	121,000
2025	56,000	2045	126,000
2026	58,000	2046	128,000

The Series 2006 Bonds are expected to be delivered to the Government as initial purchaser thereof in installments (the "delivery installments") and each delivery installment shall be noted on the registration grid set forth on the respective Series 2006 Bonds. The delivery installments shall be deemed to correspond to the principal installments of the respective Series 2006 Bonds in direct chronological order of said principal installments.

The principal installments of the Series 2006 Bonds will each bear interest from the date of delivery of the corresponding delivery installment to the registered holder thereof as shown on the registration grid set forth on the respective Series 2006 Bonds at the rate of not to exceed four and one-eighth percent (4.125%) per annum, payable on the first February 1 or August 1 following the date of delivery of said delivery installment, and semiannually thereafter on

February 1 and August 1 of each year until maturity or earlier prepayment of said installment. Acceptance of the interest rate on the Series 2006 Bonds shall be made by execution of the Series 2006 Bonds which so designates the rate specified by the Government and accepted in writing by the Issuer. The Series 2006 Bonds shall be issued in fully-registered form and shall not be convertible or exchangeable into more than one fully-registered bond.

The Series 2006 Bonds or installments thereof will be subject to prepayment prior to maturity in the manner and at the times as provided in the form of the Series 2006 Bonds set forth in Section 9 of this Ordinance.

(6) *Series 2006 Bonds Registration and Transfer.* The Transfer Agent shall keep or cause to be kept at its principal office sufficient books for the registration and transfer of the Series 2006 Bonds, which shall at all times be open to inspection by the Issuer. The Transfer Agent shall transfer or cause to be transferred on said books the Series 2006 Bonds presented for transfer, as hereinafter provided and subject to such reasonable regulations as it may prescribe.

Any Series 2006 Bonds may be transferred upon the books required to be kept by the Transfer Agent pursuant to this Section by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Series 2006 Bonds for transfer, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Transfer Agent. Whenever any Series 2006 Bond shall be surrendered for transfer, the Transfer Agent shall record such transfer on the registration books and shall register such transfer on the registration grid attached to the Series 2006 Bond. At the time of such transfer the Transfer Agent shall note on the Series 2006 Bond the outstanding principal amount thereof at the time of such transfer. The Transfer Agent shall require the payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The Issuer shall not be required (i) to issue, register the transfer of, or exchange any Series 2006 Bonds during a period beginning at the opening of business fifteen days before the day of the mailing of a notice of prepayment of Series 2006 Bonds or installments thereof selected for redemption and ending at the close of business on the day of that mailing, or (ii) to register the transfer of or exchange any Series 2006 Bonds or portion thereof so selected for prepayment. In the event any Series 2006 Bonds are called for prepayment in part, the Transfer Agent, upon surrender of the Series 2006 Bonds, shall note on the Series 2006 Bonds the principal amount prepaid and shall return the Series 2006 Bonds to the registered owner thereof together with the prepayment amount on the prepayment date.

The Issuer's Treasurer is hereby appointed to act as Transfer Agent with respect to the Series 2006 Bonds. If and at such time as the Series 2006 Bonds are transferred to or held by any registered owner other than the Government, the Issuer by resolution may appoint a bank or

trust company qualified under Michigan law to act as transfer agent and bond registrar with respect to Series 2006 Bonds, and the Issuer may thereafter appoint a successor Transfer Agent upon sixty (60) days notice to the registered owner of the Series 2006 Bonds.

(7) *Payment of the Series 2006 Bonds.* Principal of and interest on the Series 2006 Bonds shall be payable in lawful money of the United States of America by check or draft mailed by the Transfer Agent to the registered owner at the address of the registered owner as shown on the registration books of the Issuer kept by the Transfer Agent. If the Government shall no longer be the registered owner of the Series 2006 Bonds, then the principal of and interest on the Series 2006 Bonds shall be payable to the registered owner of record as of the fifteenth day of the month preceding the payment date by check or draft mailed to the registered owner at the registered address. Such date of determination of the registered owner for purposes of payment of principal or interest may be changed by the Issuer to conform to future market practice. The Issuer's Treasurer is hereby authorized to execute an agreement with any successor Transfer Agent.

The Transfer Agent shall record on the registration books the payment by the Issuer of each installment of principal or interest or both on the Series 2006 Bonds when made and the canceled checks or drafts representing such payments shall be returned to and retained by the Issuer's Treasurer, which canceled checks or drafts shall be conclusive evidence of such payments and the obligation of the Issuer with respect to such payments shall be discharged to the extent of such payments.

Upon payment by the Issuer of all outstanding principal of and interest on the Series 2006 Bonds, the registered owners thereof shall deliver the Series 2006 Bonds to the Issuer for cancellation.

The Issuer's President and Village Clerk are each hereby authorized and directed to negotiate privately the sale of the Series 2006 Bonds to the Government at an interest rate not to exceed four and one-eighth percent (4.125%) per annum.

The sale of the Series 2006 Bonds to the Government at an interest rate of not to exceed four and one-eighth percent (4.125%) per annum and at the par value thereof is hereby approved. The Issuer's Treasurer is hereby authorized to deliver the Series 2006 Bonds in accordance with the delivery instructions of the Government.

(8) *Execution and Delivery of the Series 2006 Bonds.* The Series 2006 Bonds shall be manually signed by the President and countersigned by the Village Clerk and shall have the corporate seal of the Issuer impressed thereon. After execution, the Series 2006 Bonds shall be

held by the Issuer's Treasurer for delivery to the Government. No Series 2006 Bonds or any installment thereof shall be valid until registered by the Issuer's Treasurer or by another person designated in writing by the Issuer's Treasurer to act as Bond Registrar, or upon transfer by the Government and thereafter, by an authorized representative of the Transfer Agent.

(9) *Series 2006 Bond Form.* The form and tenor of the Series 2006 Bonds shall be substantially as follows:

REGISTERED
UNITED STATES OF
AMERICA

STATE OF MICHIGAN
COUNTY OF ST. CLAIR

VILLAGE OF CAPAC
WATER SUPPLY SYSTEM
JUNIOR LIEN REVENUE BOND,
SERIES 2006

No. R-1

\$2,652,000

The Village of Capac, County of St. Clair, State of Michigan (the "Issuer"), for value received, hereby promises to pay to the registered owner hereof, but only out of the hereinafter described Net Revenues of the Issuer's Water Supply System including all appurtenances, additions, extensions and improvements thereto (the "System"), the sum of

Two Million Six Hundred Fifty Two Thousand Dollars

on the dates and in the principal installment amounts set forth in Exhibit A attached hereto and made a part hereof with interest on said installments from the date each installment is delivered to the Issuer and as set forth on the registration grid hereon until paid at the rate of four and oneeighth percent (4.125%) per annum, first payable on February 1, 2007, and semiannually thereafter; provided that the principal repayments required herein to the registered owner shall not exceed the total of the principal installments set forth on the registration grid attached hereto from time to time hereafter to acknowledge receipt of payment of the purchase price of this bond up to a total of \$2,652,000. Both principal of and interest on this bond are payable in lawful money of the United States of America to the registered owner at the address shown on the Issuer's registration books by check or draft mailed to the registered holder at the address shown on the registration books of the Issuer, and for the prompt payment thereof, the revenues of the System, after provision has been made for reasonable and necessary expenses of operation, administration and maintenance thereof (the "Net Revenues"), are hereby irrevocably pledged and a statutory lien thereon is hereby recognized and created subject in priority only to the statutory lien created by Ordinance No. 2004-01 of the Issuer duly

adopted by the Village Council of the Issuer on January 19, 2004 (the "Outstanding Ordinance"), with respect to the Issuer's outstanding Water Supply System Revenue Refunding Bonds, Series 2004, dated February 18, 2004 (the "Outstanding Bonds").

This bond is a single, fully-registered, non-convertible bond constituting an issue in the total aggregate principal sum of principal sum of \$2,652,000, issued pursuant to Ordinance No. ___ of the Issuer (the "Ordinance"), and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of acquiring and constructing System improvements to serve the users of the System, consisting generally of improvements to existing wells and the construction of a watermain for arsenic abatement purposes. For a complete statement of the revenues from which, and the conditions under which, this bond is payable, a statement of the conditions under which additional bonds of equal standing with this bond and of equal standing with the Outstanding Bonds may hereafter be issued, and the general covenants and provisions pursuant to which this bond is issued, reference is made to the Ordinance.

This bond is a self-liquidating bond and is not a general obligation of the Issuer and does not constitute an indebtedness of the Issuer within any constitutional or statutory debt limitation, but is payable, both as to principal and interest, from the Net Revenues of the System. The principal of and interest on the bond is secured by the statutory lien hereinbefore mentioned.

Principal installments of this bond are subject to prepayment prior to maturity, in inverse chronological order, at the Issuer's option, on any date on or after August 1, 2007, at par and accrued interest to the date fixed for prepayment.

Thirty days notice of the call of any principal installments for prepayment shall be given by mail to the registered owner at the registered address. The principal installments so called for prepayment shall not bear interest after the date fixed for prepayment, provided funds are on hand to prepay said installments.

This bond shall be registered as to principal and interest on the books of the Issuer kept by the Issuer's Treasurer or successor or written designee as bond registrar and transfer agent (the "Transfer Agent") and noted hereon, after which it shall be transferable only upon presentation to the Transfer Agent with a written transfer by the registered owner or his attorney in fact. Such transfer shall be noted hereon and upon the books of the Issuer kept for that purpose by the Transfer Agent.

The Issuer has covenanted and agreed and does hereby covenant and agree to fix and maintain at all times while any bonds including any installments of this bond payable from the Net Revenues of the System shall be outstanding, such rates for service furnished by the System as shall be sufficient to provide for payment of the interest upon and the principal of this bond, the Outstanding Bonds and any additional bonds of equal standing with this bond or the Outstanding Bonds payable from the Net Revenues of the System as and when the same become due and payable, and to create a Junior Lien Bond and Interest Redemption Account (including a Junior Lien Bond Reserve Account) therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the System as are required by the Ordinance.

It is hereby certified and recited that all acts, conditions and things required by law to be done precedent to and in the issuance of this bond have been done and performed in regular and due time and form as required by law.

IN WITNESS THEREOF, the Village of Capac, County of St. Clair, State of Michigan, by its Village Council, has caused this bond to be signed in its name by its President and to be countersigned by its Village Clerk, and its corporate seal to be hereunto affixed, all as of _____, 2006.

VILLAGE OF CAPAC
COUNTY OF ST.
CLAIR STATE OF
MICHIGAN

By:
Its:
President

Countersigned
By:
Its. Clerk

EXHIBIT A

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2007	\$27,000	2027	\$ 61,000
2008	28,000	2028	63,000
2009	29,000	2029	66,000
2010	31,000	2030	69,000
2011	32,000	2031	72,000
2012	33,000	2032	74,000
2013	35,000	2033	78,000
2014	36,000	2034	81,000
2015	37,000	2035	84,000
2016	39,000	2036	88,000
2017	41,000	2037	91,000
2018	42,000	2038	95,000
2019	44,000	2039	99,000
2020	46,000	2040	103,000
2021	48,000	2041	107,000
2022	50,000	2042	112,000
2023	52,000	2043	116,000
2024	54,000	2044	121,000
2025	56,000	2045	126,000
2026	58,000	2046	128,000

(10) *Security for Bonds.* To pay the principal of and interest on the Bonds as and when the same shall become due and any bonds of equal standing thereto, there is hereby recognized the statutory lien upon the whole of the Net Revenues of the System created by the Outstanding Ordinance and this Ordinance, subject in priority only to the first priority lien in favor of the Outstanding Bonds and any bonds issued of equal standing with the Outstanding Bonds, which lien shall be a first lien (except with regard to the Outstanding Bonds) to continue until the payment in full of the principal of and interest on all Bonds payable from the Net Revenues. Net Revenues shall be set aside for the purpose and identified as the Junior Lien Bond and Interest Redemption Account, as hereinafter specified.

(11) *Budget.* Immediately upon the effective date of this Ordinance for the remainder of the current Fiscal Year, and thereafter prior to the beginning of each Fiscal Year, the Issuer shall prepare an annual budget for the System for the ensuing Fiscal Year itemized on the basis of monthly requirements. A copy of such budget shall be mailed to the Government without request from the Government for review prior to adoption (as long as the Government is the registered owner of any of the Bonds), and upon written request to

any other registered owners of the Bonds.

(12) *Custodian of Funds.* The Issuer's Treasurer shall be custodian of all funds belonging to or associated with the System and such funds shall be deposited in the Depository Bank. The Issuer's Treasurer shall execute a fidelity bond with a surety company in an amount at least equal to the maximum annual debt service for the Bonds.

The Issuer's Treasurer is hereby directed to create and maintain the following funds and accounts into which the proceeds of the Bonds and the Revenues from the System shall be deposited in the manner and at the times provided in this Ordinance, which funds and accounts shall be established and maintained, except as otherwise provided, so long the Bonds hereby authorized remain unpaid.

(A) CONSTRUCTION ACCOUNT. The proceeds of the Bonds hereby authorized, and no other funds, shall be deposited in the 2006 WATER SUPPLY SYSTEM JUNIOR LIEN PROJECT CONSTRUCTION FUND ACCOUNT (the "Construction Account"), in the Depository Bank. Moneys in the Construction Account shall be used solely for the purposes for which the Bonds are issued.

Any unexpended balance of the proceeds of sale of the Bonds remaining after completion of the Project herein authorized may in the discretion of the Issuer be used for further improvements, enlargements and extensions to the System, provided that at the time of such expenditure such use be approved by the Department of Treasury (if such approval is then required by law). Any remaining balance after such expenditure shall be paid into the Junior Lien Bond and Interest Redemption Account and used as soon as is practical for the prepayment of installments of the Bonds or for the purchase of installments to the Bonds at not more than the fair market value thereof. Following completion of the Project, any unexpended balance of the Bonds shall be invested at a yield not to exceed the yield on the Bonds.

After completion of the Project and disposition of remaining proceeds, if any, of the Bonds pursuant to the provisions of this Section, the Construction Account shall be closed.

(B) WATER SUPPLY SYSTEM RECEIVING FUND. Upon and after the effective date of this Ordinance, the Revenues of the System shall continue to be set aside into the Water Supply System Receiving Fond created in the Outstanding Ordinance (the "Receiving Account"), and moneys so deposited therein shall be transferred, expended and used only in the manner and order as follows:

(i) Operation and Maintenance Account. There is hereby continued a

separate fund designated as the OPERATION AND MAINTENANCE ACCOUNT (the "Operation and Maintenance Account"). Revenues shall be transferred each quarter of the Fiscal Year, commencing upon the effective date of this Ordinance, from the Receiving Account to the Operation and Maintenance Account to pay the reasonable and necessary current expenses of administration and operating and maintaining the System for the ensuing quarter.

- (ii) Water Supply System Revenue Bonds—Bond and Interest Redemption Account. After the transfer required in (1) above, Revenues shall be transferred each quarter from the Receiving Account and deposited into the Bond and Interest Redemption Account established in the Outstanding Ordinance (the "Outstanding Bonds Redemption Account").

- (iii) Water Supply System Revenue Bonds-Junior Lien Bond and Interest Redemption Account. There is hereby established a separate depository account designated JUNIOR LIEN BOND AND INTEREST REDEMPTION ACCOUNT (the "Junior Lien Bond and Interest Redemption Account"), the moneys on deposit therein from time to time used solely for the purpose of paying the principal of and interest on the Bonds. After the transfer required in (1) and (2) above, Revenues shall be transferred each quarter of the Fiscal Year, commencing October 1, 2006 from the Receiving Account, before any other expenditures or transfer therefrom, and deposited in the Junior Lien Bond and Interest Redemption Account for payment of principal of and interest on the Bonds and to fund the Junior Lien Bond Reserve Account as required by this Ordinance.

Upon any delivery of an installment of the Bonds there shall be set aside at the time of delivery and on the first day of each quarter of the Fiscal Year thereafter to the next interest payment date an amount equal to that fraction of the amount of interest due on the next interest payment date on said installment so delivered, the numerator of which is 1 and the denominator of which is the number of full and partial Fiscal Year quarters from the date of said delivery to the next interest payment date. There shall be set aside each Fiscal Year quarter on or after the delivery of the first principal installment, an amount not less than 1/2 of the amount of interest due on the next interest payment date on all outstanding installments of the Bonds not delivered during the then current interest payment period.

Upon any delivery of an installment of the Bonds there shall be set aside at the time of such delivery and on the first day of each quarter of the Fiscal Year thereafter to the next principal payment date an amount equal to that fraction of the amount of principal due on the next principal payment date on said installment so delivered, the numerator of which is 1 and the denominator of which is the number of full and partial Fiscal Year quarters from the date of said delivery to the next principal payment date. There shall also be set aside each Fiscal Year quarter on or after the first day of the Fiscal Year quarter after payment of the first principal installment of the Bonds, an amount not less than 1/4 of the amount of principal due on the next principal payment date. Except as hereinafter provided, no further deposits shall be made into the Junior Lien Bond and Interest Redemption Account (excluding the Junior Lien Bond Reserve Account) once the aforesaid sums have been deposited therein. Any amount on deposit in the Junior Lien Bond and Interest Redemption Account (excluding the Junior Lien Bond Reserve Account) in excess of (a.) the amount needed for payment of principal installments of the Bonds for the then current principal payment period, plus (b.) interest on the Bonds for the then current interest payment period, shall be used by the Issuer for redemption of principal installments of the Bonds in the manner set forth in Section 10 hereof, if such use is impracticable, shall be deposited in or credited to the Receiving Account.

If for any reason there is a failure to make such quarterly deposit in the amounts required, then the entire amount of the deficiency shall be set aside and deposited in the Junior Lien Bond and Interest Redemption Account out of the Revenues first received thereafter which are not required by the Outstanding Ordinance and this Ordinance to be deposited in the Operation and Maintenance Account or in the Outstanding Bonds Redemption Account or in the Junior Lien Bond and Interest Redemption Account, which amount shall be in addition to the regular quarterly deposit required during such succeeding quarter or quarters.

There is hereby created in the Junior Lien Bond and Interest Redemption Account a separate account to be known as the Junior Lien Bond Reserve Account (the "Junior Lien Bond Reserve Account"). In addition to the amounts required to be deposited into the Bond Reserve Account created under the Outstanding Ordinance, the Junior Lien Bond Reserve Account shall be established as follows: Commencing the first day of the Fiscal Year quarter that is twelve months prior to the payment date of the first principal installment of the Bonds, there shall be withdrawn from the Receiving Account at the beginning of each Fiscal Year quarter and set aside in and transferred to the Junior Lien Bond Reserve Account, after provision has been made for the Operation and Maintenance Account and the current requirements of the Junior Lien Bond and Interest Redemption Account, the sum of at least \$3,425 per quarter (\$13,700 for the Series 2006 Bond) until there is

accumulated in the Junior Lien Bond Reserve Account the lessor of the sum of \$137,000 or the Reserve Amount. Except as hereinafter provided, no further deposits shall be made into the Junior Lien Bond Reserve Account for the purpose of providing additional reserve funds for the Bonds once the lessor of the sum of \$137,000 or the Reserve Amount has been deposited therein as herein provided. The moneys in the Junior Lien Bond Reserve Account shall be used solely for the payment of the principal installments of and interest on the Bonds as to which there would otherwise be default; provided however, that in the event the amount on deposit in the Junior Lien Bond Reserve Account exceeds the Reserve Amount, the moneys in excess of the Reserve Amount shall be used to pay principal installment of and interest on the Bonds on the next payment date.

If at any time it shall be necessary to use moneys in the Junior Lien Bond Reserve Account for such payment, then the moneys so used shall be replaced from the Net Revenues first received thereafter which are not required by this Ordinance and the Outstanding Ordinance to be used for operation and maintenance or for current principal and interest requirements for the Bonds and the Outstanding Bonds.

No further payments need be made into the Junior Lien Bond and Interest Redemption Account after enough of the principal installments of the Bonds have been retired so that the amount then held in the Junior Lien Bond and Interest Redemption Account (including the Junior Lien Bond Reserve Account), is equal to the entire amount of principal and interest which will be payable at the time of maturity of all the principal installments of the Bonds then remaining outstanding.

The moneys in the Junior Lien Bond and Interest Redemption Account and the Junior Lien Bond Reserve Account shall be invested in accordance with the Outstanding Ordinance and Section 13 of this Ordinance, and profit realized or income earned on such investment shall be used or transferred as provided in the Outstanding Ordinance and Section 13 of this Ordinance.

- (iv) Repair, Replacement and Improvement Fund. There is hereby established a separate fund designated REPAIR, REPLACEMENT AND IMPROVEMENT FUND (the "RRI Fund"). After the transfers required in (1), (2) and (3) above revenues shall be transferred each Fiscal Year quarter from the Receiving Account and deposited in the RRI Fund in an amount not less than \$6,075, less the amount, if any, deposited in the Junior Lien Bond Reserve Account at the beginning of the same Fiscal Year quarter. Moneys in the RRI Fund shall be used and disbursed only for the purpose of paying the cost of (a)

repairing any damage to and emergency maintenance of the System, (b) repairing or replacing obsolete, deteriorating, deteriorated or worn out portions of the System, (c) acquiring and constructing extensions and improvements to the System and (d) when necessary, for the purpose of making payments of principal and interest on the Bonds. If the amount in the Junior Lien Bond and Interest Redemption Account and the Junior Lien Bond Reserve Account is not sufficient to pay the principal of and interest on the Bonds when due, the moneys in the RRI Fund shall be transferred to the Junior Lien Bond and Interest Redemption Account and used for that purpose. Moneys in the RRI Fund may be invested in accordance with Section 13 of this Ordinance.

- (v) Reverse flow of funds; Surplus Money. In the event the moneys in the Receiving Account are insufficient to provide for the current requirements of the Operation and Maintenance Account, the Junior Lien Bond and Interest Redemption Account (including the Junior Lien Bond Reserve Account), the Junior Lien Bond and Interest Redemption Account (including the Junior Lien Bond Reserve Account), or the RRI Fund, any moneys and/or securities in the funds of the System described by this Ordinance and the Outstanding Ordinance shall be transferred, first, to the Operation and Maintenance Account, second, the Outstanding Bonds Redemption Account, third, the Junior Lien Bond and Interest Redemption Account, fourth, the Junior Lien Bond and Interest Redemption Account, and fifth, to the RRI Fund.

All moneys remaining in the Receiving Account at the end of any Fiscal Year after satisfying the above requirements for the deposit of moneys into the Operation and Maintenance Account, the Junior Lien Bond and Interest Redemption Account, and the RRI Fund may be transferred to the Junior Lien Bond and Interest Redemption Account and used to call Bonds or portions thereof for redemption, or at the option of the Issuer, transferred to the RRI Fund and used for the purpose for which the funds were established; provided, however, that if there should be a deficit in the Operation and Maintenance Account, the Junior Lien Bond and Interest Redemption Account, the Junior Lien Bond Reserve Account, or the RRI Fund, on account of defaults in setting aside therein the amounts hereinbefore required, then transfers shall be made from such moneys remaining in the Receiving Account to such funds in the priority and order named in this Section, to the extent of such deficits.

(13) *Investments.* Moneys in the funds and accounts established herein and moneys derived from the proceeds of sale of the Bonds may be invested by the legislative body of the Issuer on behalf of the Issuer in the obligations and instruments permitted for investment by Section 24 of Act 94, as the same may be amended from time to time; provided, however, that as long as the Bonds are held by the Government, then the investment may be limited to the obligations and instruments authorized by the Government. Investment of moneys in the Junior Lien Bond and Interest Redemption Account being accumulated for payment on the next maturing principal or interest payment on the Bonds shall be limited to obligations and instruments bearing maturity dates prior to the date of the next maturing principal or interest payment on the Bonds. Investment of moneys in the Junior Lien Bond Reserve Account shall be limited to Government obligations and instruments bearing maturity dates or subject to redemption, at the option of the holder thereof, not later than five (5) years from the date of the investment. In the event investments are made, any securities representing the same shall be kept on deposit with the Depository Bank. Interest income earned on investment of funds in the Receiving Account, the Operation and Maintenance Account and the Junior Lien Bond and Interest Redemption Account (except the Junior Lien Bond Reserve Account), shall be deposited in or credited to the Receiving Account. Interest income earned on the investment of funds in the Junior Lien Bond Reserve Account shall be deposited in the Junior Lien Bond and Interest Redemption Account.

(14) *Rates and Charges.* Rates and charges for the services of the System have been fixed by ordinance in an amount sufficient to pay the costs of operating, maintaining and administering the System, to pay the principal of and interest on the Bonds and the Outstanding Bonds and to meet the requirements for repair, replacement, reconstruction and improvement and all other requirements provided herein, and otherwise comply with the covenants herein provided. The Issuer hereby covenants and agrees to fix and maintain at all times while any of the Bonds shall be outstanding such rates for service furnished by the System as shall be sufficient to provide for the foregoing expenses, requirements and covenants, and to create a Junior Lien Bond and Interest Redemption Account (including a bond reserve account) for all such Bonds. The rates and charges for all services and facilities rendered by the System shall be reasonable and just, taking into consideration the cost and value of the System and the cost of maintaining, repairing, and operating the same and the amounts necessary for the retirement of all of the Bonds and the Outstanding Bonds, and accruing interest on all of the Bonds and the Outstanding Bonds, and there shall be charged such rates and charges as shall be adequate to meet the requirements of this Section and Section 12 of this Ordinance.

(15) *No Free Service.* No free service shall be furnished by the System to any individual, firm or corporation, public or private or to any public agency or instrumentality.

(16) *Covenants.* The Issuer covenants and agrees, so long as any of the Bonds hereby authorized remain unpaid, as follows:

(a) It will comply with applicable State laws and regulations and continually operate and maintain the System in good condition.

(b) (i) It will maintain complete books and records relating to the operation and financial affairs of the System. If the Government is the holder of any of the Bonds, the Government shall have the right to inspect the System and the records, accounts, and data relating thereto at all reasonable times. (ii) It will file with the Department of Treasury and the Government each year, as soon as is possible, not later than one hundred eighty (180) days after the close of the Fiscal Year, a report, on forms prepared by the Department of Treasury, made in accordance with the accounting method of the Issuer, completely setting forth the financial operation of such Fiscal Year. (iii) It will cause an annual audit of such books of record and account for the preceding Fiscal Year to be made each year by a recognized independent certified public accountant, and will cause such accountant to mail a copy of such audit to the Government, without request of the Government, or to the manager of the syndicate or account purchasing the Series 2006 Bonds. Such audit shall be completed and so made available not later than ninety (90) days after the close of each Fiscal Year, and said audit may, at the option of the Issuer, be used in lieu of the statement on forms prepared by the Department of Treasury and all purposes for which said forms are required to be used by this Ordinance.

(c) It will maintain and carry, for the benefit of the holders of the Bonds, insurance on all physical properties of the System, of the kinds and in the amounts normally carried by municipalities engaged in the operation of similar systems. The amount of said insurance shall be approved by the Government. All moneys received for losses under any such insurance policies shall be applied solely to the replacement and restoration of the property damaged or destroyed, and to the extent not so used, shall be used for the purpose of calling Bonds.

(d) It will not borrow any money from any source or enter into any contract or agreement to incur any other liabilities that may in any way be a lien upon the Revenues or otherwise encumber the System so as to impair Revenues therefrom, without obtaining the prior written consent of the Government, nor shall it transfer or use any portion of the Revenues derived in the operation of the System for any purpose not herein

specifically authorized.

(e) It will not voluntarily dispose of or transfer its title to the System or any part thereof, including lands and interest in land, sale, mortgage, lease or other encumbrances, without obtaining the prior written consent of the Government.

(f) Any extensions to or improvements of the System shall be made according to sound engineering principles and specifications shall be submitted to the Government for prior review.

(g) To the extent permitted by law, it shall take all actions within its control necessary to maintain the exclusion of the interest on the Series 2006 Bonds from adjusted gross income for general federal income tax purposes under the Internal Revenue Code of 1986, as amended, including but not limited to, actions relating to the rebate of arbitrage earnings, if applicable, and the expenditure and investment of proceeds of the Series 2006 Bonds and moneys deemed to be proceeds of the Series 2006 Bonds.

(18) *Additional Bonds.* The Issuer may issue additional bonds of equal standing with the Series 2006 Bonds for the following purposes and on the following conditions:

(a) To complete construction of the Project according to the plans referred to in Section 2, additional bonds may be issued in the amount necessary therefor.

(b) For the purpose of making reasonable replacement or extension of the System or refunding any outstanding Bonds, additional bonds of equal standing may be issued if:

(i) The augmented net revenues of the System for the Fiscal Year preceding the year in which such additional bonds are to be issued were 100 percent of the average annual debt service requirements on all bonds then outstanding and those proposed to be issued net of any bonds to be refunded by the new issue; or

(ii) The holders of at least 75 percent of the then outstanding Bonds consent to such issue in writing.

For purposes of this Section the term "augmented net revenues" shall mean the Net Revenues of the System for a year, adjusted to reflect the effect of any rate increase placed in effect during that year (but not in effect for the whole year), placed in effect subsequent to the year or scheduled, at the time the new Bonds are authorized, to be placed in effect

before principal of and interest on the new Bonds become payable from Revenues of the System, and augmented by any increase in Revenues or decrease in expenses estimated to accrue from the improvements to be acquired from the new Bonds. The adjustments and augmentations provided for in the preceding sentence shall be established by certificate of an independent consulting engineer filed with the Clerk of the Issuer. If new Bonds are issued within 4 months of the end of a Fiscal Year, the determination made in subsection (b)(i) of this Section may be based upon the results of a Fiscal Year ending within 16 months of the date of issuance of the new Bonds.

The funds herein established shall be applied to all additional bonds issued pursuant to this Section as if said bonds were part of the original bond issue and all Revenue from any such extension or replacement constructed by the proceeds of an additional bond issue shall be paid to the Receiving Account mentioned in this Ordinance.

Except as otherwise specifically provided so long as any of such Series 2006 Bonds herein authorized are outstanding, no additional bonds or other obligations pledging any portion of the Revenues of the System shall be incurred or issued by the Issuer unless the same shall be junior and subordinate in all respects to the Series 2006 Bonds herein authorized.

(18) *Ordinance Shall Constitute Contract.* The provisions of this Ordinance shall constitute a contract between the Issuer and the bondholders and after the issuance of the Series 2006 Bonds this Ordinance shall not be repealed or amended in any respect which will adversely affect the rights and interests of the holders nor shall the Issuer adopt any law, ordinance or resolution in any way adversely affecting the rights or the holders so long as the Series 2006 Bonds or interest thereon remains unpaid.

(19) *Refunding of Series 2006 Bonds.* If at any time it shall appear to the Government that the Issuer is able to refund upon call for redemption or with consent of the Government the then outstanding Series 2006 Bonds by obtaining a loan for such purposes from responsible cooperative or private credit sources at reasonable rates and terms for loans for similar purposes and periods of time, the Issuer will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government, and will take all such actions as may be required in connection with such loans.

(20) *Default of Issuer.* If there shall be default in the Junior Lien Bond and Interest Redemption Account, provisions of this Ordinance or in the payment of principal of or interest on any of the Bonds, upon the filing of a suit by 20 percent of the holders of the Bonds, any court having jurisdiction of the action may appoint a receiver to administer

the System on behalf of the Issuer with power to charge and collect rates sufficient to provide for the payment of the Bonds and for the payment of operation, maintenance and administrative expenses and to apply Revenues in accordance with this Ordinance and the laws of the State of Michigan.

The Issuer hereby agrees to transfer to any bona fide receiver or other subsequent operator of the System, pursuant to any valid court order in a proceeding brought to enforce collection or payment of the Issuer's obligations, all contracts and other rights of the Issuer, conditionally, for such time only as such receiver or operation shall operate by authority of the court.

The holders of 20 percent of the Bonds in the event of default may require by mandatory injunction the raising of rates in a reasonable amount.

(21) *Ordinance Subject to Michigan Law and Government Regulations.* The provisions of this Ordinance is subject to the laws of the State of Michigan and to the present and future regulations of the Government not inconsistent with the express provisions hereof and Michigan law.

(22) *Fiscal Year of System.* The fiscal year for operating the System shall be the Fiscal Year.

(23) *Issuer Subject to Loan Resolution.* So long as the Government is holder of any of the Bonds, the Issuer shall be subject to the loan resolution (RUS Bulletin 1780-27) and shall comply with all provisions thereof.

(24) *Covenant Not to Defeas*_e. So long as the Government is the holder of any of the Bonds, the Issuer covenants that it will not defease any of the Bonds held by the Government.

(25) *Conflict and Severability.* All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed, and each section of this Ordinance and each subdivision of any section hereof is hereby declared to be independent, and the finding or holding of any section or subdivision thereof to be invalid or void shall not be deemed or held to affect the validity of any other section or subdivision of this Ordinance.

(26) *Paragraph Headings.* The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be a part of this

Ordinance.

(27) *Publication and Recordation.* This Ordinance shall be published in full in The Tri-City Times, a newspaper of general circulation in the Issuer, qualified under State law to publish legal notices, promptly after its adoption, and the same shall be recorded in the Ordinance Book of the Issuer and such recording authenticated by the signatures of the President and the Village Clerk.

(28) *Certain Determinations.* The President and Village Clerk are hereby authorized to adjust the final bond details set forth herein to the extent necessary or convenient to complete the transactions authorized herein, and in pursuance of the foregoing each is authorized to exercise the authority and make the determinations authorized pursuant to Section 7a(1)(c) of Act 94, including but not limited to determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights, the place of delivery and payment, and other matters, provided that the aggregate principal amount of Series 2006 Bonds issued hereunder shall not exceed \$2,652,000 and the interest rate on the Series 2006 Bonds shall not exceed four and one-eighth percent (4.125%) per annum. The President and Village Clerk are authorized to confirm the terms of the sale of the Series 2006 Bonds issued hereunder and formal bond specifications with respect to such Series 2006 Bonds by the execution of the form of bond and/or an appropriate form or sale order acceptable to bond counsel.

(29) *Effective Date.* This Ordinance is hereby determined by the Village Council to be immediately necessary for the preservation of the peace, health and safety of the Issuer and shall be in full force and effect from and after its passage and publication as required by law.

Secs. 28-53--28-80. Reserved.

ARTICLE III.

SEWERS

DIVISION 1.

GENERALLY

Sec. 28-81. Purpose and objectives of article.

(a) This article regulates private and public sewers, sewer connections, industrial waste pretreatment facilities and discharge of industrial waste into the publicly operated treatment works; provides for pollutant limitations, data collection, monitoring and sampling; provides for the rates and charges for the connection to and use of the wastewater system; and provides for penalties for the violation of this article.

(b) The objectives of this article are to:

- (1) Prevent the introduction of pollutants into the wastewater system which will interfere with the normal operation of the system or contaminate the resulting municipal sludge.
- (2) Prevent the introduction of pollutants into the wastewater system which do not receive adequate treatment in the POTW, and which will pass through the system into receiving waters or the atmosphere or otherwise be incompatible with the system.
- (3) Improve the opportunity to recycle and reclaim wastewater and sludge from the system.
- (4) Provide for equitable distribution of the cost of municipal wastewater system.
- (5) Protect POTW personnel who may be affected by wastewater and sludge in the course of their employment.
- (6) Provide for the investigation of instances of pass-through or interference, the notification of the responsible industry, and for appropriate enforcement actions.

(Ord. No. 97-2, § 1, 5-5-1997)

Sec. 28-82. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act or the act means the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), as amended, 33 USC 1251 et seq.

Applicable county health department means the county health department.

Authorized representative of industrial user means:

- (1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;
- (2) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively;
- (3) If the user is a federal, state or local government facility, then a superintendent or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee shall be the authorized representative; or
- (4) A duly authorized representative of the individual designated in subsections (1) and (2) of this definition, if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates, or for environmental matters of the company. Authorization for this representative must be submitted in writing to the village by the individual designated in subsections (1) and (2) of this definition.

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five days at 20 degrees Celsius, expressed in terms of weight and concentration (milligrams per liter).

Building drain means that part of the lowest horizontal piping of a drainage system which receives discharge from drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal.

Bypass means the intentional diversion of waste streams from any portion of a user's pretreatment facility.

Categorical standards means national categorical pretreatment standards or pretreatment standard.

Chemical oxygen demand (COD) means a measure of the oxygen-consuming capacity of inorganic and organic matter present in water or wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specified test. It does not differentiate between stable and unstable organic matter and thus does not necessarily correlate with biochemical oxygen demand. Also known as OC and DOC, oxygen consumed and dichromate oxygen consumed, respectively.

Chlorine demand means the difference between the amount of chlorine applied and the amount of free chlorine available at the end of the contact time, expressed in milligrams per liter.

Combined sewer means a sewer receiving both surface runoff and sewage.

Commercial waste means a liquid or water-carried waste material from a commercial business engaged in buying, selling, exchanging goods or engaging in such goods or services.

Compatible pollutant means a substance amenable to treatment in the wastewater treatment plant such as biochemical oxygen demand, suspended solids, pH and fecal coliform bacteria, plus additional pollutants identified in the NPDES permit if the publicly owned treatment works was designed to treat such pollutants and, in fact, does remove such pollutants to a substantial degree. Examples of such additional pollutants may include chemical oxygen demand, total organic carbon, phosphorus and phosphorus compounds, nitrogen compounds, fats, oils and greases of animal or vegetable origin.

Composite sample means a series of samples taken over a specific time period whose volume is proportional to the flow in the waste stream, which are combined into one sample.

Connection charge means a charge for the privilege of connecting to the wastewater system.

Cooling water means the water discharged from any use such as air conditioning, cooling

or refrigeration, or to which the only pollutant added is heat.

Debt service charge means charges levied to customers of the wastewater system which are used to pay principal, interest and administrative costs of retiring the debt incurred for construction of the wastewater system. The debt service charge shall be in addition to the user charge specified in this section.

Dilution means any thinning or weakening of a wastewater discharge by mixing it with water or other liquid, including any process of mixing or diluting as a partial or complete substitute for adequate treatment necessary to achieve compliance with applicable standards and limitations.

Direct discharge means the discharge of treated or untreated wastewater directly to the waters of the state.

Environmental Protection Agency (EPA) means the U.S. Environmental Protection Agency, administrator or other duly authorized official.

Garbage means solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

Grab sample means a sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream over a period of time of not more than 15 minutes.

Holding tank waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

Incompatible pollutants means any pollutant which is not a compatible pollutant.

Indirect discharge means the discharge or the introduction of nondomestic pollutants into the POTW, including holding tank waste discharged into the system.

Industrial wastes means the wastewater discharges from industrial, manufacturing, trade, service or business processes, or wastewater discharge from any structure with these characteristics, as distinct from their employee's domestic wastes or wastes from sanitary conveniences.

Infiltration means any waters entering the system from the ground through such means as, but not limited to, defective pipes, pipe joints, connections or manhole walls. Infiltration does

not include and is distinguished from inflow.

Infiltration/inflow means the total quantity of water from both infiltration and inflow.

Inflow means any waters entering the system through such sources as, but not limited to, building downspouts, footing or yard drains, cooling water discharges, seepage lines from springs and swampy areas and storm drain cross connections.

Interference means the inhibition or disruption of the POTW treatment processes or operations which contributes to a violation of any requirement of the village's NPDES permit or reduces the efficiency of the POTW. The term also includes prevention of sewage sludge use or disposal by the POTW.

Laboratory determination means the measurements, tests and analyses of the characteristics of waters and wastes in accordance with the methods contained in the latest edition at the time of any such measurement, test, or analysis of Standard Methods for Examination of Water and Wastewater, a joint publication of the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation or in accordance with any other method prescribed by the rules and regulations promulgated pursuant to this article.

Lateral line means that portion of the sewer system located under the street or within the street right-of-way from the property line to the trunk line and which collects sewage from a particular property for transfer to the trunk line.

Local limits means the numerical or nonnumerical standards and requirements established by the POTW in order to protect the safety and welfare of the public and POTW workers, or to prevent pollutant interference, inhibition or pass-through in regard to plant operations, or to comply with state and federal regulations.

National categorical pretreatment standard or pretreatment standard means any federal regulation containing pollutant discharge limits promulgated by the EPA which applies to a specific category of industrial users.

National Pollution Discharge Elimination System or NPDES permit means a permit issued pursuant to section 402 of the act (33 USC 1342).

National prohibitive discharge standard or prohibitive discharge standard means any regulation developed under the authority of 307(b) of the act and 40 CFR 403.5.

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

New source means any building, structure, facility or installation from which there is or may be a discharge and for which construction commenced after the publication of proposed pretreatment standards under section 307(c) of the Clean Water Act will be applicable to the source if the standards are thereafter promulgated in accordance with section 307(c), and if any of the following provisions apply:

- (1) The building, structure, facility or installation is constructed at a site at which no other source is located.
- (2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source.
- (3) The production of wastewater-generating processes of the building, structure, facility or installation is substantially independent of an existing source at the same site. The extent to which the new facility is engaged in the same general type of activity as the existing source and the extent of integration of the new facility with the existing plant should be considered in determining whether the process is substantially independent.

Construction is considered to have commenced when installation or assembly of facilities/equipment has begun, significant site preparation has begun for installation or assembly, or the owner/operator has entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Construction on a site at which an existing source is located results in a modification, rather than a new source, if the construction does not create a new building, structure, facility or installation meeting the criteria of subsections (2) or (3) of this definition but otherwise alters, replaces or adds to existing process or production equipment.

Normal domestic sewage (NDS) means wastewater which, when analyzed, shows a daily average concentration of not more than 200 mg/l of BOD; not more than 240 mg/l of suspended solids; not more than seven mg/l of phosphorus; not more than 100 mg/l of fats, oils and grease; not more than 40 mg/l of total Kjeldahl nitrogen.

Obstruction means any object of whatever nature which substantially impedes the flow of sewage from the point of origination to the trunk line. This shall include, but not be limited to,

objects, sewage, tree roots, rocks and debris of any type.

Operation and maintenance means all work, materials, equipment, utilities and other effort required to operate and maintain the wastewater transportation and treatment system consistent with ensuring adequate treatment of wastewater to produce an effluent in compliance with the NPDES permit and other applicable state and federal regulations, and includes the cost of replacement.

Owner means the owner of record of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person in control of a building.

Pass-through means a discharge that exits a publicly owned treatment works into state waters in quantities or concentrations which, alone or in conjunction with discharges from other sources, causes a violation of any requirement of the act.

Person means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or its legal representatives, agents or assigns.

pH means the logarithm (base ten) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

Pollutant means any of various chemicals, substances and refuse materials such as solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, radioactive materials, heat, dredged spoil, incinerator residue, filter backwash, munitions, medical wastes, rock, sand, and industrial, municipal and agricultural wastes which impair the purity of the water and soil.

Pollution means the manmade or man-induced alteration of the chemical, physical, biological and radiological integrity of water.

POTW treatment plant means that portion of the POTW designed to provide treatment to wastewater.

Pretreatment or treatment means the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration

can be obtained by physical, chemical or biological processes, by process changes, or by other means, except as prohibited by 40 CFR 403.6(d).

Pretreatment requirements means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard, imposed on a nondomestic user.

Pretreatment standards means prohibited discharge standards, categorical pretreatment standards and local limits.

Private sewer lines means all service lines and equipment for the disposal of sewage installed or located on any property, from the property line to and including any structure or facility which exists on the property.

Process waste means any water, which, during manufacturing or processing, comes into direct contact with, or results from the production or use of, any raw material, intermediate product, finished product, byproduct or waste product. This definition specifically excludes noncontact cooling water, domestic wastewater, infiltration and inflow.

Properly shredded garbage means the wastes from the preparation, cooking and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half of an inch in any dimension.

Property owner means the owner of the property which abuts the street.

Public sewer means a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

Publicly owned treatment works (POTW) means a treatment works as defined by section 212 of the act (33 USC 1292), which is owned in this instance by the village. This definition includes any sewers that convey wastewater to the POTW treatment plant. For the purposes of this article, the term "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the village who are, by contract or agreement with the village, users of the village's POTW.

Replacement means the replacement, in whole or in part, of any equipment, appurtenances and accessories in the wastewater transportation or treatment systems to ensure continuous treatment of wastewater in accordance with the NPDES permit and other applicable state and federal regulations.

Sanitary sewage means a liquid or water-carried waste discharged from the sanitary conveniences of dwellings including, but not limited to, residential homes, apartment houses and hotels, office buildings, commercial businesses or industrial plants.

Sanitary sewer means a sewer which carries sewage and to which stormwater, surface water and groundwater are not intentionally admitted.

Sewage means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwater as may be present.

Sewage treatment plant or *wastewater treatment plant* means any arrangement of devices and structures used for treating sewage.

Sewage works means all facilities for collecting, pumping, treating and disposing of sewage.

Sewer means a pipe or conduit for carrying sewage.

Sewer service charge means the sum of the applicable user charge, surcharges and debt service charges.

Severe property damage means substantial physical damage to property, damage to the user's pretreatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Significant industrial user means any industrial user of the village's wastewater disposal system who:

- (1) Is subject to national categorical pretreatment standards under 40 CFR 403 (1992) and 40 CFR Chapter I, subchapter N (1990);
- (2) Has a discharge flow of 25,000 gallons or more of process water to the POTW, excluding sanitary, noncontact cooling water and boiler blowdown wastewater, per average workday;
- (3) Has a process waste stream that makes up five percent or more of the average dry

weather hydraulic or organic capacity of the POTW;

- (4) Has in his wastes toxic pollutants as defined pursuant to section 307 of the act, state statutes and rules; or
- (5) Is designed as a significant industrial user by the village on the basis that the user has a reasonable potential for adversely affecting the publicly owned treatment works operation or for violating any pretreatment standard or requirement.

Significant noncompliance means one or more of the following:

- (1) Chronic violation of wastewater discharge limit, defined here as when 66 percent or more of all of the measurements for a pollutant parameter taken during a six-month period exceed by any magnitude the corresponding daily maximum limit or the corresponding average limit.
- (2) Technical review criteria violation of wastewater discharge limit, defined here as when 33 percent or more of all of the measurements for a pollutant parameter taken during a six-month period equal or exceed the product of the corresponding daily maximum limit multiplied by the applicable TRC factor, or the product of the corresponding average limit multiplied by the applicable TRC factor (TRC factor = 1.4 for BOD, fats, oil and grease, and 1.2 for all other pollutants except pH).
- (3) Any other violation of a daily maximum limit or an average limit that the superintendent determines has alone or in combination with other discharges caused interference or pass through, including endangering the health of POTW personnel or the general public.
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, public welfare or the environment, or has resulted in the POTW exercising its emergency authority to halt or prevent such a discharge.
- (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a village-issued discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.
- (6) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports and/or reports on

compliance with compliance schedules.

- (7) Failure to accurately report noncompliance.
- (8) Any other violation, or group of violations, which the superintendent determines as adversely affecting operation or implementation of the village's pretreatment program.

Slug load means any substance released in a discharge at a rate and/or concentration which causes interference to a POTW.

Standard industrial classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual, issued by the Executive Office of the President, Office of Management and Budget, 1972.

Storm sewer or *storm drain* means a sewer which carries stormwater and surface water and drainage, but excludes sewage and polluted industrial wastes.

Stormwater means any flow occurring during or following any form of natural precipitation and resulting therefrom.

Superintendent means the superintendent of the department of public works, or his authorized representative. The superintendent is the person designated by the village to supervise the operation of the wastewater system.

Surcharge means, as part of the service charge, any customer discharging wastewater having compatible pollutant strength in excess of limits set forth by the village shall be required to pay an additional charge to cover the cost of treatment of such excess strength wastewater.

Suspended solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

Toxic pollutant means any pollutant or combination of pollutants which is or can potentially be harmful to public health or environment including those listed as toxic in regulations promulgated by the administrator of the Environmental Protection Agency under the provisions of CWA 307(a) or other acts.

Trunk line means the main sewer line located under any street or within any street right-of-way which collects and transmits the sewage of the various properties served by the

sewer system.

Uncontaminated industrial waste means wastewater which has not come into contact with any substance used in or incidental to industrial processing operations and to which no chemical or other substance has been added.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with national categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.

User means any person who contributes, causes or permits the discharge of wastewater into the POTW.

User charge means a charge levied on users of a treatment works for the cost of operation and maintenance of sewer works pursuant to section 204(b) of PL 92-500 and includes the cost of replacement.

User class means the kind of user connected to sanitary sewers including, but not limited to, residential, industrial, commercial, institutional and governmental.

- (1) *Residential user* means a user of the treatment works whose premises or buildings are used primarily as a domicile for one or more persons, including dwelling units such as detached, semidetached and row houses, mobile homes, apartments or permanent multifamily dwellings (transit lodging is not included, it is considered commercial).
- (2) *Industrial user* means any user who discharges industrial wastes as defined in this article.
- (3) *Commercial user* means an establishment listed in the Office of the Management and Budget's Standard Industrial Classification Manual (SICM), involved in a commercial enterprise, business or service which, based on a determination by the village, discharges primarily segregated domestic wastes or wastes from sanitary conveniences and which is not a residential user or an industrial user.
- (4) *Institutional user* means any establishment listed in the SICM, involved in a social, charitable, religious or educational function which, based on a

determination by the village, discharges primarily segregated domestic wastes or wastes from sanitary conveniences.

- (5) *Governmental user* means any federal, state or local government user of the wastewater treatment works.

Wastewater means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with any groundwater, surface water and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.
(Ord. No. 97-2, § 2, 5-5-1997)

Cross References: Definitions generally, § 1-2.

Sec. 28-83. Abbreviations.

The following abbreviations shall have the designated meanings:

- (1) BOD - Biochemical oxygen demand
- (2) CFR - Code of Federal Regulations
- (3) COD - Chemical oxygen demand
- (4) EPA - Environmental Protection Agency
- (5) l - liter
- (6) mg - milligrams
- (7) mg/l - milligrams per liter
- (8) NDS - Normal domestic sewage

- (9) NPDES - National Pollutant Discharge Elimination System
- (10) P - Phosphorus
- (11) POTW - Publicly owned treatment works
- (12) SIC - Standard industrial classification
- (13) SICM - Standard Industrial Classification Manual
- (14) SS - Suspended solids
- (15) SWDA - Solid Waste Disposal Act, 42 USC 6901 et seq.
- (16) O&M - Operation and maintenance
- (17) CWA - Clean Water Act
(Ord. No. 97-2, § 3, 5-5-1997)

Sec. 28-84. Unsanitary deposits; discharge to natural outlets.

(a) It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner upon public or private property within the village, or in any area under the jurisdiction of the village, any human or animal excrement, garbage or other objectionable waste.

(b) It shall be unlawful, when sewage and/or treatment facilities are available, to discharge to any natural outlet within the village, or in any area under the jurisdiction of the village, any sanitary sewage, industrial wastes or other polluted waters, unless specifically permitted by the state department of environmental quality.

(c) It shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage, unless specifically permitted by the applicable county health department or as provided in this article.

(d) The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the village and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public

sanitary or combined sewer of the village, is hereby required at his expense to install suitable sewage facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this article, within 90 days after the date of official notice to do so.

(Ord. No. 97-2, § 4, 5-5-1997)

Sec. 28-85. Protection from damage.

No unauthorized person shall enter or maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the municipal sewage works.

(Ord. No. 97-2, § 11, 5-5-1997)

Sec. 28-86. Municipal liability.

The village will not be responsible for interruptions of services due to natural calamities, equipment failures or actions of the system users. It shall be the responsibility of the user that all connected equipment remain in good working order so as not to cause disruption of service of any sewer or treatment plant equipment.

(Ord. No. 97-2, § 12, 5-5-1997)

Secs. 28-87--28-110. Reserved.

DIVISION 2.

ADMINISTRATION AND ENFORCEMENT*

* **Cross References:** Administration, ch. 2.

Sec. 28-111. Power and authority of inspectors.

The superintendent and other duly authorized employees of the village acting as his duly authorized agent, bearing proper credentials and identification, shall be permitted to enter upon such properties as may be necessary for the purposes of inspection, observation, measurement, sampling and testing in accordance with provisions of this article.

(Ord. No. 97-2, § 13, 5-5-1997)

Sec. 28-112. Administrative remedies; generally.

(a) The superintendent may suspend wastewater treatment services to any user when such suspension is necessary, in the opinion of the superintendent, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, causes or may cause interference to the POTW, or causes or may cause the POTW to violate any condition of its discharge permit.

(b) The superintendent may revoke, suspend or terminate the wastewater discharge permit of any user which fails to accurately report the wastewater constituents and characteristics of its discharge; fails to report significant changes in wastewater constituents or characteristics; refuses reasonable access to the user's premises by representatives of the village for the purpose of inspection or monitoring; or violates the conditions of this article or any final judicial order entered with respect thereto.

(c) A user shall have an affirmative defense in any action brought against it alleging the introduction of a pollutant causing interference at the POTW, pass-through at the POTW, or a violation of the specific provisions of this article if it can be demonstrated that both of the following occurred:

- (1) It did not know or have reason to know that its discharge, alone or in conjunction with a discharge from other sources, would cause pass-through interference, or a violation of specific provisions of this article; and
 - (2) A local limit was in effect for the pollutant that caused pass-through or interference, and the user was in compliance with this local limit directly before and during the pass-through or interference; or a local limit was not in effect for the pollutant that caused the pass through or interference, and the user's discharge directly before and during the pass-through or interference did not change substantially in nature or constituents from the prior discharge activity.
- (d) Users do not have an affirmative defense for the following types of discharges:
- (1) Trucked or hauled pollutants;
 - (2) Pollutants that create a fire or explosion hazard in the POTW including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit, using the test methods specified in 40 CFR 261.21;
 - (3) Pollutants that cause corrosive structural damage to the POTW including, but not

limited to, discharges with a pH lower than five, unless the works is specifically designed to accommodate such discharges; or

- (4) Pollutants that result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health problems.

(Ord. No. 97-2, § 14(1), 5-5-1997)

Sec. 28-113. Administrative notices and orders.

(a) *Notice of violation.* When it is determined that a user has violated any provision of this article, industrial waste permit or order issued under this article, or other pretreatment standard or requirement, the superintendent will issue a notice of violation to formally document the noncompliance. This document will specify the nature of the violation, establish a date by which the violation shall be corrected, and notify the affected user that failure to correct the violation would constitute a further violation which may result in additional enforcement action. The notice of violation will be sent via first class mail or personally served on an authorized representative of the user. Receipt, or nonreceipt, of a notice of violation shall in no way relieve the affected user of any and all liability associated with the violation. Issuance of a notice of violation will not be a bar against, or a prerequisite for, any other enforcement actions by the village against the affected user.

(b) *Administrative order to show cause.* When it is determined that a user has violated any provision of this article, industrial waste permit or order issued under this article, or other pretreatment standard or requirement, the superintendent may issue an administrative order to show cause requiring the affected user to appear at a hearing to demonstrate why escalated enforcement action should not be pursued. This document will specify the nature of the violation, establish the time and place for the hearing, and notify the affected user that failure to comply would constitute a violation of this article which may result in additional enforcement action. The order to show cause will be issued at least ten days prior to the hearing, and will be sent via certified mail, return receipt requested, or personally served on an authorized representative of the user. Receipt or nonreceipt of an order to show cause shall in no way relieve the affected user of any and all liability associated with the violation. Issuance of an order to show cause or conducting of the show cause hearing will not be a bar against, or a prerequisite for, any other enforcement actions by the village against the affected user.

(c) *Order of consent.* When the village and an affected user agree to a violation and to the remedial solution, the superintendent may issue an order of consent or similar document to formally establish such agreement, specify the nature of the violation and required actions, such as compliance schedules, stipulated fines, additional self-monitoring and improvements to

treatment facilities or management practices designed to control the user's discharge to the sewer. The order of consent will be sent via certified mail, return receipt requested, or personally served on an authorized representative of the user, and will require signatures of representatives from both the village and the affected user. This order shall have the same force and effect as other administrative orders issued by the village pursuant to this article, shall be judicially enforceable, and shall not modify the requirements or extend the deadline for compliance established by a pretreatment standard or requirement. Receipt or nonreceipt of an order of consent or similar document shall in no way relieve the affected user of any and all liability associated with the violation. Issuance of a consent order or similar document will not be a bar against, or a prerequisite for, any other enforcement actions by the village against the affected user.

(d) *Order to achieve compliance.* When the superintendent and affected user do not agree to the violation or to the remedial solution, the superintendent may issue an order to achieve compliance to formally specify the nature of the violation and establish required actions, such as compliance schedules, stipulated fines, additional self-monitoring and improvements to treatment facilities or management practices designed to control the user's discharge to the sewer. The order to achieve compliance will be issued unilaterally in that terms need not be agreed to by the affected user, and will be sent via certified mail, return receipt requested, or personally served on an authorized representative of the user. This order shall have the same force and effect as other administrative orders issued by the village pursuant to this article, shall be judicially enforceable, and shall not modify the requirements or extend the deadline for compliance established by a pretreatment standard or requirement. Receipt or nonreceipt of an order to achieve compliance shall in no way relieve the affected user of any and all liability associated with the violation. Issuance of an order to achieve compliance will not be a bar against, or a prerequisite for, any other enforcement actions by the village against the affected user.

(e) *Cease and desist order.* When it is determined that a user has violated and continues to violate any provision of this article, industrial waste permit or order issued under this article, or other pretreatment standard or requirement, the superintendent and village attorney may jointly issue a cease and desist order requiring the affected user to eliminate the violation within 24 hours or face suspension of sewer service. This document will specify the nature of the violation, and require that the violation cease. If the violation has not been corrected within 24 hours following issuance of the order, the village may suspend sewer service without further notice until such time as the affected user is able to demonstrate that it can comply with the discharge requirements. The cease and desist order will be personally served on an authorized representative of the user. Receipt or nonreceipt of a cease and desist order shall in no way relieve the affected user of any and all liability associated with the violation. Issuance of a cease and desist order will not be a bar against, or a prerequisite for, any other enforcement actions by

the village against the user.

(f) *Emergency cease and desist order.* Whenever it is determined that a user's discharge is in violation of any provision of this article, industrial waste permit or order issued under this article, or other pretreatment standard or requirement, and that the violation creates or threatens to create an emergency situation, such as damage to the sewer collection system, pass-through or interference at the POTW, hazard to the environment, endangerment to the public health and safety, or violation of any condition of the discharge permit issued to the village, the superintendent and village attorney will jointly issue an emergency cease and desist order notifying the affected user to eliminate the violating discharge immediately or face service severance via a temporary plug in its sewer connection at any time and without further warning. This document will specify the nature of the violation, and require that the violating discharge cease until such time as the affected user is able to demonstrate that it can comply with the discharge requirements. This document will also establish the time and place for a hearing where the affected user shall present a written statement regarding the causes of the violation and measures taken to prevent future occurrences, and further will notify the affected user of its liability for any costs incurred by the village to conduct this enforcement action. The emergency cease and desist order will be personally served to an authorized representative of the user, or may be delivered verbally via telephone to an authorized representative of the user and then served personally. Receipt or nonreceipt of an emergency cease and desist order shall in no way relieve the affected user of any and all liability associated with the violation. Issuance of an emergency cease and desist order will not be a bar against, or a prerequisite for, any other enforcement actions by the village against the affected user.

(g) *Notice of termination.* Except for emergency situations covered under subsection (f) of this section, whenever it is determined that a user's continuing violation of any provision of this article, industrial waste permit or order issued under this article, or other pretreatment standard or requirement warrants revocation of its privilege to discharge to the POTW, the superintendent and village attorney will jointly issue a notice of termination to warn of the impending suspension of the sewer service up to and including severance via temporary plug in the affected user's sewer connection. This document will specify the date and the time of scheduled service suspension in order to allow the affected user to either voluntarily cease the violating discharge or arrange appropriate actions such as production shutdown or alternative means of wastewater disposal. This document will also establish the time and place for a hearing where the affected user shall present a written statement regarding the causes of the violation and measures taken to prevent future occurrences, and further will notify the affected user of its liability for any costs incurred by the village to conduct this enforcement action. The notice of termination will be personally served on an authorized representative of the user at least ten days before the scheduled service suspension. Receipt or nonreceipt of a notice of termination shall in

no way relieve the affected user of any and all liability associated with the violation. Issuance of a notice of termination will not be a bar against, or a prerequisite for, any other enforcement actions by the village against the affected user.

(h) *User liability.* In addition to the sanctions, orders, liabilities and other remedies prescribed in this section, a user shall be liable to the village for any and all fines, penalties, and associated legal and other costs incurred or expended by the village as the result of any violation of the village's discharge permit that is attributable, in whole or in part, to the user's violation of this article, industrial waste permit or order issued under this article, or other pretreatment standard or requirement.

(Ord. No. 97-2, § 14(2), 5-5-1997)

Sec. 28-114. Administrative fines.

When the village finds that a user has violated or continues to violate any provision of this article, an industrial waste permit or order issued under this article, or other pretreatment standard or requirement, an administrative fine may be assessed against the affected user in an amount up to \$500.00 per violation. Each day during which the violation occurred or continues to occur may be deemed a separate violation and, in the case of a violation of monthly or other longterm average discharge limits, the fine may be assessed for each day during the period of averaging. Receipt or nonreceipt of an administrative fine shall in no way relieve the affected user of any and all liability associated with the violation. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, any other enforcement actions by the village against the affected user.

(Ord. No. 97-2, § 14(3), 5-5-1997)

Sec. 28-115. Rights of appeal.

Except for emergency situations covered under section 28-113(f), any user desiring to dispute a notice of violation or order of the village including, but not limited to, fines, may present a written request for reconsideration. Such a request shall be submitted to the village president within ten days of first being notified of the corresponding order for all but a notice of termination, where such a request shall be submitted within five days of notification. If this request has merit, in the opinion of the village president, he will convene a hearing on the matter as soon as possible to collect testimony of appropriate persons, take evidence and render a final determination. If the affected user's appeal is unsuccessful, any original fine will become immediately due, and the village may also add any additional costs incurred to administer this appeal. Further appeal of the village's final determination shall be governed by applicable state law. Submittal of an appeal shall in no way relieve the affected user of any and all liability

associated with the violation. An appeal will not stay the corresponding order or limit any other enforcement proceedings by the village against the affected user.
(Ord. No. 97-2, § 14(4), 5-5-1997)

Sec. 28-116. Judicial penalties.

(a) *Petition of circuit court for relief.* When it is determined that a user has violated or continues to violate any provision of this article, industrial waste permit or order issued under this article, or other pretreatment standard or requirement, the village attorney may petition the circuit court of this county for appropriate legal and/or equitable relief.

(b) *Injunctive relief.* A user who has violated or continues to violate any provision of this article, industrial waste permit or order issued under this article, or other pretreatment standard or requirement will be liable to issuance of a preliminary injunction or a permanent injunction, or both as may be appropriate. This action will be sought to restrain or compel activities on the part of the affected user. A petition for injunctive relief shall in no way relieve the affected user of any and all liability associated with the violation. A petition for injunctive relief will not be a bar against, or a prerequisite for, any other actions by the village against the affected user.

(c) *Civil penalties.* A user who has violated or continues to violate any provision of this article, industrial waste permit or order issued under this article, or other pretreatment standard or requirement will be liable for a civil infraction penalty of up to \$500.00 per violation. Each day during which the violation occurred or continues to occur may be deemed a separate distinct violation and, in the case of a violation of monthly or other longterm average discharge limits, the penalty may be assessed for each day during the period of the averaging. The affected user will also be liable for all costs incurred by the village for associated enforcement action such as reasonable attorney's fees, court costs, additional sampling and monitoring expenses, as well as costs of any environmental damage and any fines imposed upon the village for discharge permit violations that result, in whole or in part, from the user's violation and expenses associated with remediation of sites thereby contaminated. The village attorney may petition the court to impose, assess and recover sums up to this limit of liability. In determining the appropriate amount of civil infraction penalty to seek, the village may take into account all relevant circumstances including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained by the affected user as a result of the violation, corrective actions implemented or proposed to be implemented by the affected user and a history of compliance or noncompliance by the affected user. A suit for civil penalties will not be a bar against, or a prerequisite for, any other actions by the village against the affected user.

- (d) *Criminal prosecution.*
- (1) *Generally.* A user who has willfully or negligently violated or continues to willfully or negligently violate any provision of this article, industrial waste permit or order issued under this article, or other pretreatment standard or requirement will be liable to criminal prosecution. If convicted, the affected user will be guilty of a misdemeanor and may be punished by a monetary penalty of up to \$500.00 per violation, imprisonment for up to 90 days, or both. Each day during which the violation occurred or continues to occur may be deemed a separate distinct violation and, in the case of a violation of monthly or other longterm average discharge limits, the penalty may be assessed for each day during the period of averaging.
- (2) *Falsifying information.* A user who knowingly makes any false statements, representations or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this article, industrial waste permit or order issued under this article, or pretreatment standard or requirement will be liable to criminal prosecution. If convicted, the affected user will be guilty of a misdemeanor and may be punished by a monetary penalty of up to \$500.00 per violation, imprisonment for up to 90 days, or both. Each day during which the violation occurred or continues to occur may be deemed a separate distinct violation and, in the case of a violation of monthly or other longterm average discharge limits, the penalty may be assessed for each day during the period of averaging.
- (3) *Tampering.* A user who falsifies, tampers with or knowingly renders inaccurate any data device or test method used to monitor a discharge pursuant to this article, industrial waste permit or order issued under this article, or pretreatment standard or requirement will be liable to criminal prosecution. If convicted, the affected user will be guilty of a misdemeanor and may be punished by a monetary penalty of up to \$500.00 per violation, imprisonment for up to 90 days, or both. Each day during which the violation occurred or continues to occur may be deemed a separate distinct violation and, in the case of a violation of monthly or other longterm average discharge limits, the penalty may be assessed for each day during the period of averaging.

Criminal prosecution will not be a bar against, or a prerequisite for, any other actions by the village against the affected user.

(Ord. No. 97-2, § 14(5), 5-5-1997)

Sec. 28-117. Records retention.

All nondomestic users subject to this article shall retain and preserve for no less than three years all documents, including records, books, memoranda, reports, correspondence, and any and all summaries thereto, relating to monitoring, sampling and chemical analyses made by or in behalf of the user in connection with its discharge. All documents which pertain to matters which are the subject of an administrative order or any other enforcement activities of the village shall be retained and preserved by the user until all corresponding activities have concluded and all associated appeal periods have expired.

(Ord. No. 97-2, § 15, 5-5-1997)

Sec. 28-118. Annual notification.

The village will annually publish in a newspaper of general circulation a list of all categorical users that were in significant noncompliance with any pretreatment requirements or standards at least once during the 12 previous months. The notification will identify the nature of the violation and summarize any enforcement actions taken against such users during the same 12 months. All customers of the village's wastewater treatment works will receive an annual notification, either printed on the bill or enclosed in a separate letter, which will show the breakdown of the sewer into its components for operation, maintenance and replacement and for debt service.

(Ord. No. 97-2, § 17, 5-5-1997)

Secs. 28-119--28-140. Reserved.

DIVISION 3.

INDUSTRIAL USER REGULATIONS*

* **Cross References:** I industrial district, § 30-426 et seq.

Sec. 28-141. Wastewater contribution information.

Any industry or structure discharging process flow to the sanitary sewer, storm sewer or receiving stream shall file the information listed in this section with the superintendent. Any industry which does not normally discharge to the sanitary sewer, storm sewer or receiving stream, but has the potential to do so from accidental spills or similar circumstances, shall also file the information listed in this section. The superintendent may require each person who applies for or receives sewer service, or through the nature of the enterprise creates a potential environmental problem, to file the following information listed on a disclosure form prescribed by the village:

- (1) Name, address and location, if different from the address.
- (2) SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended.
- (3) Wastewater constituents and characteristics including, but not limited to, those mentioned in section 28-142 as determined by a reliable analytical laboratory; sampling and analysis shall be performed in accordance with the procedures and methods detailed in:
 - a. Standard Methods for the Examination of Water and Wastewater, American Public Health Association, current edition.
 - b. Manual of Methods for Chemical Analysis of Water and Wastes, United States Environmental Protection Agency, current edition.
 - c. Annual Book of Standards, part 131, Water, Atmospheric Analysis, American Society of Testing Materials, current edition.
- (4) Time and duration of contribution.
- (5) Average daily wastewater flow rates, including daily, monthly and seasonal

variations, if any.

- (6) Industries identified as significant industrial users or those required by the village must submit site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections and appurtenances by the size, location and elevation.
- (7) Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged.
- (8) Where known, the nature and concentration of any pollutants in the discharge which are limited by any village, state or federal pretreatment requirements, and a statement regarding whether or not the pretreatment requirements are being met on a consistent basis and if not, whether additional operation and maintenance and/or additional pretreatment is required by the industrial user to meet applicable pretreatment requirements.
- (9) If additional pretreatment and/or O&M will be required to meet the pretreatment requirements, the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:
 - a. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment requirements.
 - b. For existing users, no increment referred to in subsection (a)(9)a of this section shall exceed nine months. For new sources, all pollution control equipment required to meet applicable pretreatment standards shall be installed and in operating condition before beginning to discharge.
 - c. Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the superintendent including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to

the schedule established. In no event shall more than nine months elapse between such progress reports to the superintendent.

- (10) Each product produced by type, amount, process and rate of production.
- (11) Type and amount of raw materials processed, average and maximum per day.
- (12) Number and type of employees, hours of operation of plant and proposed or actual hours of operation of pretreatment system.
- (13) Any other information as may be deemed by the village to be necessary to evaluate the impact of the discharge on the POTW.
- (14) The disclosure form shall be signed by a principal executive officer of the user and a qualified engineer.
- (15) The village will evaluate the complete disclosure form and data furnished and may require additional information. Within 90 days after full evaluation and acceptance of the data furnished, the village shall notify the user of the acceptance thereof.

(Ord. No. 97-2, § 5(1), 5-5-1997)

Sec. 28-142. Discharge conditions.

Wastewater discharges shall be expressly subject to all provisions of this article and all other applicable regulations, user charges and fees established by the village. The village may:

- (1) Set unit charges or a schedule of user charges and fees for the wastewater to be discharged to the POTW.
- (2) Limit the average and maximum wastewater constituents and characteristics.
- (3) Limit the average and maximum rate and time of discharge or make requirements for flow regulations and equalization.
- (4) Require the installation and maintenance of inspection and sampling facilities.
- (5) Establish specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and

reporting schedule.

- (6) Establish compliance schedules.
- (7) Require submission of technical reports or discharge reports.
- (8) Require the maintaining, retaining and furnishing of plant records relating to wastewater discharge as specified by the village, and affording village access thereto, and copying thereof.
- (9) Require prompt notification of the village in advance of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system, including all of the following, if applicable:
 - a. Groundwaters that are purged for remedial action programs;
 - b. Groundwaters containing pollutants that infiltrate into the sewers; and
 - c. Listed or characteristic hazardous waste.
- (10) Require immediate notification of all discharges that could cause problems to the POTW, including slug discharges.
- (11) Require other conditions as deemed appropriate by the village to ensure compliance with this article.
- (12) Require waste treatment facilities, process facilities, waste streams, or other potential waste problems to be placed under the specific supervision and control of persons who have been certified by an appropriate state agency as properly qualified to supervise such facilities.
- (13) Require records and file reports to be maintained on the final disposal of specific liquids, solids, sludges, oils, radioactive materials, solvents or other wastes.
- (14) Convert concentration-based national categorical pretreatment standards to equivalent mass-based or production-based pretreatment requirements.
- (15) Control through permit, order or similar means, the contribution to the POTW by

each user to ensure compliance with applicable national categorical pretreatment standards or pretreatment requirements. The control mechanism may limit duration to a maximum of five years, require nontransferability without appropriate prior notification, set effluent limits, establish monitoring and reporting requirements, contain a statement of applicable penalties for violations, a provision for the modification of the control mechanism by the superintendent in the event of revised NPDES permit conditions, water quality standards, categorical pretreatment standards, or the industrial pretreatment program objectives, and a provision for the issuance, revocation, suspension or modification of a control mechanism based on user's compliance with categorical pretreatment standards or with this article.

- (16) Adjust national categorical pretreatment standards to reflect the presence of pollutants in a user's intake water.

(Ord. No. 97-2, § 5(2), 5-5-1997)

Sec. 28-143. Baseline reports.

(a) Within 180 days after promulgation or revision of a national categorical pretreatment standard, all existing affected industrial users must submit to the superintendent the information specified by R323.2310(2), subdivisions (a) through (g).

(b) At least 90 days prior to commencement of discharge, new sources and sources that become affected industrial users subsequent to the promulgation of an applicable national categorical pretreatment standard shall submit to the superintendent the information specified by R323.2310(2), subdivisions (a) through (e). New sources shall also include in this report information on the method of pretreatment they intend to use to meet the applicable pretreatment standard and shall give estimates of the required information regarding flow and pollutant discharge.

(c) Industrial users shall report any changes to information in the reports required by section 28-144 to the superintendent within 60 days.

(Ord. No. 97-2, § 5(3), 5-5-1997)

Sec. 28-144. Compliance date; report.

Within 90 days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall

submit to the superintendent a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment standards or requirements. For users subject to equivalent mass-based or concentration-based limits established by the superintendent, the report shall contain a reasonable measure of the longterm production rate. For users subject to categorical pretreatment standards expressed per unit of production, the report shall include the actual production during the sampling period. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional O&M and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This statement will be signed by an authorized representative of the industrial user, and certified to by a qualified representative. (Ord. No. 97-2, § 5(4), 5-5-1997)

Sec. 28-145. Periodic compliance reports.

(a) Any significant industrial user discharging into the POTW shall submit to the superintendent during the months of June and December, unless required more frequently in the pretreatment standard or by the superintendent, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards or this article. In addition, this report shall include a record of all daily flows, both average and daily maximum, measured in accordance with section 28-172 and the flows that exceed the average daily flow reported in section 28-142(3). At the discretion of the superintendent and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the superintendent may agree to alter the months during which such reports are to be submitted.

(b) The superintendent may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases in which the imposition of mass limitations is appropriate. In such cases, the report required by subsection (a) of this section shall also indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user.

(c) If a user is subject to reporting requirements required to demonstrate continued compliance and monitors any pollutant more frequently than required by the village, using standard laboratory procedures, the results of this additional monitoring shall also be included in the periodic compliance report.

(d) If sampling performed by a user indicated a violation, the user shall notify the superintendent within 24 hours of becoming aware of the violation. The user shall also repeat the

sampling and submit the results of reanalysis within 30 days after becoming aware of the violation, except when the superintendent will be performing scheduled surveillance sampling/analysis within this 30-day period.
(Ord. No. 97-2, § 5(5), 5-5-1997)

Sec. 28-146. Notification of hazardous waste discharges.

All users shall notify the superintendent, the EPA regional waste management division superintendent, and the state hazardous waste authority in writing of any discharge into the POTW of a substance which would be a hazardous waste under 40 CFR 261 if disposed via other means. Notification details, as well as allowable exemptions, shall be in accordance with 40 CFR 403.12(p). In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must provide notification of the discharge of such substance within 90 days of the effective date of such regulations. In the case of any notification of hazardous waste discharges, the user shall further certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
(Ord. No. 97-2, § 5(6), 5-5-1997)

Sec. 28-147. Monitoring facilities.

The village may require to be provided and operated, at the user's own expense, monitoring facilities to allow inspection, sampling and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the village may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles. There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user. Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with plans and specifications submitted to and approved by the village and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the village.
(Ord. No. 97-2, § 5(7), 5-5-1997)

Sec. 28-148. Inspection and sampling.

The village shall inspect the facilities of any user to ascertain whether the purpose of this article is being met and the user is complying with all requirements. Persons or occupants of premises where wastewater is created or discharged shall allow the village or its representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination, records copying or in the performance of any of their duties. The village, state department of environmental quality and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the village, state department of environmental quality and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

(Ord. No. 97-2, § 5(8), 5-5-1997)

Sec. 28-149. Pretreatment facilities.

Industrial users shall provide necessary wastewater treatment as required to comply with this article and shall achieve compliance with all national categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations and as required by the village. Any facilities required to pretreat wastewater to a level acceptable to the village shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the village for review, and shall be approved by the village before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the village under the provisions of this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the village prior to the user's initiation of the changes. All records relating to compliance with pretreatment standards shall be made available to officials of the EPA or state department of environmental quality upon request.

(Ord. No. 97-2, § 5(9), 5-5-1997)

Sec. 28-150. Confidential information.

Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the village that the release of such information would divulge

information, processes or methods of production entitled to protection as trade secrets of the user. When requested by the person furnishing a report, the portion of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this article, the National Pollutant Discharge Elimination System (NPDES) permit, or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information. Information accepted by the village as confidential shall not be transmitted to any governmental agency or to the general public by the village until and unless a ten-day notification is given to the user.
(Ord. No. 97-2, § 5(10), 5-5-1997)

Sec. 28-151. Signatory requirements.

All reports required by this division shall be signed by the authorized representative of the industrial user and include the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If the authorized representative of the industrial user changes because a different individual has responsibility for the overall operation of the facility or for environmental matters of the company, a new authorization satisfying the requirements of subsection (3) of the definition of "authorized representative" in section 28-82 must be submitted to the village prior to or together with any reports to be signed by that representative.
(Ord. No. 97-2, § 5(11), 5-5-1997)

Secs. 28-152--28-170. Reserved.

DIVISION 4.

USE OF THE PUBLIC SEWERS

Sec. 28-171. General discharge prohibitions.

No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW. These general prohibitions apply to all such users of a POTW whether or not the user is subject to the national categorical pretreatment standards or any other national, state or local pretreatment standards or requirements. The village may refuse to accept any wastes which will cause the POTW to violate its NPDES discharge limits. A user may not contribute the following substances to any POTW:

- (1) Any liquids, solids or gases including, but not limited to, waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit, which by reason of their nature and quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW.
- (2) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to: grease, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.
- (3) Any wastewater having a pH less than 6.0 or greater than 9.5, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the POTW.
- (4) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or exceed the limitation set forth in a categorical pretreatment standard. This prohibition of toxic pollutants will conform to section 307(a) of the act.

- (5) Any noxious or malodorous liquids, gases or solids which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair, including pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (6) Any substance which may cause the POTW's effluent or any other product of the POTW, such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process.
- (7) Any substance which will cause the POTW to violate its NPDES permit or the receiving water quality standards.
- (8) Any wastewater with objectionable color not removed in the treatment process such as, but not limited to, dye wastes and vegetable tanning solutions.
- (9) Any wastewater having a temperature which will inhibit biological activity in the POTW resulting in interference, but in no case wastewater with a temperature at the introduction into the POTW which exceeds 40 degrees Celsius (104 degrees Fahrenheit).
- (10) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which will cause interference to the POTW.
- (11) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the superintendent in compliance with applicable state or federal regulations.
- (12) Any wastewater which causes a hazard to human life or creates a public nuisance.
- (13) Any unpolluted water including, but not limited to, stormwater, groundwater, roof water or noncontact cooling water.
- (14) Any waters or wastes containing suspended solids or any constituent of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant.

- (15) Any waste from individual sewage disposal systems, except at the POTW as provided in section 28-190, except that waste from any individual sewage disposal system may be disposed of directly into a sanitary sewer upon entering into an agreement with the superintendent, which agreement shall specify the site of disposal, sewage disposal charge, and such other conditions as may be required to satisfy appropriate sanitation and health requirements. For the purpose of this subsection, the term "individual sewage disposal system" is defined to include every means of disposing of industrial, commercial, household, domestic or other water-carried sanitary waste or sewage other than a public sanitary sewer.
 - (16) Any sludge, precipitate or congealed substances resulting from an industrial or commercial process, or resulting from the pretreatment of wastewater or air pollutants.
 - (17) Any trucked or hauled wastewater, except as specifically authorized by the superintendent.
 - (18) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass-through.
- (Ord. No. 97-2, § 8(1), 5-5-1997)

Sec. 28-172. Discharge pollutant limitations.

(a) *Toxic pollutants.* Unless specifically authorized by the superintendent, no discharge wastewater shall contain in excess of the following:

- (1) 0.085 mg/l arsenic
- (2) 0.037 mg/l cadmium
- (3) 9.6 mg/l chromium (total)
- (4) 2.1 mg/l copper
- (5) 0.11 mg/l cyanides
- (6) 0.77 mg/l lead
- (7) ND⁽¹⁾ mg/l mercury

- (8) 0.48 mg/l nickel
- (9) 0.027 mg/l silver
- (10) 3.9 mg/l zinc

ND⁽¹⁾ indicates nondetectable per the practical level of quantification for U.S. EPA Method 245.1, unless a higher detection level is appropriate because of demonstrated sample matrix interference.

(b) *Conventional pollutants.* Except as authorized by the superintendent, no person shall discharge wastewater containing in excess of the following:

- (1) 200 mg/l BOD₅
- (2) 240 mg/l total suspended solids
- (3) 40 mg/l total Kjeldahl nitrogen
- (4) 5 mg/l total phosphorus
- (5) 600 mg/l COD
- (6) 100 mg/l by weight of fat, oil or grease

(c) *Reduction.* Should the concentrations in subsections (a) and (b) of this section, either individually or in combination with one another, interfere with the sewage treatment process, or cause difficulties or damage to the receiving waters, the maximum concentrations of these substances will be reduced by order of the superintendent. Should any other substances either, individually or in combination with other substances, interfere with the sewage treatment process or cause damage to the receiving waters or affect the sanitary or storm sewer system, the allowable concentration of these substances will be reduced by order of the superintendent. Should the superintendent determine that such limits can be raised without damage to the sewer system or the sewage plant exceeding the state or federal limits, then the superintendent may raise the limits, and shall determine the individual concentrations depending on quantity of flow, equipment, capabilities, reliability of testing, etc.

(d) *Other actions by superintendent.* If any waters are discharged or are proposed to

be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in subsections (a) and (b) of this section, and which in the judgment of the superintendent may have a deleterious effect upon the sewage works, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the superintendent may respond as follows:

- (1) Reject the wastes;
- (2) Require pretreatment to the level defined as normal domestic sewage;
- (3) Require control over the quantities and rates of discharge;
- (4) Require payment to cover the added cost of handling and treating the wastes not covered using taxes or sewer charges; or
- (5) Require new industrial customers or industries with significant changes in strength or flow to submit prior information to the village concerning the proposed flows.

If the superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plant and equipment shall be subject to the review and approval of the superintendent and shall be subject to the requirements of all applicable codes, ordinances and laws.

(Ord. No. 97-2, § 8(2), 5-5-1997)

Sec. 28-173. National categorical pretreatment standards.

(a) National categorical pretreatment standards, established by the EPA as separate regulations under 40 CFR chapter I, subchapter N parts 4065-471, specifying quantities or concentrations of pollutants or pollutant properties that may be discharged to a publicly owned treatment works by existing or new nondomestic users in specific industrial subcategories, shall be considered part of this article. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this article.

(b) Upon the promulgation of the national categorical pretreatment standards for a particular subcategory, the pretreatment standard, if more stringent than limitations imposed under this article for sources in that subcategory, shall immediately supersede the limitations imposed under this article and shall be considered part of this article. The superintendent shall notify all affected users of the applicable reporting requirements.

(c) Existing users subject to new national categorical pretreatment standards shall achieve compliance within three years of the date the standard is promulgated, unless a shorter compliance schedule is specified in the standard. New sources subject to national categorical pretreatment standards shall install, have in operating condition, and have started up all pretreatment equipment required to achieve compliance before beginning to discharge; and shall meet all applicable pretreatment standards within the shortest feasible time, but not to exceed 90 days after beginning to discharge.
(Ord. No. 97-2, § 8(3), 5-5-1997)

Sec. 28-174. State requirements.

State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this article.
(Ord. No. 97-2, § 8(4), 5-5-1997)

Sec. 28-175. Village's right of revision.

The village reserves the right to establish by ordinance more stringent limitations or requirements on discharges to the wastewater disposal system if deemed necessary to comply with the objectives presented in section 28-81.
(Ord. No. 97-2, § 8(5), 5-5-1997)

Sec. 28-176. Discharge of unpolluted waters.

(a) No user shall discharge or cause to be discharged any stormwater, surface water, groundwater, water from footing drains, or roof water to any sewer or sewer connection, which is designated to receive exclusively sanitary wastewater. Any premises connected to a storm sewer shall comply with county, state and federal requirements as well as those of the village.

(b) Downspouts and roof leaders shall be disconnected from sanitary sewers within six months of the date of the ordinance from which this article derives. If this is not done, the village shall perform this work and bill the user.

(c) Stormwater, groundwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designed as combined sewers or storm sewers. Discharge of cooling water or unpolluted process water to a natural outlet shall be approved only by the state department of environmental quality.
(Ord. No. 97-2, § 8(6), 5-5-1997)

Sec. 28-177. Grease, oil and sand interceptors.

Grease, oil and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be located as to be readily and easily accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious material capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers, which when bolted in place shall be gastight and watertight.

(Ord. No. 97-2, § 8(7), 5-5-1997)

Sec. 28-178. Maintenance of interceptors.

Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuously efficient operation at all times.

(Ord. No. 97-2, § 8(8), 5-5-1997)

Sec. 28-179. Prohibited discharges.

The village may prohibit the admission into the public sewers of any waters or wastes as follows:

- (1) Containing any quantity of substances having the characteristics described in section 28-171 or 28-172, or
- (2) Having an average daily flow greater than two percent of the average daily sewage flow of the village, or having a rate of flow (gallons per day) greater than ten percent of the average daily village flow for a period of one hour or more, shall be subject to review and approval of the superintendent. Where necessary, in the opinion of the village, the owner shall provide, at his expense, such preliminary treatment as may be necessary to reduce the five-day BOD, suspended solids, phosphorus and total Kjeldahl nitrogen to concentrations given in section 28-172(b); or to reduce objectionable characteristics of constituents to within the maximum limits provided for in section 28-172(a), or control the quantities and rates of discharge of such waters or wastes.

(Ord. No. 97-2, § 8(9), 5-5-1997)

Sec. 28-180. Additional charges.

Where the strength of sewage from an industrial, commercial or institutional establishment exceeds 200 parts per million of biochemical oxygen demand or 240 parts per million by weight of suspended solids or seven parts per million by weight of phosphorus or 40 parts per million by weight of total Kjeldahl nitrogen, and where such wastes are permitted to be discharged to the sewer system by the superintendent, an added charge, as noted in this section, will be made against such establishment according to the strength of such wastes. The strength of such wastes shall be determined by composite samples taken over a sufficient period of time to ensure a representative sample. The cost of taking and making the first of these samples shall be borne by the village. The cost of any subsequent sampling and testing shall be borne by the industry or establishment, whether owner or lessee. Tests shall be made by an independent laboratory or at the village wastewater treatment plant. Added charges shall be determined by the village. These charges shall be based on the cost of operation, maintenance and equipment replacement for the sewage works.

(Ord. No. 97-2, § 8(10), 5-5-1997)

Sec. 28-181. Control manholes.

When required by the village, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole, together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the village. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

(Ord. No. 97-2, § 8(11), 5-5-1997)

Sec. 28-182. Measurements, tests and analyses; sampling.

All measurements, tests and analyses of the characteristics of water, to which reference is made in sections 28-171 and 28-180, shall be determined in accordance with the latest edition at the time of the Standard Methods for Examination of Water and Sewage, and shall be determined at the control manhole provided for in section 28-181, or upon suitable samples taken at such control manhole. If no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to obtain a sample which is representative of conditions occurring during the reporting period, and

will enable the determination of the effect of constituents upon the sewage works and the existence of hazards to life, limb and property. The particular analyses involved will determine whether a 24-hour composite of all outfalls of a premises is appropriate or whether grab samples should be taken. The responsibilities of industry are further defined as follows:

- (1) One person from each industry shall be delegated the authority to be responsible for industrial wastes admitted to the municipal sewers. Such person would be involved with maintaining the pretreatment facility operations and ensuring a continual high level of performance. In case no pretreatment is provided, such person would be involved with the prevention of accidental discharges of process wastes admitted to the sanitary sewer system. Such person must become aware of all potential and routine toxic wastes generated by their industry. Such person must also be informed of all process alterations which could, in any manner, increase or decrease normal daily flow or waste strength discharged to the sanitary sewers.
- (2) This industrial representative must catalog all chemicals stored, used or manufactured by their industry. Such a listing should include specific chemical names, not manufacturer's codes. Those wastes admitted to the sanitary sewer are a prime concern; however, all discharges should be cataloged. An estimate of daily average flows and strengths must be made including process, cooling, sanitary, etc. Such a determination should separate the flows according to appropriate categories. Such flow and chemical listing is to be sent to the village.
- (3) The industrial representative shall determine whether or not large process alterations will occur during the next few years; one year, two years and five years. Management should be consulted to determine if such alterations are scheduled and forthcoming.
- (4) A sketch of the plant buildings must be made, including a diagram of process and chemical storage areas. Location of any pretreatment equipment should be indicated and floor drains located near process and storage areas should be noted. Manhole and sewer locations at the industry's point of discharge into the municipal collection system should be included on the plant layout sketch.
- (5) There must be separation of spent concentrations from the sanitary sewer to prevent toxic wastes from upsetting the wastewater treatment plant. Supervision and operation of the pretreatment equipment for spent concentrations as well as all toxic wastes and high strength organic wastes to an acceptable level as detailed

in this article is the responsibility of the industrial representative. All sludges generated by such treatment must be handled in an acceptable manner, such as designated areas of a sanitary landfill or by a licensed waste hauler. Adequate segregation of those waters and wastes to be pretreated to meet discharge limits is a vital portion of the industrial effort to prevent operational problems at the wastewater treatment plant.

- (6) Throughout the industry, adequate secondary containment or curbing must be provided to protect all floor drains from accidental spills and discharges to the receiving sewers. Such curbing should be sufficient to hold 150 percent of the total process area tank volume. All floor drains found within the containment area must be plugged and sealed. Spill trough and sumps within the containment area must be plugged and sealed. Spill trough and sumps within process areas must discharge to appropriate pretreatment tanks. Secondary containment should be provided for storage tanks which may be serviced by commercial haulers and for chemical storage areas.
- (7) An adequate sampling vault or manhole must be provided in an accessible place for the wastewater treatment plant personnel to obtain samples and flow measurement data. The complexity of the vault will vary with the sampling requirements the village determines necessary to protect the treatment plant and receiving stream. Should the village desire continual flow recording and long duration, 24-hour composite sampling, then a more complex manhole would be mandatory, complete with 110 volt AC. Samples collected could be divided between the industry and village for analysis if so desired by the industry. The sampling vault should be located so as to give access by village personnel without entering the industrial property.
- (8) Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the village that the release of such information would divulge information, processing or methods of production entitled to protection as trade secrets of the user. When requested by the person furnishing the report, the portion of the report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this article. The National Pollutant Discharge Elimination System (NPDES) permit, state disposal system permit

and/or the pretreatment programs and wastewater constituents and characteristics will not be recognized as confidential information. Information accepted by the village as confidential shall not be transmitted to any governmental agency or to the general public by the village until and unless a ten-day notification is given to the user. Industrial cooling water containing such pollutants as insoluble oils or grease or other suspended solids shall be pretreated for removal of the pollutants and then discharged to a state department of environmental quality approved drainage outlet. Agents of the village, county health department, state department of environmental quality and the U.S. Environmental Protection Agency shall have the right to enter all properties for the purpose of inspecting, measuring, sampling and testing the wastewater discharge and copying applicable pretreatment records.

(Ord. No. 97-2, § 8(12), 5-5-1997)

Sec. 28-183. Determination of sewage flow; methods.

To determine the sewage flow from any establishment, the superintendent may use one of the following methods:

- (1) The amount of water supplied to the premises by the village as shown upon the water meter if the premises are metered.
- (2) If such premises are supplied with river water or water from private wells, the amount of water supplied from such sources as estimated by the superintendent from the water, gas or electric supply.
- (3) If such premises are used for an industrial or commercial purpose of such a nature that the water supplied to the premises cannot be entirely discharged into the sewer system, the estimate of the amount of sewage discharged into the sewer system made by the superintendent from the water, gas or electric supply.
- (4) The number of gallons of sewage discharged into the sewer system as determined by measurements and samples taken at a manhole installed by the owner of the property served by the sewer system, at his own expense, in accordance with the terms and conditions of the permit issued by the superintendent pursuant to division 5 of this article.
- (5) A figure determined by the superintendent by any combination of the foregoing or by any other equitable method.

(Ord. No. 97-2, § 8(13), 5-5-1997)

Sec. 28-184. Excessive discharges.

Except where expressly authorized to do so by an applicable national categorical pretreatment standard, no user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, or in any other pollutant-specific limitation developed by the village or state. Dilution is prohibited unless specifically approved by the superintendent in writing.

(Ord. No. 97-2, § 8(14), 5-5-1997)

Sec. 28-185. Combined waste streams.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Combined treatment facility means the equipment and processes used to reduce the mass or concentration of pollutants in a combined waste stream before discharge to the sanitary sewer system.

Combined waste stream means any combination of regulated streams and waste streams not subject to a categorical pretreatment standard.

Regulated waste stream means wastewater from a particular process that is subject to a categorical pretreatment standard.

Waste stream means wastewater from a particular process.

(b) *Calculation of alternative limits.* When a regulated waste stream is mixed before treatment with other wastewaters, the superintendent may calculate alternative limits for the combined waste stream using one or both of the following equations, as applicable:

PU diagram mps 1044, 1045

Where:

C _i	=	the categorical pretreatment standard concentration limit for a pollutant in regulated waste stream i;
CT	=	alternative concentration limit for the combined waste stream;
M _i	=	the categorical pretreatment standard mass limit for a pollutant in regulated waste stream i;
MT	=	alternative mass limit for the pollutant in the combined waste stream;
N	=	total number of regulated waste streams;
F _i	=	the average daily flow over at least 30 days of the regulated waste stream i to the extent that it is regulated for the pollutant;
FT	=	the average daily flow over at least 30 days through the combined treatment facility;
FD	=	the average daily flow over at least 30 days from the following:

- (1) Boiler blowdown, noncontact cooling water, stormwater, and demineralizer backwash streams, except the superintendent may exclude a stream if the user has requested the change in classification and provided data (engineering data, production data, monitoring results, or other information) demonstrating that the waste stream contains a significant amount of a pollutant and the combination of the waste stream before treatment with regulated streams will result in a substantial reduction of that pollutant;
- (2) Domestic wastewater; or
- (3) Regulated waste streams that the superintendent exempts from categorical pretreatment standards for one or more of the following reasons:
 - a. The pollutants of concern are not detectable in the effluent from the user;

- b. The pollutants of concern are presently only in trace amounts and are neither causing nor likely to cause toxic effects;
- c. The pollutants of concern are present in quantities too small to be effectively reduced by established treatment technologies; or
- d. The waste stream contains only pollutants that are compatible with the sanitary sewer system.

(c) *Daily maximum limit; monthly average limit.* When deriving alternative limits, the superintendent may calculate both a daily maximum limit and a monthly average limit, where applicable in the categorical pretreatment standard.

(d) *User compliance with modifications.* The user shall comply with the alternative limits until the superintendent modifies the limits.

(e) *Report of changes in values.* The user shall immediately report to the superintendent any significant changes in the values used to calculate the alternative limits. Necessary changes to the alternative limits will be made within 30 days after such changes are reported.

(f) *Judgment calculation.* The superintendent may impose alternative discharge limits determined by his best professional judgment when it is determined that the calculation of the alternative discharge limits according to this section is not practicable.

(g) *Use of other measures.* When necessary to ensure that neither dilution nor mixing is used instead of treatment to achieve compliance with the applicable limits, the superintendent may require segregated treatment of waste streams or other measures.
(Ord. No. 97-2, § 8(15), 5-5-1997)

Sec. 28-186. Accidental discharge.

Where required, a user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this article. Facilities to prevent accidental discharge or prohibited materials shall be provided and maintained at the owner's or user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the village for review, and shall be approved by the village before construction of the facility. All required users shall complete such a plan within 180 days after the adoption of the ordinance from which this chapter derives. If required by the village, a user

who commences contribution to the POTW after May 5, 1997, shall not be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the village. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this article. In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

- (1) *Written notice.* Within five days following an accidental discharge, the user shall submit to the superintendent a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law.
- (2) *Notice to employees.* A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees of whom to call in the event of a dangerous discharge. Employers shall ensure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

(Ord. No. 97-2, § 8(16), 5-5-1997)

Sec. 28-187. Upsets as affirmative defense.

(a) An upset shall constitute an affirmative defense by users in unintentional and temporary noncompliance with applicable national categorical pretreatment standards or pretreatment requirements, provided it can be demonstrated through contemporaneous operating logs or other relevant evidence that all of the following apply:

- (1) An upset occurred and the user can identify the causes of the upset.
- (2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures.
- (3) The user submitted the following information to the superintendent within 24 hours of becoming aware of the upset:

- a. A description of the discharge and cause of noncompliance;
 - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - c. Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.
- (4) The upset did not result from the discharge of trucked or hauled wastewater, create a fire or explosion hazard in the POTW, cause corrosive structural damage to the POTW, or result in the presence of toxic vapors, gases or fumes within the publicly owned treatment works in a quantity that may cause worker health or safety problems.

If such information is provided orally, a written submission must be provided to the superintendent within five days of the oral notification.

(b) The user shall control production of all discharges to the extent necessary to maintain compliance with pretreatment standards and requirements upon reduction, loss or failure of its treatment facility until the facility is restored or an alternate method of treatment is provided. This subsection applies in a situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

(c) In any enforcement proceedings, the user seeking to establish the occurrence of an upset shall have the burden of proof.
(Ord. No. 97-2, § 8(17), 5-5-1997)

Sec. 28-188. Bypass.

(a) Bypass producing a discharge which violates applicable national categorical pretreatment standards or pretreatment requirements is prohibited, and the superintendent may take enforcement action against a user for such bypass, unless:

- (1) The bypass was unavoidable to prevent loss of life, personal injury or severe property damage.
- (2) There were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal

periods of equipment downtime (except where adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to operate during normal periods of equipment downtime or preventive maintenance).

(3) The user submitted required notices.

(b) If the user knows in advance of the need for bypass, a prior notice shall be submitted to the superintendent at least ten days before the date of the bypass. The superintendent may approve or disapprove this anticipated bypass, after considering its adverse effects.

(c) A user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment requirements to the superintendent within 24 hours from the time the user becomes aware of the bypass. Unless waived by the superintendent, a written submission shall then be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the bypass.

(Ord. No. 97-2, § 8(18), 5-5-1997)

Sec. 28-189. Special agreements.

No statement contained in this division shall be construed as preventing any special agreement or arrangement between the village and any person, firm or corporation whereby waste of unusual strength or character may be accepted by the superintendent, subject to payment therefor by the person provided that such waste will not damage the sanitary sewer, storm sewer, sewage treatment plant or the receiving waters.

(Ord. No. 97-2, § 8(19), 5-5-1997)

Sec. 28-190. Disposal at wastewater treatment plant.

(a) Waste from individual sewage systems may be accepted with permission of the superintendent at the wastewater treatment plant. No waters or wastes, described in section 28-171, shall be disposed of at the wastewater treatment plant.

(b) Rates for disposal at the wastewater treatment plant shall be determined by the superintendent at the time of acceptance.

(Ord. No. 97-2, § 9, 5-5-1997)

Sec. 28-191. Fees for industrial pretreatment.

(a) *Purpose.* It is the purpose of this section to provide for the recovery of costs from users of the wastewater treatment works for the implementation of the pretreatment program established in this article. The applicable charges or fees shall be set forth in the village's schedule of charges and fees.

(b) *Description of charges and fees.* Charges and fees shall be for:

- (1) Reimbursement of costs of setting up and operating the pretreatment program;
- (2) Monitoring, inspections and surveillance procedures for reviewing accidental discharge procedures and construction;
- (3) Filing appeals;
- (4) Permit applications or transfers;
- (5) Consistent removal by the village of pollutants otherwise subject to federal pretreatment standards; and
- (6) Others as the village may deem necessary to carry out the requirements contained herein.

Additional surcharges may be made by the village to compensate the village for the cost of treatment of pollutant loadings not normally treated at or in excess of those treated by the POTW. There shall be additional charges for laboratory testing of wastewater. The laboratory charge shall be for the cost thereof and will be determined for each industrial user.

(c) *Charges and fees levied.* The charges and fees for the services provided by the system shall be levied upon any user which may have any sewer connections with the POTW and which discharges industrial waste to the POTW or any part thereof. Such charges shall be based upon the quantity and quality of industrial wastewater used thereon or therein.
(Ord. No. 97-2, § 10, 5-5-1997)

Secs. 28-192--28-210. Reserved.

DIVISION 5.

BUILDING SEWER CONNECTIONS AND CONNECTION CHARGES

Sec. 28-211. Permit required.

No person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the superintendent. No building sewer shall be covered until after it has been inspected and approved by the superintendent.

(Ord. No. 97-2, § 7.1, 5-5-1997)

Sec. 28-212. Application for sewer permit; connection charge; plumbing permit.

The owner or his agent shall make application for a sewer permit on a form furnished by the village. The permit application shall be supplemented by any plans, specifications, or other information required by this article or considered pertinent in the judgment of the village. A connection charge, in an amount established by resolution of the village council, shall be paid to the village treasurer at the time the application is filed. A plumbing permit is also required. If a street opening is required to make the lead connection, an additional attachment to the permit must be completed.

(Ord. No. 97-2, § 7.2, 5-5-1997)

Sec. 28-213. Costs and expenses.

All cost and expense incident to the installation, connection and maintenance of the building sewer to the public sewer connection shall be borne by the owner.

(Ord. No. 97-2, § 7.3, 5-5-1997)

Sec. 28-214. Liability for installation and connection.

All liabilities incident to the installation and connection of the building sewer shall be borne by the property owner. The property owner shall indemnify and save harmless the village from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

- (1) It shall be the duty of each property owner to maintain, clean and repair the private sewer lines on his property, at his own expense, as necessary to keep such lines free and clear of obstructions and in good working order and to maintain and

keep clear of obstructions the lateral lines servicing his property.

- (2) It shall be the duty of the village to maintain, clean and repair as necessary and at its expense the sewer trunk lines and to repair or replace any broken or crushed lateral lines. The village shall not be responsible for cleaning or maintenance of lateral lines.
- (3) In the case of a bona fide dispute as to whether needed maintenance, cleaning or repair of a portion of sewer line is the responsibility of the property owner or the village under the provisions of this article, it shall be the duty of the property owner to establish that the obstruction disrepair or defect has occurred in that portion of the line for which the village is responsible.
- (4) If the property owner fails to establish the village responsibility, it shall be the property owner's responsibility to perform the necessary maintenance as provided in this article. If the village responsibility is established, the village shall perform the necessary maintenance and shall reimburse the property owner for reasonable expenses incurred in locating the defect in the line or in otherwise establishing the village responsibility.
- (5) The property owner would be responsible under this article for the total maintenance and repair of the private sewer lines on his property and for the maintenance and cleaning, although not including major repair, of the entire sewer line out to the trunk line.
- (6) The village, on the other hand, is responsible for major repair of the trunk line and lateral lines only and has no responsibility of any sort for the private lines. The village also has no responsibility to clean the lateral lines.
- (7) Any property owner who shall violate the provisions of this article shall be liable to the village for civil damage incurred in correcting the defect and, in addition, shall be guilty of a civil infraction.
- (8) If any property owner fails to maintain a private sewer line as required by this article, in addition to the other penalties prescribed, the sewer may be declared a public nuisance by the county health officer, and the defect may be corrected by the village. Any costs so incurred, including court costs and attorney fees, shall be assessed against the property and become a lien on the property if not timely paid.

(Ord. No. 97-2, § 7.4, 5-5-1997)

Sec. 28-215. Separate, independent building sewer.

A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another or an interior (lot) and no private sewer is available or can be constructed to the rear building through an adjoining alley, yard or driveway, the building sewer from the front building may be extended to the rear building.
(Ord. No. 97-2, § 7.5, 5-5-1997)

Sec. 28-216. Use of old building sewer.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this article.
(Ord. No. 97-2, § 7.6, 5-5-1997)

Sec. 28-217. Sewer construction materials.

The building sewer shall be constructed of vitrified clay sewer pipe or cast iron soil pipe, as approved by the superintendent. The village reserves the right to specify and require the encasement of any sewer pipe with concrete, or the installation of the sewer pipe in concrete cradle if foundation and construction are such as to warrant such protection in the opinion of the superintendent.
(Ord. No. 97-2, § 7.7, 5-5-1997)

Sec. 28-218. Size and slope.

The size and slope of the building sewer shall be subject to approval by the superintendent, but in no event shall the diameter be less than four inches. The slope of such four-inch pipe shall be not less than one-quarter of an inch per foot, unless otherwise permitted. The slope of pipe, the diameter of which is six inches or more, shall be not less than one-eighth of an inch per foot, unless otherwise permitted.
(Ord. No. 97-2, § 7.8, 5-5-1997)

Sec. 28-219. Elevation.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three feet of any bearing wall, which might thereby be weakened. The depth shall be sufficient to afford protection from frost. The building sewer shall be laid at uniform grade. The line shall be straight

or laid with properly curved pipe and fittings. Changes in direction greater than 45 degrees shall be provided with cleanouts accessible for cleaning.
(Ord. No. 97-2, § 7.9, 5-5-1997)

Sec. 28-220. Lifting of sewage.

In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by artificial means approved by the superintendent, and discharges to the building sewer.
(Ord. No. 97-2, § 7.10, 5-5-1997)

Sec. 28-221. Joints and connections.

All joints and connections shall be made gastight and watertight. All joints shall be approved by the superintendent.
(Ord. No. 97-2, § 7.11, 5-5-1997)

Sec. 28-222. Connection permitted upon available capacity.

No sewer connection will be permitted unless there is capacity available in all downstream sewers, lift stations, force mains and the sewage treatment plant, including capacity for treatment of BOD and suspended solids.
(Ord. No. 97-2, § 7.12, 5-5-1997)

Sec. 28-223. Cleanout required.

All newly constructed building sewers shall have a properly sized cleanout at the head of the sewer that is accessible at all times. This cleanout shall allow access of sewer cleaning equipment of a size equivalent to the size of the building sewer.
(Ord. No. 97-2, § 7.13, 5-5-1997)

Sec. 28-224. Construction standards.

All sewers shall be constructed in accordance with the latest edition of the Ten State Standards.
(Ord. No. 97-2, § 7.14, 5-5-1997)

Secs. 28-225--28-245. Reserved.

DIVISION 6.

PRIVATE SEWAGE DISPOSAL

Sec. 28-246. Installation where public sewer unavailable.

Where a public sewer is not available under the provisions of section 28-84(d), the building sewer shall be connected to an approved private sewage disposal system.

(Ord. No. 97-2, § 6.1, 5-5-1997)

Sec. 28-247. Soil evaluation test and installation permit required; fee.

Before commencement of a private sewage disposal system, the owner shall first apply to the county health department for a soil evaluation test. The fee shall be determined by the county health department, and shall be paid to the county health department. At completion of the soil evaluation test showing positive results, the property owner shall apply for a permit for installation for the proposed sewage system. He shall include plans, specifications and other information as deemed necessary by the county health department. At the time the application is filed, the fee determined by the county health department for the permit and inspection shall be paid.

(Ord. No. 97-2, § 6.2, 5-5-1997)

Sec. 28-248. Permit effective upon final inspection and approval of county health department.

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the county health department. The county health department shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the county health department when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within seven days of the receipt of notice by the county health department. All persons receiving a permit for a private sewer disposal system shall provide the village with copies of all final approved inspection reports issued by the county health department.

(Ord. No. 97-2, § 6.3, 5-5-1997)

Sec. 28-249. Type, capacity, location and layout.

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the county health department. No septic tank or cesspool

shall be permitted to discharge to any public sewer or natural outlet.
(Ord. No. 97-2, § 6.4, 5-5-1997)

Sec. 28-250. Connection to public system required upon availability; abandonment and filling.

At such time as a public sewer becomes available to a property served by a private sewage disposal system as provided in section 28-84(d), a direct connection shall be made to the public sewer in compliance with this article, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned for sanitary use and filled with a suitable material.
(Ord. No. 97-2, § 6.5, 5-5-1997)

Sec. 28-251. Operation and maintenance.

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times at no expense to the village.
(Ord. No. 97-2, § 6.6, 5-5-1997)

Secs. 28-252--28-270. Reserved.

DIVISION 7.

USER CHARGE SYSTEM

Sec. 28-271. Established; basis for computations.

Rates and charges for the use of the wastewater system of the village shall be based upon the methodology in the user charge system approved by the state department of environmental quality. Rates for total sewer service charges are to be established by resolution of the village council, which shall be enacted apart from this article as necessary to ensure sufficiency of revenues in meeting operation, maintenance and replacement costs, as well as debt service. User charges for operation, maintenance and replacement shall be subject to the annual review of the user charge system. User charges shall be the same for all customers of the system regardless of geographical boundaries. Such charges and rates shall be made against each lot, parcel of land or premises which may have any sewer connections with the sewer system of the village, or which may otherwise discharge sewage or industrial waste, either directly or indirectly, into such system or any part thereof. Such charges shall be based upon the quantity of water used thereon or therein.
(Ord. No. 97-2, § 16(1), 5-5-1997)

Sec. 28-272. Amounts; billings; sewer service charge.

(a) *Generally.* The rates and charges for service furnished by such system shall be levied upon each lot or parcel of land, building or premises, having any sewer connection with such system, on the basis of the quantity of water used thereon or therein as the water is measured and therein used, or in the absence thereof, by such equitable method as shall be determined by the village, and shall be collected quarterly except in cases where the character of the sewage from a manufacturing or industrial plant, building or premises is such that unreasonable additional burden is placed upon the system, greater than that imposed by the normal domestic sewage delivered to the system plant, the additional cost of treatment created thereby shall be an additional charge over the regular rates set forth in this division. The village may, if it deems it advisable, compel such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the village before discharging such sewage into the sewage disposal system. Rates for all users obtaining all or part of their water supply from sources other than the village water system may be determined by gauging or metering the actual sewage entering the system, or by metering the water used by them, in a manner acceptable to the village.

(b) *Utility customers with separate meter.* A property owner may, upon application to the village clerk, install a water meter which shall meter water used on the exterior of the residence and not enter the sanitary sewer system. Water so consumed will not have sewer charges added thereto. The location of the meter shall be approved by the superintendent of the department of public works and installed under his direction. A part of the application form shall contain a statement by the owner that the water used in accordance with this section shall not enter the sanitary sewer system. The meter to be installed shall be purchased from the village. All expenses incurred for the installation of such meters shall be the responsibility of the property owner.

(Ord. No. 97-2, § 16(2), (2a), 5-5-1997; Ord. No. 98-4, § 1, 9-21-1998)

Sec. 28-273. Annual audit.

The rates hereby fixed are estimated to be sufficient to provide for the expenses of operation, maintenance and replacement of the system as are necessary to preserve the system in good repair and working order. Such rates shall be fixed and revised from time to time as may be necessary to produce these amounts. An annual audit shall be prepared. Based on such audit, rates for sewage services shall be reviewed annually and revised as necessary by the village council by resolution to meet system expenses and to ensure that all user classes pay their proportionate share of operation, maintenance and equipment replacement cost.

(Ord. No. 97-2, § 16(3), 5-5-1997)

Sec. 28-274. Free service.

No free service shall be allowed for any user of the wastewater treatment works.
(Ord. No. 97-2, § 16(4), 5-5-1997)

Sec. 28-275. Billing.

Billing for wastewater service shall be the village's responsibility. All water meters shall be read quarterly and bills rendered quarterly.
(Ord. No. 97-2, § 16(5), 5-5-1997)

Sec. 28-276. Termination of service for nonpayment.

(a) If payment is not received or satisfactory arrangements have not been made by the 16th of the month, an additional charge of ten percent of the total unpaid balance shall be added.

(b) If payment is not received or satisfactory arrangements have not been made within 30 days of the due date on the bill, a shutoff notice will be sent by first class mail to inform the user that failure to respond will result in termination of sewer service. If payment is not received or satisfactory arrangements have not been made within ten days after the shutoff notice is sent to the user, the sewer service shall be shut off. No sewer service that has been discontinued due to nonpayment shall be restored until all past due bills are paid or satisfactory arrangements for such payment are made.
(Ord. No. 97-2, § 16(6), 5-5-1997)

Sec. 28-277. Collection of delinquent accounts.

Unpaid charges for sewage disposal service furnished to any premises within the village shall be a lien against the premises. Enforcement of this lien shall be made pursuant to village ordinance and/or state statute. This lien remedy does not preclude any other remedy provided by law. Those premises outside the village that are served by the village wastewater treatment works that have delinquent bills will be certified to their governmental unit for collection as provided in the contract between the village and the governmental unit.
(Ord. No. 97-2, § 16(7), 5-5-1997)

Secs. 28-278--28-300. Reserved.

ARTICLE IV.
TELECOMMUNICATIONS

Sec. 28-301. Purpose.

The purposes of this article are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety, and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) ("Act") and other applicable law, and to ensure that the Village qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-302. Conflict.

Nothing in this article shall be construed in such a manner as to conflict with the Act or other applicable law.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-303. Terms defined.

The terms used in this article shall have the following meanings:

Act. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.

Council president. The village council president or his or her designee.

Permit. A nonexclusive permit issued pursuant to the Act and this article to a telecommunications provider to use the public rights-of-way in the village for its telecommunications facilities.

Village. The Village of Capac, St. Clair County, Michigan.

Village council. The village council of the Village of Capac or its designee. This section does not authorize delegation of any decision or function that is required by law to be made by the village council.

All other terms used in this article shall have the same meaning as defined or as provided in the Act, including without limitation the following:

Authority. The Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to section 3 of the Act.

MPSC. The Michigan Public Service Commission in the department of consumer and industry services, and shall have the same meaning as the term "commission" in the Act.

Person. An individual, corporation, partnership, association, governmental entity, or any other legal entity.

Public right-of-way. The area on, below, or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

Telecommunication facilities or facilities. The equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the Communications Act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.

Telecommunications provider, provider and telecommunications services. Those terms as defined in section 102 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in section 332(d) of part I of the Communications Act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this article only, a provider also includes all of the following:

- (1) A cable television operator that provides a telecommunications service.

(2) Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.

(3) A person providing broadband internet transport access service.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-304. Permit required.

(1) *Permit required.* Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the village for its telecommunications facilities shall apply for and obtain a permit pursuant to this article.

(2) *Application.* Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the village clerk, and one copy with the village attorney. Upon receipt, the village clerk shall make copies of the application and distribute a copy to the village president, village engineer and village department of public works supervisor. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with section 6(5) of the Act.

(3) *Confidential information.* If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.

(4) *Application fee.* Except as otherwise provided by the Act, the application shall be accompanied by a one-time nonrefundable application fee in the amount of \$500.00.

(5) *Additional information.* The village president may request an applicant to submit such additional information which the village president deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the village president. If the village and the applicant cannot agree on the requirement of additional information requested by the village, the village or the applicant shall notify the MPSC as provided in section 6(2) of the Act.

(6) *Previously issued permits.* Pursuant to section 5(1) of the Act, authorizations or

permits previously issued by the village under section 251 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2251, and authorizations or permits issued by the village to telecommunications providers prior to the 1995 enactment of section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this article.

(7) *Existing providers.* Pursuant to section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the village as of such date, that has not previously obtained authorization or a permit under section 251 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2251, shall submit to the village an application for a permit in accordance with the requirements of this article. Pursuant to section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the \$500.00 application fee required under subsection (d) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the authority, as provided in section 5(4) of the Act.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-305. Issuance of permit.

(1) *Approval or denial.* The authority to approve or deny an application for a permit is hereby delegated to the village president. Pursuant to section 15(3) of the Act, the village president shall approve or deny an application for a permit within 45 days from the date a telecommunications provider files an application for a permit under section 4(b) of this article for access to a public right-of-way within the village. Pursuant to section 6(6) of the Act, the village president shall notify the MPSC when the village president has granted or denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The village president shall not unreasonably deny an application for a permit.

(2) *Form of permit.* If an application for permit is approved, the village president shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with sections 6(1), 6(2) and 15 of the Act. 3

(3) *Conditions.* Pursuant to section 15(4) of the Act, the village president may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

(4) *Bond requirement.* Pursuant to section 15(3) of the Act, and without limitation on subsection (c) above, the village president may require that a bond be posted by the

telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-306. Construction/engineering permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public rights-of-way in the village without first obtaining a construction or engineering permit as required under the Code of Ordinances, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-307. Conduit or utility poles.

Pursuant to section 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this article does not give a telecommunications provider a right to use conduit or utility poles.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-308. Route maps.

Pursuant to section 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the village, submit route maps showing the location of the telecommunications facilities to both the MPSC and to the village. The route maps should be in paper format unless and until the MPSC determines otherwise, in accordance with section 6(8) of the Act.
(Ord. No. 2003-04, 4-7-2003)

Sec. 38-309. Repair of damage.

Pursuant to section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the village, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-310. Establishment and payment of maintenance fee.

In addition to the nonrefundable application fee paid to the village set forth in subsection 28-304(4) above, a telecommunications provider with telecommunications facilities in the village's public rights-of-way shall pay an annual maintenance fee to the authority pursuant to section 8 of the Act.

(Ord. No. 2003-04, 4-7-2003)

Sec. 28-311. Modification of existing fees.

In compliance with the requirements of section 13(1) of the Act, the village hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the authority. In compliance with the requirements of section 13(4) of the Act, the village also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the village's boundaries, so that those providers pay only those fees required under section 8 of the Act. The village shall provide each telecommunications provider affected by the fee with a copy of this article, in compliance with the requirement of section 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the village's policy and intent, and upon application by a provider or discovery by the village, shall be promptly refunded as having been charged in error.

(Ord. No. 2003-04, 4-7-2003)

Sec. 28-312. Savings clause.

Pursuant to section 13(5) of the Act, if section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under section 28-311 above shall be void from the date the modification was made.

(Ord. No. 2003-04, 4-7-2003)

Sec. 28-313. Use of funds.

Pursuant to section 10(4) of the Act, all amounts received by the village from the authority shall be used by the village solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the village from the authority shall be deposited into the major street fund and/or the local street fund maintained by the village under Act No. 51 of

the Public Acts of 1951.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-314. Annual report.

Pursuant to section 10(5) of the Act, the village clerk shall file an annual report with the authority on the use and disposition of funds annually distributed by the authority.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-315. Cable television operators.

Pursuant to section 13(6) of the Act, the village shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-316. Existing rights.

Pursuant to section 4(2) of the Act, except as expressly provided herein with respect to fees, this article shall not affect any existing rights that a telecommunications provider or the village may have under a permit issued by the village or under a contract between the village and a telecommunications provider related to the use of the public rights-of-way.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-317. Compliance.

The village hereby declares that its policy and intent in adopting this article is to fully comply with the requirements of the Act, and the provisions hereof should be construed in such a manner as to achieve that purpose. The village shall comply in all respects with the requirements of the Act, including but not limited to the following:

- (1) Exempting certain route maps from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, as provided in section 28-304(3) of this article;
- (2) Allowing certain previously issued permits to satisfy the permit requirements hereof, in accordance with section 28-304(6) of this article;

- (3) Allowing existing providers additional time in which to submit an application for a permit, and excusing such providers from the \$500.00 application fee, in accordance with section 28-304(7) of this article;
- (4) Approving or denying an application for a permit within 45 days from the date a telecommunications provider files an application for a permit for access to and usage of a public right-of-way within the village, in accordance with section 28-305(1) of this article;
- (5) Notifying the MPSC when the village has granted or denied a permit, in accordance with section 28-305(1) of this article;
- (6) Not unreasonably denying an application for a permit, in accordance with section 28-305(1) of this article;
- (7) Issuing a permit in the form approved by the MPSC, with or without additional or different permit terms, as provided in section 28-305(2) of this article;
- (8) Limiting the conditions imposed on the issuance of a permit to the telecommunications provider's access and usage of the public right-of-way, in accordance with section 28-305(3) of this article;
- (9) Not requiring a bond of a telecommunications provider which exceeds the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunication provider's access and use, in accordance with section 28-305(4) of this article;
- (10) Not charging any telecommunications providers any additional fees for construction or engineering permits, in accordance with section 28-306 of this article;
- (11) Providing each telecommunications provider affected by the village's right-of-way fees with a copy of this article, in accordance with section 28-311 of this article;
- (12) Submitting an annual report to the authority, in accordance with section 28-314 of this article; and
- (13) Not holding a cable television operator in default for a failure to pay certain

franchise fees, in accordance with section 28-315 of this article.
(Ord. No. 2003-04, 4-7-2003)

Sec. 28-318. Reservation of police powers.

Pursuant to section 15(2) of the Act, this article shall not limit the village's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the village's authority to ensure and protect the health, safety, and welfare of the public.
(Ord. No. 2003-04, 4-7-2003)