

**THE VILLAGE OF FLANAGAN
LIVINGSTON COUNTY, ILLINOIS**

ORDINANCE NO. 2016-12

**AN ORDINANCE AMENDING CERTAIN PORTIONS OF AN ORDINANCE
ESTABLISHING CHARGES AND RATES FOR THE USE AND SERVICE OF THE
COMBINED WATERWORKS AND SEWERAGE SYSTEM OF THE
VILLAGE OF FLANAGAN**

**ADOPTED BY
THE PRESIDENT AND BOARD OF TRUSTEES
OF THE
VILLAGE OF FLANAGAN**

This 20th day of December, 2016

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WHEREAS, the Village of Flanagan (hereinafter, the "Village"), pursuant to Section 11-139-8 of the Illinois Municipal Code, 65 ILCS 5/11-139-8, is authorized to record a lien against the real property of a record owner who has become delinquent in the payment of water and sewer service bills; and

WHEREAS, the Village adopted an ordinance on January 16, 1979 establishing charges and rates and the use and service of the combined waterworks and sewerage system of the Village; and

WHEREAS, the Village Board's most recent rate charges were approved to be effective on May 1, 2013 (attached hereto and incorporated herein by reference); and

WHEREAS, the Village would like to recover arrears for water and sewer services rendered and more fully protect itself from debtors declaring bankruptcy by properly perfecting its security interests and rendering debts non-dischargeable under applicable provisions of the Bankruptcy Code, 11 U.S.C. § 101, et seq.; and

WHEREAS, the Corporate Authorities desire to implement a water and sewer lien program that adheres in all respects to the procedures set forth in the Municipal Code.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Flanagan, Livingston County, as follows:

Section A. Recitals. The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

Section B. Water Lien Procedures. Article VI of the 1979 Ordinance Establishing Charges and Rates for the Use and Service of the Combined Waterworks and Sewerage System of the Village of Flanagan is deleted in its entirety and replaced as follows:

1. Bills.

- a. **General Provisions.** Rates or charges shall be payable monthly. The owner of the premises, the occupant thereof, and the user of the service shall be jointly and severally liable to pay for the service to the premises and the

service is furnished to the premises by the Village only upon the condition that the owner of the premises, occupant, and user of the services are jointly and severally liable therefore to the Village. Bills for sewer service shall be sent out by the Village collector on the fifth day of the month succeeding the period for which the service is billed.

- b. **Rental Properties.** Monthly, water, sewer and garbage bills for property occupied by an entity or person other than the owner of that property shall be sent directly to the owner of the property. The owner and occupant of the property shall remain jointly and severally liable for the water, sewer and garbage bills for the property.
 - c. **Due Date and Penalties.** All water and sewer bills are due and payable 15 days after being sent out. A penalty of 10% shall be added to all bills not paid before the sixteenth day after they have been issued. Such penalty shall be added to the principal amount owed in computing payoff balances for delinquent service recipients.
2. **Delinquency.** Whenever a bill for water and/or sewer service remains unpaid 5 days after the due date, such monies owing, inclusive of applicable penalty, interest and fees, shall constitute delinquent service payments.
 3. **Notice of Delinquency.** Where a delinquent water and/or sewer service payment is triggered by nonpayment for five (5) calendar days following the due date, as provided in Section 1(C), the Village Collector shall send the owner and occupant, if other than the owner, a Notice of Delinquency. The Notice of Delinquency shall specify the premises served; a copy of the bill(s) for which payment has not yet been tendered, the amount presently due and owing, including any applicable penalties, interest and fees; a notice that service shall be discontinued, as provided in Section 4, within five (5) calendar days of the Notice of Delinquency, unless the payoff balance is tendered in full. The Notice of Delinquency shall also set forth that the delinquent charges having accrued shall become a lien on the premises served if the payoff balance is not tendered in full within five (5) calendar days.
 4. **Discontinuance of Service.** If the charges for water and sewer services, inclusive of any applicable late payment penalties accrued under the auspices of Section 1(C), are not paid within fifteen (15) calendar days after the rendition of the original bill for such services, services may be discontinued following proper notice of the delinquency and consequences therefore. If the service is discontinued, it shall not be reinstated until all claims are fully settled. The failure of the owner or tenant to actually receive a delinquency notice shall not affect the Village's right to shut off the water service.
 5. **Notice of Lien.** Whenever a bill for water and/or sewer service remains unpaid for 15 days after it was originally mailed, and five (5) calendar days following issuance of the Notice of Delinquency provided in Section 3, the Village may

file with the County Recorder of Deeds a Notice of Lien in the county in which the real property receiving the services is located. This Notice of Lien shall consist of a sworn statement setting out: (1) a legal description of the premises served; (2) the amount of money due for such service plus all penalties, interest, and fees; and (3) the date when said amount became delinquent. A copy of the Notice of Lien shall be sent to the record owner and may be sent to any occupants of the premises subject to the lien, with any and all delinquency notices affixed thereto. The failure of the Village to record the lien or to mail the notice or the failure of the owner to receive the notice shall not affect the right to foreclose the lien for unpaid bills as mentioned in the foregoing section. In the event a Notice of Lien is recorded, the owner of the property shall be responsible for payment of the following additional fees and the lien shall not be released until such fees are paid: a. Notice of Lien \$50.00; b. Recorder fees per county recorder; c. Release fee per county recorder.

6. Foreclosure of Lien. Property subject to a lien for unpaid charges shall be sold for non-payment of the charges, and the proceeds of the sale shall be applied to pay the charges, after deducting costs, as is the case in the foreclosure of other statutory liens. Foreclosure shall be by bill-in-equity and in the name of the Village. The Village Attorney is hereby authorized and directed to institute proceedings in the name of the Village in any court having jurisdiction over such matters against any property for which the bill has remained unpaid 90 days in the case of a monthly bill after it has been rendered.
7. Restoration of Service. Utility service shall not be restored to the property after shut off unless all delinquent utility bills, late fees, and a \$25.00 fee to assist in covering the cost of the disconnection and a \$25.00 fee to assist in covering the cost of reconnection is paid in full. Once utility service is turned off at a property, the Village will only accept payment in the form of cash, certified check or money order.
8. Revenues. All revenues and moneys derived from the operation of the sewerage system shall be deposited in the water sewer and garbage account of the sewerage fund. All such revenues and moneys shall be held by the Village separate and apart from private funds and separate and apart from all other funds of the Village and all of said sum, without any deductions whatever, shall be delivered to the Village Treasurer not more than ten (10) calendar days after receipt of the same, or at such more frequent intervals as may, from time-to-time, be directed by the President and Board of Trustees.

The Village shall receive all such revenues from the system and all other funds and moneys incident to the operation of such system as the same may be delivered to him and deposit the same in the account of the fund designated as the "Waterworks & Sewerage Fund of the Village." Village Treasurer shall

administer such fund in every respect in the manner provided by the Illinois Municipal Code.

9. Accounts. The Village Treasurer shall establish a proper system of accounts and shall keep proper books, records, and accounts in which complete and correct entries shall be made of all transactions relative to the sewerage system, and at regular annual intervals, he shall cause to be made an audit by an independent auditing concern of the books to show the receipts and disbursements of the system. Separate accounts shall be kept for water and sewerage portions of the system. Accounts shall be kept as provided by the Village Board or otherwise in compliance with any applicable laws.

In addition to the customary operating statements, the annual audit report shall also reflect the revenues and operating expenses of the waterworks facilities and wastewater facilities, including a replacement cost, to indicate that the sewer service charges under the waste cost recovery system and capital amounts required to be recovered under the industrial cost recovery system do in fact meet these regulations. In this regard, the financial information to be shown in the audit report shall include the following:

- a. Flow data showing total gallons pumped to the water distribution system.
- b. Flow data showing total gallons received at the wastewater plant for the current fiscal year.
- c. Billing data to show total number of gallons billed for water use and sewer use.
- d. Debt service for the next succeeding fiscal year.
- e. Number of users connected to the system.
- f. Number of non-metered users.
- g. A list of users discharging non-domestic wastes (industrial users) and volume of waste discharged.

10. Penalty. Any person, firm or corporation violating any provisions of this article shall be fined not less than \$75 dollars nor more than \$750.00 dollars for each offense.

11. Access to Records. The Illinois Environmental Protection Agency or its authorized representative shall have access to any books, documents, papers and records of the Village which are applicable to Village system of user charges or industrial cost recovery for the purpose of making audit, examination, excerpts and transcriptions thereof to insure compliance with the terms of the Special and General Conditions to any State Grant.

Section C. Severability. In the event a court of competent jurisdiction finds this ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the

application thereof to the greatest extent permitted by law.

Section D. Repeal and Savings Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or causes of action which shall have accrued to the Village of Flanagan prior to the effective date of this ordinance.

Section E. Effectiveness. After its passage, this Ordinance, shall be effective and commence 10 days after this Ordinance is printed in book or pamphlet form and published by the authority of the corporate authorities.

PRESENTED to the Board of Trustees of the Village of Flanagan, Livingston County, Illinois this 20th day of December, 2016.

PASSED by the Board of Trustees of the Village of Flanagan, Livingston County, Illinois, this 20th day of December, 2016.

SIGNED by the President of the Board of Trustees of the Village of Flanagan, Livingston County, Illinois, this 20th day of December, 2016.

AYES: _____

NAYES: _____

ABSENT: _____

Jason Montello
President, Board of Trustees
Village of Flanagan

IL (SEAL)

ATTEST:

Kristy Dodge, Village Clerk
Village of Flanagan