

VILLAGE PRESIDENT
Ray Danford

VILLAGE CLERK
Jerry Menard

VILLAGE TRUSTEES
Rita Baker
Charlie Mattern
Kevin Groth
Corby Valentine
Steve Smith
Tony Miller

VILLAGE OF FREEBURG

FREEBURG MUNICIPAL CENTER
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PHONE: (618) 539-5545 • FAX: (618) 539-5590
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VILLAGE ADMINISTRATOR
Dennis Herzing

VILLAGE TREASURER
Bryan A. Vogel

PUBLIC WORKS DIRECTOR
Ronald Dintelmann

POLICE CHIEF
Melvin E. Woodruff, Jr.

VILLAGE ATTORNEY
Stephen R. Wigginton

February 4, 2008

NOTICE

MEETING OF LEGAL AND ORDINANCE COMMITTEES (Annexation; Building; Zoning; Subdivision) Groth/Baker/Mattern

A Legal and Ordinance Committee Meeting of the Village of Freeburg will be held at the Municipal Center, Executive Board Room, **Wednesday, February 6, 2008, at 5:00 p.m.**

LEGAL AND ORDINANCE COMMITTEE MEETING AGENDA

I. Items To Be Discussed

A. Old Business

1. Approval of 1/9/08 Minutes
2. Material Requirements on Commercial Buildings
3. Status of Public Hazard Homes
4. Nuisance Abatement Code
5. Countryside Lane annexations
6. TIF Litigation
7. Stumpf lawnmower repair business

B. New Business

1. Subdivision Code
2. Underwood Direct TV Antenna
3. Williams Starnes

C. General Concerns

D. Public Participation

E. Adjourn

At said Legal and Ordinance Meeting, the Village Trustees may vote on whether or not to hold an Executive Session to discuss the selection of a person to fill a public office [5 ILCS, 120/2 - (c)(3)], litigation [5 ILCS, 120/2 - (c)(11)] personnel [5 ILCS, 120/2 - (c) (1) a.]; or real estate transactions [5 ILCS, 120/2 - (c)(5)].

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Legal and Ordinance Committee Meeting
(Annexation; Building; Zoning; Subdivision)
(Groth/Baker/Mattern)
Wednesday, February 6, 2008 at 5:00 p.m.

The meeting of the Legal and Ordinance Committee was called to order at 5:03 p.m. by Chairman Kevin Groth on Wednesday, February 6, 2008, in the Freeburg Municipal Center. Members attending were Chairman Kevin Groth, Trustee Charlie Mattern, Trustee Rita Baker, Mayor Ray Danford, Village Clerk Jerry Menard, Attorney Steve Wigginton, Administrator Dennis Herzing and Office Manager Julie Polson. Guests present: Charlotte Vielweber and Janet Baechle.

D. PUBLIC PARTICIPATION: Chairperson Groth asked for public participation to be held first. Charlotte Vielweber stated she there is an issue that has developed in her subdivision. There is a satellite dish installed on the front of the home directly across the street from her. She stated when the satellite dish was being installed, her husband talked to the installer about the placement of the dish. She said the installer told her husband the dish could have been placed in the rear of the home but the homeowner wanted it on the east side of the home. She provided pictures of the dish placement on the Underwood's home. She also reviewed the FCC Information Sheet and also wanted to know the rationale on the permit being issued. Trustee Baker stated she misspoke when she said the permit had been issued - it had not. She summarized by saying the antenna didn't have to be placed where it is, there are no other homes that have dishes in that area installed on the front of their homes and it is an aesthetic concern of hers. Administrator Herzing said he was not aware of the FCC Ruling when this issue first came up. He believes the intent of the FCC Ruling to overrule ordinances like ours with respect to the small satellite dish antennas. He believes the ruling says the Village can't have an ordinance that requires a permit or controls where it is put unless it is for very specific public safety reasons or to preserve a historical district. In other words, our ordinance is pre-empted by the FCC Ruling.

Attorney Wigginton stated he has dealt with many other municipalities on this issue. He advised the Telecommunications Act of 1996 did pre-empt all local ordinances in their efforts to regulate the delivery of satellite signals. Attorney Wigginton told Mrs. Vielweber that he understands her frustration but he would have to advise the Village that this is not a battle they want to engage in nor would it win or a wise use of taxpayer money. It was agreed there is nothing that can be done in this situation. The committee agreed that our ordinance needs to be revised.

A. OLD BUSINESS:

1. Approval of 1/9/08 Minutes: Trustee Rita Baker motioned to approve the January 9, 2008 minutes and Trustee Charlie Mattern seconded the motion. All voting aye, motion carried.

Legal and Ordinance Committee Meeting
Wednesday, February 6, 2008
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2. Material Requirements on Commercial Buildings: Dennis will work on revising Fairview Height's code and have a proposal published in the paper for public comment.

3. Status of Public Hazard Homes: Attorney Wigginton stated the Koesterer property is done. We are still negotiating on the engineering and legal fees on the W. Washington Street property. Sheets has hired another attorney on this case and had a conference call last week with both attorneys fighting over the fees in this case. Attorney Wigginton advised on 2 S. Monroe, we had proposed a deadline on the redevelopment of the lot and Sheets wants to wait until the weather improves. He received a letter from Sheets' attorney asking us to sell Sheets' our fence. Attorney Wigginton advised there has been no court precedence set for cases like this one (recovering costs before winning an order of demolition). Sheets' lawyers feel we shouldn't get the costs reimbursed because the Court never had to rule in our favor. Our position on this case is they would have never voluntarily demolished the building if we hadn't taken them to Court. We are looking at spending approximately an additional \$1,000 in legal fees. He expects a Motion to Dismiss to be filed and he will have to answer that. After discussion, the committee decided to continue trying to recoup the attorney fees, engineering and related costs on this case.

4. Nuisance Abatement Code: Copies of the updated nuisance abatement code were provided. The committee will review and talk about it at the next meeting.

5. Countryside Lane Annexations: Dennis has not heard from David Gass. Trustee Mattern stated he did not want to miss out on this opportunity. After discussion, the committee agreed to contact Gass, advise him that we will pay to run the line to the end of his lane. Dennis stated an annexation agreement should be signed before we lay any water pipe. We will need an annexation agreement for both Gass and Luechtefeld and have it stated in the annexation agreement that the water line installed within a reasonable time frame. Dennis has not talked to the U.S. Dept. of Agriculture. See discussion later on in meeting.

7. TIF Litigation: Attorney Wigginton advised we should have the amended development agreement by the end of the month and that we will need to go into Executive Session with the entire board once the committee has reviewed the agreement.

8. Stumpf lawnmower repair: Nothing new.

Trustee Mattern asked if Dennis had sent the letter to Rogers expressing the Village's interest in that property and he advised he had not.

Attorney Wigginton advised the only outstanding issue on the Dickerson case is a portion of the road needs to be vacated. He advised St. Clair County has not gotten back to them regarding the Special Assessment Ordinance. He said St. Clair County has sent a request to the State's Attorney's office on how to handle this issue. Steve advised the Kaiser issue is closed. The Emge suit was dismissed with prejudice which means that case can never be reopened again against us. Steve stated a letter was sent to the attorney regarding the unpaid utilities at 312 White Street. He filed a lien against the property and advised the attorney her client had foreclosed on the property and is the owner of the property and responsible for payment of the lien. Steve advised he talked to Attorney Jay Dowling about the sewer line being hit by the utility pole and that it needs to be directed to IDOT.

Steve talked to Watts' attorney regarding the 100% pay reimbursement issue. He pointed out the Public Employee's Disability Act to the attorney and believes that issue to be resolved.

Kevin brought up the information handed out about the appointment of the zoning administrator. It was agreed this should be an appointed position and the ordinance/code will be cleaned up.

Kevin stated he was happy to see the Estate of Ed Wilson come to a close. Pat Wilson accepted the insurance company's offer on the life insurance policy payout.

B. NEW BUSINESS:

1. Subdivision Code: Dennis provided a proposed ordinance to change all new streets to concrete. He advised that this had been recommended by the Plan Commission and discussed in a previous meeting but was just now getting the ordinance to the committee. *Trustee Rita Baker motioned to recommend to the full Board the ordinance changing the subdivision street requirement from asphalt to concrete and Trustee Charlie Mattern seconded the motion.* All voting aye, the motion carried.

2. Underwood Direct TV Antenna: See public participation.

3. William Starnes: A copy of Starnes' response to Dennis' letter was attached. Dennis stated we do have complaints about the dogs and wanted Steve's advice on whether those can be released. Steve will check into this and get back to Dennis.

Trustee Mattern wanted to revisit the Gass water line topic. He said we need a way to recoup that value. The taps that we are allowing with the water line going in are for individual residents not for developers. He asked if there was a way to establish a tap fee based on the number of homes to be served. Steve said that can be handled through a reimbursement plan put into the annexation agreement. Steve said statute 65 ILCS 5/9 requires the property to be defined that is going to be the recapture area. The annexation agreement will be recorded and show up on the title insurance. Recapture agreements are only applicable to newly annexed property. Charlie wants to know if we can put the limits within a reasonable distance. Steve said we will just put in the annexation agreement that Gass will receive 1 free tap and Luechtefeld will receive 2 free taps and then put in there in the event the property is subdivided, then all lots that result from that subdivision shall be subject to an additional tap-on fee of \$_____ to recapture or reimburse the Village the funds they spent in extending the line. Steve will look into the limits issue.

Kevin brought up an issue mentioned to him by a couple of the other trustees, limiting how much time the attorney is at the regular board meeting. Kevin does not feel comfortable with the attorney not at the meetings. Dennis said the original discussion was to invite Steve to the meeting if we felt we were going to need him there but it is hard to predict that. Charlie questioned the status report and Steve advised he will start doing that and said he would like to get out here once in a while, but doesn't want to come here and say he doesn't have a report.

C. GENERAL CONCERNS: None.

D. PUBLIC PARTICIPATION: Janet asked if the attorney could be available by conference call during board meetings and Steve replied it would be hard to answer questions as he probably wouldn't have the files/information readily available.

E. ADJOURN: *Trustee Rita Baker motioned to adjourn the meeting at 6:43 p.m. and Trustee Charlie Mattern seconded the motion. All voting aye, the motion carried.*



Julie Polson
Office Manager

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Legal and Ordinance Committee Meeting
(Annexation; Building; Zoning; Subdivision)
(Groth/Baker/Mattern)
Wednesday, January 9, 2008 at 4:00 p.m.

The meeting of the Legal and Ordinance Committee was called to order at 4:04 p.m. by Chairman Kevin Groth on Wednesday, January 9, 2008, in the Freeburg Municipal Center. Members attending were Chairman Kevin Groth, Trustee Charlie Mattern, Trustee Rita Baker, Mayor Ray Danford, Village Clerk Jerry Menard, Administrator Dennis Herzing and Office Manager Julie Polson. Guest present: Janet Baechle.

OLD BUSINESS:

1. Approval of 12/6/07 Minutes: *Trustee Charlie Mattern motioned to approve the December 6, 2007 minutes and Trustee Rita Baker seconded the motion. All voting aye, motion carried.*
2. Material Requirements on Commercial Buildings: Charlie attended the Chamber of Commerce meeting and stated there was no real discussion on this topic. The meeting had approximately 10 members present. Charlie asked if the proposed building requests could go through the Plan Commission for their review and Dennis advised that there is nothing in the code to control what a building looks like when built. Kevin would like the code from Fairview Heights revised by Dennis and have a proposal published in the paper for public comment.
3. Status of Public Hazard Homes: Dennis provided copies of emails received on the 2 S. Monroe property. The Public Works Dept. put up the orange plastic fence as directed by the Board of Trustees and Sheets' attorney questioned why they were not advised ahead of time. Dennis advised them that the cleanup was underway but we needed the site to be safe. Sheets also requested a temporary arrangement be made so he doesn't have to back fill that property right now. We responded no to that request. Kevin brought up the Main Street property and Dennis advised that an invoice has been sent to Mary Kinzinger to pay for the cost to have R&N clean up the property. If she does not pay the invoice in a timely manner, a notice of lien will be filed. Since St. Clair County has not answered our question on how the special assessment works (as we passed the ordinance), it is possible we can recover these costs through that avenue. Rita brought up the Rogers' home across the street from the old power plant and Dennis advised that someone asked her if she was willing to sell the home and she said she is not interested. The home is not vacant.
4. Nuisance Abatement Code: Kevin stated he has talked to some people in town who would support this and also some that won't. Dennis stated Attorney Wigginton feels we need to address this and make the code more stringent. Dennis is to come up with a proposal on this to be put in the paper for public comment.

Legal and Ordinance Committee Meeting
Wednesday, January 9, 2008

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committee review, it was decided to have Dennis revise the ordinance to only have a building permit required for a very large dish.

GENERAL CONCERNS: None.

PUBLIC PARTICIPATIOIN: Janet Baechle asked what was going on with Walnut Street/Phillips Street and Dennis advised the tenants are gone.

ADJOURN: *Trustee Rita Baker motioned to adjourn the meeting at 5:23 p.m. and Trustee Charlie Mattern seconded the motion. All voting aye, the motion carried.*



Julie Polson
Office Manager

CHAPTER 151: NUISANCE ABATEMENT

Section

Updated by AH

General Provisions

- 151.001 Establishment
- 151.002 Code Enforcement Officer

Unsafe Structures and Equipment

- 151.015 Condemnation of structures
- 151.016 Definitions

Unfit or Unlawful Structures

- 151.030 Structures unfit for occupancy
- 151.031 Definitions
- 151.032 Vacant structures

Maintenance of Exteriors

- 151.045 Applicability
- 151.046 Maintenance by owner
- 151.047 Vacant structure conditions
- 151.048 Exterior premises
- 151.049 Garbage storage containers
- 151.050 Stagnant water
- 151.051 Loading and delivery areas
- 151.052 Responsibility for extermination of pests
- 151.053 Responsibility for exterior areas
- 151.054 Weeds and lawns
- 151.055 Storage yards and areas
- 151.056 Discharges to adjacent property
- 151.057 Accessory structures
- 151.058 Exterior of structures
- 151.059 Sanitary conditions

Notices; Posting Requirements

- 151.070 Notice of violation
- 151.071 Service of notice
- 151.072 Condemnation order; vacation of premises
- 151.073 Non-compliance
- 151.074 Issuance of condemnation notice
- 151.075 Continued use of structure
- 151.076 Lifting condemnation notice
- 151.077 Emergency actions

Junk Vehicles

151.090	Definition
151.091	Declaration of nuisance
151.092	Issuance of citation; exceptions
151.093	Multiple vehicles for sale
151.094	Unlawful sale without license
151.095	Enclosure of motor vehicles
151.096	Dismantling prohibited
151.097	Unlawful parking
151.098	Commercial vehicles in residential district
151.099	Recreational vehicles
151.100	Applicability

Violations, Penalties and Remedies

151.115	Code violations
151.116	Non-compliance with order
151.117	Action by Board of Trustees
151.118	Time constraints
151.119	Commencement of court proceedings
151.120	Sale of structure and materials

Certificate of Occupancy

151.135	Occupancy permit required
151.136	Application
151.137	Action on application
151.138	Issuance of permit
151.139	Conditional permit
151.140	Rejection of application
151.141	Suspension of permit
151.142	Revocation of permit
151.999	Penalty

GENERAL PROVISIONS

§ 151.001 ESTABLISHMENT. This code establishes the minimum requirements for the initial and continued occupancy and use of all structures and premises, but does not replace or modify requirements otherwise established by prior codes, ordinances, the Housing Code and Building code, which may be additional or more stringent than the requirements set forth herein for the construction, repair, alteration or use of structures, equipment or facilities.

§ 151.002 CODE ENFORCEMENT OFFICER.

- A. It shall be the duty and responsibility of the appointed Building and Zoning/Code Enforcement Administrator, hereinafter referred to as "Administrator," to enforce the provisions of the Nuisance Abatement Code as provided for herein.
- B. The Administrator shall have the following powers and duties under this code:
 - 1. To enforce all the provisions of the Nuisance Abatement Code;
 - 2. To issue all necessary notices and orders to abate illegal or unsafe conditions in order to ensure compliance with the Nuisance Abatement Code for the safety, health and general welfare of the public;
 - 3. To enter any non-residential or residential structure at any reasonable time for the purpose of making inspections and performing duties as provided for under the Nuisance Abatement Code;
 - 4. To seek from a court of competent jurisdiction an order against an owner, occupant or other person in charge of a premises to cease and desist in refusing, impeding, inhibiting or obstructing the free access by the Administrator to any part of a structure wherein inspection is sought;
- C. Every occupant of a non-residential structure or a premises shall give the owner, his or her agent or employee access to any part of the structure or its premises at reasonable times for the purpose of making inspections and such repairs as are necessary to comply with the provisions of this code
- D. The Administrator or his or her authorized representative shall disclose proper credentials of his or her respective office for the purpose of entering into any structure for the purpose of inspecting any and all building and premises in the performance of his or her duties pursuant to this code.
- E. Inspection of all premises, the issuance of notices and orders resulting from inspections and the enforcement of this code shall be the responsibility of the Administrator. However, if, in the opinion of the Administrator initiating an inspection under this code, he or she deems it necessary or desirable to have inspections by other departments of the village, the Administrator shall make reasonable effort to arrange for the coordination of additional inspections so as to minimize the number of visits by inspectors. The Administrator shall confer with the other departments conducting inspections for the purpose of eliminating conflicting orders or citations before any are issued. No department conducting inspections shall delay the issuance of any emergency orders which it determines must be issued for the purpose of conducting such a conference with other departments.

UNSAFE STRUCTURES AND EQUIPMENT

§ 151.015 CONDEMNATION OF STRUCTURES.

- A. When any structure or part thereof is determined by the Administrator to be unsafe, or when a structure or part thereof is found unfit for human occupancy or use, or is found to be unlawful, it may be condemned pursuant to the provisions of this code and shall be posted with appropriate notice and vacated.
- B. It shall not be reoccupied without approval of the Administrator. Unsafe equipment located within a structure shall also be posed with appropriate notice and placed out of service upon posting.

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

EQUIPMENT. Equipment includes any boiler, heating unit, elevator, moving stairway, electrical wiring or device, air conditioning system, flammable liquid container or other type of equipment located within a structure or premises. Such equipment is unsafe when it is in such disrepair or condition that it is determined by the Administrator to be a hazard to life, health, property or safety of the public or the occupants of the structure or premises wherein the equipment is situated. ***Unsafe equipment*** may contribute to or be the cause of a finding that the structure wherein it is situated is unsafe or unfit for human occupancy or use.

UNSAFE STRUCTURE. One in which all or part thereof is determined by the Administrator to be dangerous to life, health, property or the safety of the public, which includes its occupants, because it is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that it may partially or completely collapse.

UNFIT OR UNLAWFUL STRUCTURES

§ 151.030 STRUCTURES UNFIT FOR OCCUPANCY. A structure is unfit for human occupancy or use whenever the Administrator finds that it is unsafe, unlawful or because of the degree in which it lacks maintenance or is in disrepair, is unsanitary, vermin or rat infested, contains filth and contamination or lacks proper ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code or any other code or ordinance. Furthermore, a structure may be unfit for human occupancy if its location constitutes a hazard to its occupants or to the public.

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

UNLAWFUL STRUCTURE.

1. One found in whole or in part to be occupied by more persons than is permitted by the village code.
2. One determined to have been erected, altered or occupied contrary to the village code.

§ 151.032 VACANT STRUCTURES. If any structure or part thereof is vacant and unfit for human habitation, occupancy or use, but is not in danger of structural collapse, the Administrator

shall post a placard of condemnation on the premises and shall order the structure closed up so it will not be an attractive nuisance to the public. Upon failure of the owner to close up the premises within the time specified in the order, the Administrator shall cause the structure to be closed through any available public agency or by contract or arrangement with private persons or contractors. The cost for closing up the structure shall be charged against the real estate upon which the structure is located and shall constitute a lien on such real estate.

MAINTENANCE OF EXTERIORS

§ 151.045 APPLICABILITY. The provisions of this subchapter shall govern the minimum conditions for maintenance of the exterior of property, premises and structures. Premises shall comply with the conditions herein prescribed insofar as they are applicable.

§ 151.046 MAINTENANCE BY OWNER. The owner of the premises or structure shall maintain the property in compliance with the requirements set forth herein. A person shall not occupy, as owner/occupant, or lease to another for occupancy or use, premises or structures which do not comply with the requirements of this code.

§ 151.047 VACANT STRUCTURE CONDITIONS. All vacant structures and vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause blight or to adversely affect the public health and safety. Penalty, see § 151.999

§ 151.048 EXTERIOR PREMISES.

- A. All exterior property areas and premises shall be maintained in a clean, safe and sanitary condition, free from any accumulation of rubbish or garbage.
- B. Storage of material must, at all times, be enclosed or screened from adjoining property and from public view so as not to be visible from adjoining property or from a public street. Penalty, see § 151.999

Cross Reference:

Weeds, see 94.20 et seq.

§ 151.049 GARBAGE STORAGE CONTAINERS. The owner, manager or operator of every establishment producing garbage, vegetable wastes or other putrescible materials shall provide, and at all times, cause to be used, leak-proof containers having close-fitting covers for storage of the materials until such time as they are removed from the premises for disposal. The storage containers shall be located behind or to the sides of a building. All storage containers which are greater than one yard in size located in commercial areas shall be screened from residential areas and residential streets so they are not visible. All storage containers which are greater than four yards in size located in residential areas shall be screened from view so as not to be visible from open areas.

§ 151.050 STAGNANT WATER. All premises shall be graded and maintained in such a manner so as to prevent the accumulation of stagnant water thereon. Penalty, see § 151.999

§ 151.051 LOADING AND DELIVERY AREAS. All loading and delivery areas, automobile service stations and drive-in food establishments shall be paved with bituminous, concrete or equivalent surfacing in accordance with **§ 155.250** and shall be free from dirt and other litter. The paved areas of the establishments shall be kept in good repair. Exterior lighting of

commercial establishments shall be installed in such a manner so as to avoid illumination of residential areas as much as possible. Penalty, see § 151.999

§ 151.052 RESPONSIBILITY FOR EXTERMINATION OF PESTS. An owner or manager of a structure or of property shall be responsible for extermination of insects, rats, vermin or other pests in all exterior areas of the premises, except that the occupant of a single-family dwelling shall be responsible for the extermination in the exterior areas of the premises. Whenever infestation exists in the shared or public parts of a premises or structure which is not a single-family dwelling, extermination shall be the responsibility of the owner, manager or operator of the premises or structure. Penalty, see § 151.999

§ 151.053 RESPONSIBILITY FOR EXTERIOR AREAS. All sidewalks, steps, driveways, parking spaces and similar paved areas privately owned, but used by the public, shall be free from mud and other debris. If any sidewalk or driveway, or portion thereof, by virtue of its state of disrepair shall constitute a danger to public health and safety, the sidewalk or driveway, or portion thereof, shall be repaired or replaced. Penalty, see § 151.999

§ 151.054 WEEDS AND LAWNS. All areas shall be kept free from weeds or wild plant growth. Lawns shall not exceed eight inches in height. Penalty, see § 151.999

Cross-reference:

Weeds, see 94.20 et seq.

§ 151.055 STORAGE YARDS AND AREAS.

- A. *Enclosure of storage yards.* All open storage yards and areas shall be completely obscured from view by surrounding property by a solid fence (such as wood or slatted chain link) not less than six feet in height. This section shall not apply to areas where licensed, registered motor vehicles that are in good, safe and operable condition are operated on a regular basis. In those areas, a fence of not less than six feet in height is required.
- B. *Nuisance.* Unsheltered storage of old, unused, stripped, junked and other motor vehicles not in good, safe and operable condition, and of any other vehicles, machinery, implement and/or equipment and personal property of any kind which is no longer safely usable for the purposes for which it was manufactured, which hereinafter are collectively described as "the personalty," for a period of 30 days or more, except in licensed junk yards, within the corporate limits of the village, is hereby declared to be a nuisance and dangerous to the public safety.
- C. *Abatement of nuisance by owners.* The owner, owners, tenants, lessees and/or occupants of any lot within the corporate limits of the village upon which the storage is made, and also the owner, owners and/or lessees of the personalty involved in the storage (all of whom are hereinafter referred to collectively as "owners"), shall jointly and severally abate the nuisance by the prompt removal of the personalty into completely enclosed buildings authorized to be used for the storage purposes, if within the corporate limits of the village, or otherwise to remove it to a location outside the corporate limits.
- D. *Penalty for failure of owner to abate the nuisance.* If the owners allow the nuisance to exist or fail to abate the nuisance, the, and each of them, upon conviction thereof, shall be fined not less than \$50, nor more than \$500, for each offense and a separate offense shall be deemed committed on each day during or on which the nuisance is permitted to exist.

E. *Abatement by village.*

1. Whenever the owners fail to abate the nuisance, then the village shall remove the personalty to a location of its selection, the expenses therefore to be billed to the owners, jointly and severally, the bill to be recoverable in a suit at law.
2. When the personalty has been removed and placed in storage by the village, as provided for herein, the personalty shall be sold by the village after the lapse of time as is provided by law. If the proceeds of the sale are insufficient to pay the costs of abatement, the owners shall be liable to the village for the balance of the costs, jointly and severally to be recoverable in a suit at law. If the proceeds are in excess of costs, the balance shall be paid to the owners or deposited in the Village Treasury for their use. Penalty, see § 151.999

§ 151.056 DISCHARGES TO ADJACENT PROPERTY. No person shall construct, maintain or operate pipes, ducts, conductors, fans or blowers in a manner so as to discharge gases, steam vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property belonging to another. Penalty, see § 151.999

§ 151.057 ACCESSORY STRUCTURES. All accessory structures, including detached garages, fences and walls shall be maintained structurally sound and in compliance with the requirements for exterior structures set forth herein. Penalty, see § 151.999

§ 151.058 EXTERIOR OF STRUCTURES. The exterior of a structure or building shall be maintained structurally sound and sanitary so as not to pose a threat to the health and safety of the occupants or other members of the public and shall be maintained so as to protect the occupants from the elements

- A. *Structural members.* All supporting structural members of all structures and building shall be kept structurally sound, free of deterioration and maintained so as to be capable of safely bearing the dead and live loads located within the buildings and structures.
- B. *Maintenance of foundations.* Every foundation, exterior wall, roof and all other exterior surfaces shall be maintained in a workmanlike state of maintenance and repair.
- C. *Foundation walls.* All foundation walls shall be maintained so as to carry the safe design and support the operating dead and live loads of the building or structure. The foundations shall be maintained plumb and free from open cracks and breaks and be kept in a state of repair so as not to be detrimental to individual safety and welfare of citizens.
- D. *Exterior walls.* All exterior walls shall be free of holes, breaks, cracks, loose or rotting boards or timbers and shall be free of any other conditions of disrepair which might admit rain, dampness or wind to the interior portions of the walls or to the occupied spaces within a building. All exterior surface materials, including wood, composition or metal siding shall be maintained weatherproof and shall be properly surface coated where necessary in order to prevent deterioration.
- E. *Roofs and roof drainage.* Roofs of all buildings and other structures shall be structurally sound and shall not have defects which might admit moisture. Roof drainage shall be such so as to prevent rainwater and other types of moisture from causing dampness in the walls or the interior portion of any building or structure.
- F. *Maintenance of cornices.* All cornices entablatures, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair and shall be properly anchored to a building or structure so as to be in a safe condition.
- G. *Maintenance of overhang extensions.* All canopies, marquees, signs, metal awnings, fire escapes, standpipes, gutters and downspouts, exhaust ducts and similar overhang

extensions shall be maintained in good repair and be properly anchored so as to be kept in a safe and secure condition. They shall be protected from the elements and against decay and rust by the periodic application of a weather-coating material such as paint or by application of other protective treatment material.

- H. *Chimneys and appurtenances.* All chimneys, cooling towers, smoke stacks and similar appurtenances shall be maintained structurally safe, sound and in a good state of repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials such as paint or by treatment of a similar substance.
- I. *Stairway, porch and balcony.* Every stair, stairway, porch, balcony and all appurtenances attached thereto shall be so constructed and maintained so as to be safe to use and capable of supporting the loads to which it is subjected. They shall be kept in a sound condition and in good repair.
- J. *Windows and doors.* Every window, door and frame shall be constructed and maintained in relation to the adjacent wall construction so as to prevent rain and other types of moisture and wind from penetrating the interior of the dwelling or structure. Every window sash shall be treated with approved glazing materials and shall be free of cracks and holes. Penalty, see § 151.999

§ 151.059 SANITARY CONDITIONS.

- A. Every occupant of a structure, building or part thereof shall keep that portion of the structure or premises which he or she occupies in a clean and sanitary condition.
- B. Every owner, manager or operator of a building containing two or more dwelling units shall maintain the shared or public areas of the building in a clean and sanitary condition.
 - 1. *Disposal of rubbish.* Every occupant of a structure or building shall dispose of all rubbish in a clean and sanitary manner by placing it in rubbish containers equipped with tight-fitting covers.
 - 2. *Garbage disposal facilities.* Every occupant of a structure or part thereof shall dispose of garbage in a clean and sanitary manner by placing it in garbage disposal facilities or, if the facilities are not available, by removing all non-burnable matter and securely wrapping the garbage and placing it in tight garbage storage containers or by disposing of the garbage in a manner as may be approved by the village code or other ordinances.
 - 3. *Placement of garbage.* Rubbish and garbage shall not be placed on the front property line for pick-up by the disposal service more than 24 hours prior to the time such pick-up will occur.
 - 4. *Building requirements for garbage.* Every building shall be supplied with an approved garbage disposal facility such as a mechanical sink grinder to be located within each dwelling unit or with approved outside garbage can or cans as required by this code. The facilities shall be sufficient to meet the needs of the occupants. Outside storage shall be screened on all sides so as not to be visible to adjoining residential structures.
 - 5. *Approved containers.* Every structure shall have adequate approved containers and covers for storage of rubbish and the owner, operator, manager or agent in control of a building shall be responsible for the removal of the rubbish.
 - 6. *Non-residential structure.* The owner or occupant of a non-residential structure or part thereof shall keep the equipment and fixtures located therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in

the proper use, operation and maintenance of the equipment and fixtures.
Penalty, see § 151.999

NOTICES; POSTING REQUIREMENTS

§ 151.070 NOTICE OF VIOLATION.

- A. Whenever the Administrator determines there has been a violation of this code or has reasonable grounds to believe that a violation has occurred or whenever the Administrator has condemned a structure or equipment under the provisions of this code, notice shall be given to the owner or the person or persons responsible in the manner as prescribed below.
- B. If the administrator has condemned the property or part thereof, he or she shall give notice to the owner and the occupants of his or her intent to post the property, to order equipment out of service and that the occupants vacate the premises.
- C. The notice shall:
 - 1. Be in writing;
 - 2. Include a description of the real estate sufficient for identification;
 - 3. Include a statement of the reason or reasons why it is being posted; and
 - 4. Include a correction order allowing a reasonable time for the repairs and improvements required to bring the structure into compliance with the provisions of this code and other applicable codes and ordinances.

§ 151.071 SERVICE OF NOTICE.

- A. Service of the notice required in the previous section shall be deemed to be properly served upon the owner if a copy is delivered to the owner personally or by leaving a copy of the notice at the usual place of the owner's abode with someone residing there of suitable age and discretion who shall be informed of the contents of the notice. Notice can also be served by certified or registered mail, return receipt requested, addressed to the owner at his or her last known address.
- B. In addition to the forms of service specified above, notice when the structure is condemned must also include posting a copy of the notice in a conspicuous place in or about the structure affected by the notice and at least one publication of the notice in a local newspaper of general circulation within the village.

§ 151.072 CONDEMNATION ORDER; VACATION OF PREMISES.

- A. When a condemnation order is served on an occupant other than the owner or person responsible for compliance, a reasonable time to vacate the property after non-compliance shall be allowed and stated in the order.
- B. Owners or persons responsible for compliance, however, must vacate at the time set as a deadline for correction of defects if there is a failure of compliance.

§ 151.073 NON-COMPLIANCE. Penalties for non-compliance of orders and notices shall be in accordance with §§ 151.115 through 151.120.

§ 151.074 ISSUANCE OF CONDEMNATION NOTICE.

- A. When the condemnation notice required under the provisions of this code has been given and time allowed for repairs has expired without compliance, the Administrator

shall post on the premises or structure or parts thereof, or on defective equipment, a placard bearing the words:

“CONDEMNED AS UNFIT FOR HUMAN OCCUPANCY OR USE”

- B. A statement of the penalties provided for any occupancy or use or for removing the placard shall be noted on that placard. The owner, or the person or persons responsible for the correction of violations, shall remove himself or herself from the property for his or her failure to comply with the correction order in the time specified. However, other occupants of the property shall be given a reasonable amount of time thereafter to vacate.

§ 151.075 CONTINUED USE OF STRUCTURE. Any person who shall occupy a posted premises or structure or part thereof or shall use posted equipment and any owner or person responsible for the premises who shall let anyone occupy a posted premises shall be subject to the penalties provided for herein. Penalty, see § 151.999

§ 151.076 LIFTING CONDEMNATION NOTICE. The Administrator shall remove the condemnation card whenever the defect or defects upon which the condemnation and posting action were based have been eliminated. Any person who defaces or removes a condemnation card without the approval of the Administrator shall be subject to the penalties provided for herein. Penalty, see § 151.999

§ 151.077 EMERGENCY ACTIONS. Whenever an Administrator finds that an emergency exists on any premises, or in any structure or part thereof, or on any defective equipment which requires immediate action to protect the public's health and safety or the health and safety of the occupants therein, the Administrator shall, with proper notice and service in accordance with the provisions stated herein, issue an order reciting the existence of an emergency and requiring the vacating of the premises or the taking of such other action as the Code Enforcement Administrator deems necessary to meet an emergency. Notwithstanding other provisions of this code to the contrary, the order shall be effective immediately and the premises or equipment involved shall be posted immediately upon service of the order. A copy of that order shall be delivered to the Mayor and members of the Village Board immediately after it is issued.

JUNK VEHICLES

§ 151.090 DEFINITION. For the purposes of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

JUNK VEHICLE.

1. Any vehicle which is without a current valid license plate and/or is in a rusted, wrecked, discharged, dismantled, partly dismantled, inoperative or abandoned condition. A ***JUNK VEHICLE*** is also a motor vehicle from which, for a period of at least seven days, the engine, wheels or other parts have been removed or on which the engine, wheels or other parts have been altered, damaged or otherwise so treated that the vehicle is incapable of being driven under its own motor power.
2. A ***JUNK VEHICLE*** shall be classified as to its condition in one of the two following categories:

- a) **RESTORABLE.** A junk vehicle that is in a condition whereby repairs to it could be made to place it in operating condition without exceeding its estimated value when repaired. One restorable vehicle shall be allowed on a lot located in a residential area provided that it is enclosed within a garage structure.
- b) **WRECKED.** A junk vehicle in such a condition that it is economically unsound to restore it to operating condition considering the cost of repairs to be made, age of the vehicle, market value of the vehicle if it were restored or if, in the opinion of the Administrator, it is determined that such a classification for the vehicle is warranted. A wrecked vehicle shall not be allowed to remain or be stored on any parcel within a designated residential area.

Cross-reference:

Abandoned and Inoperable Vehicles, see Chapter 92

§ 151.091 DECLARATION OF NUISANCE. All junk vehicles, whether on public or private property and in view of the general public, are hereby declared a nuisance, and any person who violates any provision of this code pertaining thereto or who fails to obey a notice which states that such person is to dispose of that vehicle under his control shall be subject to the fines and penalties as provided for in §§ 151.115 through 151.120.

§ 151.092 ISSUANCE OF CITATIONS, EXCEPTIONS. After ten days from the issuance of a citation, members of the Police Department may enter upon public or private property and remove any junk vehicle, or parts thereof, for the purpose of disposing of same. The cost(s) for the removal shall be paid by the owner of the property. However, nothing in this section shall apply to any motor vehicle that is kept within a building, nor does this section apply to operable historic vehicles over 25 years of age, or to a motor vehicle on the premises of a place of business engaged in the wrecking or junking of motor vehicles.

§ 151.093 MULTIPLE VEHICLES FOR SALE. The offering of two or more motor vehicles for sale at the same time on private property located within a residential area is prohibited. At no time and under no circumstances is the offering for sale of a junk vehicle or the sale of vehicle parts permitted in open areas on private property unless the property upon which it is situated is licensed by the village to permit such sale. For the purpose of this section, a “for sale” sign posted upon or adjacent to a motor vehicle constitutes an offering for sale and is prohibited unless specifically allowed herein. Penalty, see § 151.999

§ 151.094 UNLAWFUL SALE WITHOUT LICENSE. Except as permitted by this code, it shall be unlawful to offer for sale any vehicle at any location unless the location is licensed by the village to permit such a sale. The owner of the vehicle, as well as the owner of the property upon which it is located, shall be liable for any violations of this code which pertain thereto. Penalty, see § 151.999

§ 151.095 ENCLOSURE OF MOTOR VEHICLES. Unless otherwise provided herein, all unregistered, inoperable or junk motor vehicles shall be garaged when in a residential district.

§ 151.096 DISMANTLING PROHIBITED. Unless otherwise provided for herein, no motor vehicle which is in a state of major disassembly, disrepair or which is being stripped or dismantled shall be permitted on any property located within a residential or a non-residential district unless the property is licensed for the use. The major repair or demolition of motor vehicles shall not be permitted in residential areas. Penalty, see § 151.999

§ 151.097 UNLAWFUL PARKING.

- A. All vehicles parked in a residential district shall be parked on a street, a clearly delineated driveway or within a garage.
- B. At no time shall a motor vehicle be parked, stored or in any manner be placed on the front, side or rear yards or otherwise allowed to create a nuisance to adjoining property owners by placing the vehicle in areas other than herein provided. Penalty, see § 151.999

§ 151.098 COMMERCIAL VEHICLES IN RESIDENTIAL DISTRICT.

- A.
 - 1. No more than one commercial vehicle shall be parked, stored or housed within a residential district.
 - 2. The commercial vehicle parked, stored or housed within a residential district must be owned by or assigned to the owner of the premises where the vehicle is situated and must be located on the owner's lot in the residential district.
 - 3. The vehicle must not exceed seven feet in height and shall not be a school bus, tractor, trailer, dump truck, front loader, crane, tow truck or similar vehicle.
 - 4. The commercial vehicle shall be parked to the side or rear of a building on a clearly delineated driveway so as to be screened from view from the public right-of-way as much as possible.
 - 5. For the purpose of this section, the following definition shall apply unless the context clearly indicates a different meaning.

COMMERCIAL VEHICLE. A vehicle having been issued a "B" or a "D" license plate by the Secretary of State. All other commercial vehicles having greater than a "D" license plate shall not be parked, stored or housed within a residential district.

- B. No refrigerated truck or trailer shall be parked within the village between the hours of 10:00 p.m. and 6:00 a.m. with the refrigeration unit in operation, except where the units are parked in parking areas specifically designed and established for group parking of the units or where the units are parked within properly zoned business districts and where the noise from the vehicles is not audible in adjacent residentially zoned districts.
- C. No diesel powered truck or trailer shall be parked within the village between the hours of 10:00 p.m. and 6:00 a.m. with the engine running, except where the units are parked in parking areas specifically designed and established for group parking of the units or within properly zoned business districts and where the noise from the vehicles is not audible in adjacent residentially zoned districts. Penalty, see § 151.999

§ 151.099 RECREATIONAL VEHICLES. The provisions of this code shall not be construed to amend or alter any provisions contained in other codes or ordinances regulating the parking and/or storing of recreational vehicles.

§ 151.100 APPLICABILITY. All provisions of this code shall apply to trailers and towable vehicles.

VIOLATIONS, PENALTIES AND REMEDIES

§ 151.115 CODE VIOLATIONS. It shall be unlawful for any person to erect, construct, alter, extend, repair, remove, demolish, use or occupy any structure or equipment regulated by this code when the conduct is contrary to or in conflict with or in violation of any of the provisions stated herein.

§ 151.116 NON-COMPLIANCE WITH ORDER.

- A. In case any violation order is not promptly complied with, the Administrator may request the Village Board to direct the village's legal representative to institute an appropriate action or proceeding in a court of competent jurisdiction to collect the penalties provided for in § 151.999(A)
- B. Furthermore, subject to the provisions set forth in ILCS Chapter 65, Act 5, § 11-31-1, the Administrator may ask the Village Board to authorize the village's legal representative to proceed at law or in equity against the person responsible for the violation for the purpose of ordering that person:
 - 1. To restrain, correct or remove the violation or refrain from any further work at that structure(s);
 - 2. To restrain or correct the erection, installation or alteration of the structure(s);
 - 3. To require the removal of work in violation of any provision of this code; or
 - 4. To prevent the occupation or use of the structure or part thereof erected, constructed, installed or altered in violation of or not in compliance with the provisions of this code or which is in violation of a plan or specification of which an approval, permit or certificate was issued by the village.

§ 151.117 ACTION BY BOARD OF TRUSTEES.

- A. Subject to the provisions of ILCS Chapter 65, Act 5, § 11-31-1, the Administrator may recommend to the Village Board that it direct the owner of the premises upon which is located any structure or part thereof, which, in the Administrator's judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation, occupancy or use, to raze and remove a structure or part thereof.
- B. Furthermore, the Village Board may direct the owner of a premises to repair, make safe and make sanitary a structure if it can be repaired or to raze and remove the structure at the owner's option.
- C. The Village Board may also direct the owner of the premises to demolish a structure where there has been a cessation of normal construction of the structure for a period of more than two years and the unfinished structure is so deteriorated that it warrants demolition.

§ 151.118 TIME CONSTRAINTS.

- A. The order from the Village Board shall specify a time in which the owner shall comply therewith and specify repairs, if any, to be made. It shall be served on the owner of record, or an agent where an agent is in charge of the building and upon the holder of any encumbrance of record in the manner provided for service of a summons by a court of record. If the owner or a holder of the encumbrance of record cannot be found, the order may be served by posting it on the main entrance of the

building and by publishing it once each week for three successive weeks in a newspaper of general circulation within the village.

- B. An extension of time to comply with an order of repair or demolition issued by the Village Board may be requested by the owner from the Village Board by filing the requests with the Village Clerk within five days of receipt by the owner of the notice of repair or demolition.

§ 151.119 COMMENCEMENT OF COURT PROCEEDINGS.

- A. In the event the owner of the premises fails or refuses to comply with the order of the Village Board, the Village Board may direct the Village Attorney to commence court proceedings in accordance with ILCS Chapter 65, Act 5, § 11-31-1 to authorize the demolition or repair of the structure.
- B. The requirements and provisions of ILCS Chapter 65, Act 5, § 11-31-1 are incorporated herein by reference, shall be strictly complied with and shall supersede and take precedence over any provisions of this code or ordinances which are in conflict therewith.

§ 151.120 SALE OF STRUCTURE AND MATERIALS. When any structure has been razed and removed, the Village Board, or its designated officer under a contract or arrangement for removal, may sell the salvageable and valuable materials at the highest price obtainable. The net proceeds of such a sale, after deducting the expenses of the razing and removal, shall be promptly remitted to the Village Clerk with a report of a sale transaction, including the items and the amount deducted for the benefit of any person, firm or corporation entitled to reimbursement for the expenses. The report to be submitted shall so state if there are no sale proceeds remaining to be remitted.

CERTIFICATE OF OCCUPANCY

§ 151.135 OCCUPANCY PERMIT REQUIRED.

- A. It shall be unlawful for any person, owner or agent thereof to occupy or use, or to permit the occupancy or use of any single or multi-family dwelling unit for any purpose including the movement of furniture, equipment or other personal property into the premises until a permit of occupancy has been issued by the Administrator. The certificate so issued shall state the occupancy complies with all of the provisions of this code as far as can be determined by a visual inspection of the premises and a review of the records.
- B. The fee for the occupancy permit/final inspection shall be \$15 for each dwelling unit or building, or portion thereof, occupied. If an inspection certificate has been issued, then an occupant may move in on weekends and holidays when the department, responsible for issuing occupancy permits, is closed. The occupant is required to obtain the permit written three days after the Department is open.

§ 151.136 APPLICATION. It shall be unlawful for any person to knowingly make any false statements on an application for an occupancy permit for a dwelling unit as to the names, relationship or number of occupants who will occupy the dwelling unit. Penalty, see § 151.999

§ 151.137 ACTION ON APPLICATION.

- A. The Administrator shall examine, or cause to be examined, all applications for permits within a reasonable time for filing. He or she shall cause the premises to be inspected within seven working days after filing. If the premises are not inspected within seven working days, then the permit and certificate of compliance shall be automatically issued without an inspection. If the premises are not in compliance with this code and all laws and ordinances applicable thereto, the Administrator shall provide the applicant with a list of defects that are not in compliance. The defects shall be listed with as much as specificity as possible. The owner or occupant of every dwelling unit and its premises shall give the Administrator free access thereto, at all reasonable time, for the purpose of the inspection. An inspection shall be valid for a period of one year. The dwelling unit does not have to be reinspected during the year, even if the occupancy changes. There shall be no fee for the original inspection, or the first reinspection, if necessary.
- B. A reinspection shall be made within seven working days after a written request for reinspection has been made to the Administrator. If the premises are not reinspected within the seven working days, from receipt of the written request, then the permit and certificate of compliance shall be automatically issued without a reinspection. If specific defects are found in the original inspection, the Administrator shall not require additional defects to be corrected that were discovered on a reinspection unless the new defects occurred after the original inspection.
- C. There shall be a fee of \$50 for every reinspection after that first one.
- D. No inspection shall be required under this subchapter for a dwelling unit that is less than five years of age.

§ 151.138 ISSUANCE OF PERMIT. If all the fees are paid and the Administrator is satisfied that the premises and its occupancy are in compliance with this code and all laws and ordinances applicable thereto, the Administrator shall issue the occupancy permit as soon as practicable.

§ 151.139 CONDITIONAL PERMIT.

- A. Occupancy shall be permitted on a conditional basis when in the judgment of the Administrator practical difficulties interfere with completing all repairs required to bring the premises into full compliance with this code prior to permitting occupancy.
- B. However, no conditional permit shall be issued when there is a condition on the premises which can threaten the health or safety of an occupant.
- C. No conditional permit shall be issued under the provisions of this code for which a change in use is proposed unless a certificate of use and occupancy has first been issued under the provisions of the Building Code and/or Zoning Code.

§ 151.140 REJECTION OF APPLICATION. If the application does not comply with the requirements of all pertinent laws, the Administrator shall reject the application in writing, stating the reasons therefore.

§ 151.141 SUSPENSION OF PERMIT. Any permit issued shall become invalid if the occupancy is not commenced within six months after issuance of the permit or if the occupancy is terminated.

§ 151.142 REVOCATION OF PERMIT. The Administrator may revoke a permit in cause of any false statement or misrepresentation of facts in the application on which a permit was based, or in the event a structure or part thereof is condemned pursuant to this code.

§ 151.199 PENALTY.

- A. Any person, upon conviction of violating any provisions of this code, shall be fined not less than \$50, nor more than \$750 for each violation. The Administrator is authorized to issue a citation for each day that a violation continues after due notice has been served and each citation shall be deemed a separate and distinct offense.
- B. Any person, upon conviction of violating § 151.098, shall be fined \$250 for each violation.
- C. Any owner or occupier of any premises violating §§ 151.135 through 151.142 shall, upon conviction, be fined \$100. Each day an occupancy continues without complying with this code shall be considered a separate offense and is subject to a separate fine.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV, CHAPTER 154 OF THE REVISED
CODE OF THE VILLAGE OF FREEBURG, ST. CLAIR
COUNTY, ILLINOIS (Subdivision Code)

BE IT ORDAINED BY THE VILLAGE PRESIDENT AND VILLAGE BOARD OF
TRUSTEES OF THE VILLAGE OF FREEBURG, ST. CLAIR COUNTY, ILLINOIS, THAT:

TITLE XV, CHAPTER 154, Section 154.42 Street Improvements, Paragraph (E) is
hereby amended to read as follows:

- (E) Street construction standards. All streets within the jurisdictional authority of the village other than state highways shall be improved with pavements bounded by integral concrete curbs and gutters, and constructed in accordance with the following minimum standards:

Street Type	Dedicated Street Width	Pavement Width	Pavement Type
Arterial or Industrial	80 Ft.	50 Ft.	9" Standard Reinforced Portland Cement Concrete w/40' dowel joints* and 6" crushed stone base
Collector	60 Ft.	36 Ft. (one-side parking)	8" Standard Reinforced Portland Cement Concrete w/40' dowel joints* and 6" crushed stone base
Local	50 Ft.	32 Ft. (one-side parking)	6" Standard Reinforced Portland Cement Concrete w/15' plain joints** and 6" crushed stone base
Cul-de-sac	50 Ft.	26 Ft.	6" Standard Reinforced Portland Cement Concrete w/15' plain joints** and 6" crushed stone base

* Dowel Joints – Saw cut or formed joints with cast-in-place dowels centered in joint and sealed with joint sealant.

** Plain Joints – Keyed or saw cut joints with joint surface sealant

- (1) Portland Cement concrete designs shall be based on Illinois Department of Transportation pavement designs. Materials and construction techniques shall be in accordance with the latest edition of the Standards and Specifications for Road and Bridge Construction as published by the Illinois Department of Transportation.
- (2) The subdivider shall be required to improve arterial streets only to the width required by the current and immediate needs of his subdivision consistent with the standards and specifications herein contained.

PASSED BY THE VILLAGE BOARD OF THE VILLAGE OF FREEBURG,
ILLINOIS, ST. CLAIR COUNTY, AND APPROVED BY THE VILLAGE PRESIDENT THIS

_____ DAY OF February, 2008.

AYES _____

NAYS _____

ABSENT _____

ABSTAIN _____

Jerry Menard, Village Clerk

Approved this _____ day of _____, 2008

Raymond S. Danford, Village President

ATTEST:

Jerry Menard, Village Clerk

Approval as to Legal Form:

Stephen R. Wigginton, Village Attorney

VILLAGE PRESIDENT
Ray Danford

VILLAGE CLERK
Jerry Menard

VILLAGE TRUSTEES
Rita Baker
Charlie Mattern
Kevin Groth
Corby Valentine
Steve Smith
Tony Miller

VILLAGE OF FREEBURG

FREEBURG MUNICIPAL CENTER
14 SOUTHGATE CENTER, FREEBURG, IL 62243
PHONE: (618) 539-5545 • FAX: (618) 539-5590
Web Site: www.freeburg.com

VILLAGE ADMINISTRATOR
Dennis Herzing

VILLAGE TREASURER
Bryan A. Vogel

PUBLIC WORKS DIRECTOR
Ronald Dintelmann

POLICE CHIEF
Melvin E. Woodruff, Jr.

VILLAGE ATTORNEY
Stephen R. Wigginton

MEMO:

To: Legal & ordinance Committee
From: Dennis R. Herzing, P.E., Village Administrator
CC: Mayor Danford
Date: 01/29/2008
Re: Underwood Direct TV antenna

As requested after the last board meeting, on 1/29/08 I spoke with a Mr. Laiton Bailey who identified himself as the technician that installed the Underwood's Direct TV antenna. I asked him why he selected the location he did to install the antenna. He indicated that he had tried to install it on the end of the house at the rear but it did not get a good signal so he moved it to its present location. I asked him if it could have been installed in the back yard on a post and he said it could not because the yard sloped down rapidly and the signal would be blocked.

I told him about our ordinance and that a neighbor was upset about the location of the antenna. He said he remembered a neighbor coming over and talking to him during the installation and that he had told him that there was no other good location to install the antenna. He said the neighbor became upset and made a comment that the antenna was tacky and then left.

The whole discussion concerning this antenna is probably a moot point since, based on the information from the FCC, our ordinance has probably been invalid with respect to dish antennae less than 1 meter in size since 1996.

FEDERAL COMMUNICATIONS COMMISSION

INFORMATION SHEET



December 2007

Over-the-Air Reception Devices Rule

Preemption of Restrictions on Placement of Direct Broadcast Satellite, Broadband Radio Service, and Television Broadcast Antennas

Quick Links to Document Sections Below

- [Questions and Answers](#)
- [Links to Relevant Orders and the Rule](#)
- [Guidance on Filing a Petition Where to Call for More Information](#)

As directed by Congress in Section 207 of the Telecommunications Act of 1996, the Federal Communications Commission adopted the Over-the-Air Reception Devices ("OTARD") rule concerning governmental and nongovernmental restrictions on viewers' ability to receive video programming signals from direct broadcast satellites ("DBS"), broadband radio service providers (formerly multichannel multipoint distribution service or MMDS), and television broadcast stations ("TVBS").

The rule (47 C.F.R. Section 1.4000) has been in effect since October 1996, and it prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. The rule applies to video antennas including direct-to-home satellite dishes that are less than one meter (39.37") in diameter (or of any size in Alaska), TV antennas, and wireless cable antennas. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal.

Effective January 22, 1999, the Commission amended the rule so that it also applies to rental property where the renter has an exclusive use area, such as a balcony or patio.

On October 25, 2000, the Commission further amended the rule so that it applies to customer-end antennas that receive and transmit fixed wireless signals. This amendment became effective on May 25, 2001.

The rule applies to individuals who place antennas that meet size limitations on property that they own or rent and that is within their exclusive use or control, including condominium owners and cooperative owners, and tenants who have an area where they have exclusive use, such as a balcony or patio, in which to install the antenna. The rule applies to townhomes and manufactured homes, as well as to single family homes.

The rule allows local governments, community associations and landlords to enforce restrictions that do not impair the installation, maintenance or use of the types of antennas described above, as well as restrictions needed for safety or historic preservation. Under some circumstances where a central or common antenna is available, a community association or landlord may restrict the installation of individual antennas. The rule does not apply to common areas that are owned by a landlord, a community association, or jointly by condominium or cooperative owners where the antenna user does not have an exclusive use area. Such common areas may include the roof or exterior wall of a

multiple dwelling unit. Therefore, restrictions on antennas installed in or on such common areas are enforceable.

This Information Sheet provides general answers to questions concerning implementation of the rule, but is not a substitute for the actual rule. For further information or a copy of the rule, contact the Federal Communications Commission at 888-CALLFCC (toll free) or (202) 418-7096. The rule is also available via the Internet by going to [links to relevant Orders and the rule](#).

Q: What types of antennas are covered by the rule?

A: The rule applies to the following types of antennas:

- (1) A "dish" antenna that is one meter (39.37") or less in diameter (or any size dish if located in Alaska) and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite.
- (2) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite.
- (3) An antenna that is designed to receive local television broadcast signals. Masts higher than 12 feet above the roofline may be subject to local permitting requirements.

In addition, antennas covered by the rule may be mounted on "masts" to reach the height needed to receive or transmit an acceptable quality signal (e.g. maintain line-of-sight contact with the transmitter or view the satellite). Masts higher than 12 feet above the roofline may be subject to local permitting requirements for safety purposes. Further, masts that extend beyond an exclusive use area may not be covered by this rule.

Q: What are "fixed wireless signals"?

A: "Fixed wireless signals" are any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Examples include wireless signals used to provide telephone service or high-speed Internet access to a fixed location. This definition does **not** include, among other things, AM/FM radio, amateur ("HAM") radio (but see 47 C.F.R. §97.15), Citizens Band ("CB") radio, and Digital Audio Radio Services ("DARS") signals.

Q: Does the rule apply to hub or relay antennas?

A: The rule applies to "customer-end antennas" which are antennas placed at a customer location for the purpose of providing service to customers at that location. The rule does not cover antennas used to transmit signals to and/or receive signals from multiple customer locations.

Q: What types of restrictions are prohibited?

A: The rule prohibits restrictions that impair a person's ability to install, maintain, or use an antenna covered by the rule. The rule applies to state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules, condominium or cooperative association restrictions, lease restrictions, or similar restrictions on property within the exclusive use or control of the antenna user where the user has an ownership or leasehold interest in the property. A restriction impairs if it: (1) unreasonably delays or prevents use of; (2) unreasonably increases the cost of; or (3) precludes a person from receiving or transmitting an acceptable quality signal from an antenna covered under the rule. The rule does not prohibit legitimate safety restrictions or restrictions designed to preserve designated or eligible historic or prehistoric properties, provided the restriction is no more burdensome than necessary to accomplish the safety or preservation purpose.

Q: What types of restrictions unreasonably delay or prevent viewers from using an antenna? Can an antenna user be required to obtain prior approval before installing his antenna?

A: A local restriction that prohibits all antennas would prevent viewers from receiving signals, and is prohibited by the Commission's rule. Procedural requirements can also unreasonably delay installation, maintenance or use of an antenna covered by this rule. For example, local regulations that require a person to obtain a permit or approval prior to installation create unreasonable delay and are generally prohibited. Permits or prior approval necessary to serve a legitimate safety or historic preservation purpose may be permissible. Although a simple notification process might be permissible, such a process cannot be used as a prior approval requirement and may not delay or increase the cost of installation. The burden is on the association to show that a notification process does not violate our rule.

Q: What is an unreasonable expense?

A: Any requirement to pay a fee to the local authority for a permit to be allowed to install an antenna would be unreasonable because such permits are generally prohibited. It may also be unreasonable for a local government, community association or landlord to require a viewer to incur additional costs associated with installation. Things to consider in determining the reasonableness of any costs imposed include: (1) the cost of the equipment and services, and (2) whether there are similar requirements for comparable objects, such as air conditioning units or trash receptacles. For example, restrictions cannot require that expensive landscaping screen relatively unobtrusive DBS antennas. A requirement to paint an antenna so that it blends into the background against which it is mounted would likely be acceptable, provided it will not interfere with reception or impose unreasonable costs.

Q: What restrictions prevent a viewer from receiving an acceptable quality signal? Can a homeowners association or other restricting entity establish enforceable preferences for antenna locations?

A: For antennas designed to receive analog signals, such as TVBS, a requirement that an antenna be located where reception would be impossible or substantially degraded is prohibited by the rule. However, a regulation requiring that

antennas be placed where they are not visible from the street would be permissible if this placement does not prevent reception of an acceptable quality signal or impose unreasonable expense or delay. For example, if installing an antenna in the rear of the house costs significantly more than installation on the side of the house, then such a requirement would be prohibited. If, however, installation in the rear of the house does not impose unreasonable expense or delay or preclude reception of an acceptable quality signal, then the restriction is permissible and the viewer must comply.

The acceptable quality signal standard is different for devices designed to receive digital signals, such as DBS antennas, digital broadband radio service antennas, digital television ("DTV") antennas, and digital fixed wireless antennas. For a digital antenna to receive or transmit an acceptable quality signal, the antenna must be installed where it has an unobstructed, direct view of the satellite or other device from which signals are received or to which signals are to be transmitted. Unlike analog antennas, digital antennas, even in the presence of sufficient over-the-air signal strength, will at times provide no picture or sound unless they are placed and oriented properly.

Q: Can a restriction limit the number of antennas that may be installed at a particular location?

The Commission's rule covers the antennas necessary to receive service. Therefore, a local rule may not, for example, allow only one antenna if more than one antenna is necessary to receive the desired service.

Q: Are all restrictions prohibited?

A: No. Clearly-defined, legitimate safety restrictions are permitted even if they impair installation, maintenance or use provided they are necessary to protect public safety and are no more burdensome than necessary to ensure safety. Examples of valid safety restrictions include fire codes preventing people from installing antennas on fire escapes; restrictions requiring that a person not place an antenna within a certain distance from a power line; and installation requirements that describe the proper method to secure an antenna. The safety reason for the restriction must be written in the text, preamble or legislative history of the restriction, or in a document that is readily available to antenna users, so that a person who wishes to install an antenna knows what restrictions apply. Safety restrictions cannot discriminate between objects that are comparable in size and weight and pose the same or a similar safety risk as the antenna that is being restricted.

Restrictions necessary for historic preservation also may be permitted even if they impair installation, maintenance or use of the antenna. To qualify for this exemption, the property may be any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places. In addition, restrictions necessary for historic preservation must be no more burdensome than necessary to accomplish the historic preservation goal. They also must be imposed and enforced in a non-discriminatory manner, as compared to other modern structures that are comparable in size and weight and to which local regulation would normally apply.

Q: How does the rule apply to restrictions on radiofrequency (RF) exposure from antennas that have the capability to transmit signals? Can a local restriction require professional installation of receive-only antennas?

A: All transmitters regulated by the Commission, including the customer-end fixed wireless antennas (either satellite or terrestrial) covered under the amended rule, are required to meet the applicable Commission guidelines regarding RF exposure limits. The limits established in the guidelines are designed to protect the public health with a large margin of safety. These limits have been endorsed by federal health and safety agencies, such as the Environmental Protection Agency and the Food and Drug Administration. The Commission requires that providers of fixed wireless service exercise reasonable care to protect users and the public from RF exposure in excess of the Commission's limits. In addition, as a condition of invoking protection under the rule from government, landlord, and association restrictions, a provider of fixed wireless service must ensure that customer-end antennas are labeled to give notice of potential RF safety hazards posed by these antennas.

It is recommended that antennas that both receive and transmit signals be installed by professional installers to maximize effectiveness and minimize the possibility that the antenna will be placed in a location that is likely to expose subscribers, their families, or others in the area to radiation from the transmit signal at close proximity and for an extended period of time. In general, associations, landlords, local governments and other restricting entities may not require professional installation for receive-only antennas, such as one-way DBS satellite dishes. However, local governments, associations, and property owners may require professional installation for **transmitting** antennas based on the safety exception to the rule. Such safety requirements must be: (1) clearly defined; (2) based on a legitimate safety objective (such as bona fide concerns about RF radiation) which is articulated in the restriction or readily available to antenna users; (3) applied in a non-discriminatory manner; and (4) no more burdensome than necessary to achieve the articulated objectives.

For additional information about the Commission's RF exposure limits, please visit <http://www.fcc.gov/oet/rfsafety> or call the RF Safety Information Line at 202-418-2464.

Q: Whose antenna restrictions are prohibited?

A: The rule applies to restrictions imposed by local governments, including zoning, land-use or building regulations; by homeowner, townhome, condominium or cooperative association rules, including deed restrictions, covenants, by-laws and similar restrictions; and by manufactured housing (mobile home) park owners and landlords, including lease restrictions. The rule only applies to restrictions on property where the viewer has an ownership or leasehold interest and exclusive use or control.

Q: If I live in a condominium or an apartment building, does this rule apply to me?

A: The rule applies to antenna users who live in a multiple dwelling unit building, such as a condominium or apartment building, if the antenna user has an exclusive use area in which to install the antenna. "Exclusive use" means an area of the property that only you, and persons you permit, may enter and use to the exclusion of other residents. For example, your condominium or apartment may include a balcony, terrace, deck or patio that only you can use, and the rule applies to these areas. The rule does not apply to common areas, such as the roof, the hallways, the walkways or the exterior walls of a condominium or apartment building. Restrictions on antennas installed in these common areas are not covered by the Commission's rule. For example, the rule would **not** apply to restrictions that prevent drilling through the exterior wall of a condominium or rental unit and thus restrictions may prohibit installation that requires such drilling.

Q: Does the rule apply to condominiums or apartment buildings if the antenna is installed so that it hangs over or protrudes beyond the balcony railing or patio wall?

A: No. The rule does not prohibit restrictions on antennas installed beyond the balcony or patio of a condominium or apartment unit if such installation is in, on, or over a common area. An antenna that extends out beyond the balcony or patio is usually considered to be in a common area that is not within the scope of the rule. Therefore, the rule does not apply to a condominium or rental apartment unit unless the antenna is installed wholly within the exclusive use area, such as the balcony or patio.

Q: Does the fact that management or the association has the right to enter these areas mean that the resident does not have exclusive use?

A: No. The fact that the building management or the association may enter an area for the purpose of inspection and/or repair does not mean that the resident does not have exclusive use of that area. Likewise, if the landlord or association regulates other uses of the exclusive use area (e.g., banning grills on balconies), that does not affect the viewer's rights under the Commission's rule. This rule permits persons to install antennas on property over which the person has *either* exclusive use *or* exclusive control. Note, too, that nothing in this rule changes the landlord's or association's right to regulate use of exclusive use areas for other purposes. For example, if the lease prohibits antennas and flags on balconies, only the prohibition of antennas is eliminated by this rule; flags would still be prohibited.

Q: Does the rule apply to residents of rental property?

A: Yes. Effective January 22, 1999, renters may install antennas within their leasehold, which means inside the dwelling or on outdoor areas that are part of the tenant's leased space and which are under the exclusive use or control of the tenant. Typically, for apartments, these areas include balconies, balcony railings, and terraces. For rented single family homes or manufactured homes which sit on rented property, these areas include the home itself and patios, yards, gardens or other similar areas. If renters do not have access to these outside areas, the tenant may install the antenna inside the rental unit. Renters are not required to obtain the consent of the landlord prior to installing an antenna in these areas. The rule does not apply to common areas, such as the roof or the exterior walls of an apartment building. Generally, balconies or patios that are shared with other people or are accessible from other units are not considered to be exclusive use areas.

Q: Are there restrictions that may be placed on residents of rental property?

A: Yes. A restriction necessary to prevent damage to leased property may be reasonable. For example, tenants could be prohibited from drilling holes through exterior walls or through the roof. However, a restriction designed to prevent ordinary wear and tear (e.g., marks, scratches, and minor damage to carpets, walls and draperies) would likely not be reasonable provided the antenna is installed wholly within the antenna user's own exclusive use area. In addition, rental property is subject to the same protection and exceptions to the rule as owned property. Thus, a landlord may impose other types of restrictions that do not impair installation, maintenance or use under the rule. The landlord may also impose restrictions necessary for safety or historic preservation.

Q: If I live in a condominium, cooperative, or other type of residence where certain areas have been designated as "common," do these rules apply to me?

A: The rules apply to residents of these types of buildings, but the rules do not permit you to install an antenna on a common area, such as a walkway, hallway, community garden, exterior wall or the roof. However, you may install the antenna wholly within a balcony, deck, patio, or other area where you have exclusive use.

Drilling through an exterior wall, *e.g.* to run the cable from the patio into the unit, is generally not within the protection of the rule because the exterior wall is generally a common element. You may wish to check with your retailer or installer for advice on how to install the antenna without drilling a hole. Alternatively, your landlord or association may grant permission for you to drill such a hole. The Commission's rules generally do not cover installations if you drill through a common element.

Q: If my association, building management, landlord, or property owner provides a central antenna, may I install an individual antenna?

A: Generally, the availability of a central antenna may allow the association, landlord, property owner, or other management entity to restrict the installation by individuals of antennas otherwise protected by the rule. Restrictions based on the availability of a central antenna will generally be permissible provided that: (1) the person receives the particular video programming or fixed wireless service that the person desires and could receive with an individual antenna covered under the rule (*e.g.*, the person would be entitled to receive service from a specific provider, not simply a provider selected by the association); (2) the signal quality of transmission to and from the person's home using the central antenna is as good as, or better than, the quality the person could receive or transmit with an individual antenna covered by the rule; (3) the costs associated with the use of the central antenna are not greater than the costs of installation, maintenance and use of an individual antenna covered under the rule; and (4) the requirement to use the central antenna instead of an individual antenna does not unreasonably delay the viewer's ability to receive video programming or fixed wireless services.

Q: May the association, landlord, building management or property owner restrict the installation of an individual antenna because a central antenna will be available in the future?

A: It is not the intent of the Commission to deter or unreasonably delay the installation of individual antennas because a central antenna may become available. However, persons could be required to remove individual antennas once a central antenna is available if the cost of removal is paid by the landlord or association and the user is reimbursed for the value of the antenna. Further, an individual who wants video programming or fixed wireless services other than what is available through the central antenna should not be unreasonably delayed in obtaining the desired programming or services either through modifications to the central antenna, installation of an additional central antenna, or by using an individual antenna.

Q: I live in a townhome community. Am I covered by the FCC rule?

A: Yes. If you own the whole townhouse, including the walls and the roof and the land under the building, then the rule applies just as it does for a single family home, and you may be able to put the antenna on the roof, the exterior wall, the backyard or any other place that is part of what you own. If the townhouse is a condominium, then the rule applies as it does for any other type of condominium, which means it applies only where you have an exclusive use area. If it is a condominium townhouse, you probably cannot use the roof, the chimney, or the exterior walls unless the condominium association gives you permission. You may want to check your ownership documents to determine what areas are owned by you or are reserved for your exclusive use.

Q: I live in a condominium with a balcony, but I cannot receive a signal from the satellite because my balcony faces north. Can I use the roof?

A: No. The roof of a condominium is generally a common area, not an area reserved for an individual's exclusive use.

If the roof is a common area, you may not use it unless the condominium association gives you permission. The condominium is not obligated to provide a place for you to install an antenna if you do not have an exclusive use area.

Q: I live in a mobile home that I own but it is located in a park where I rent the lot. Am I covered by the FCC rule?

A: Yes. The rule applies if you install the antenna anywhere on the mobile or manufactured home that is owned by you. The rule also applies to antennas installed on the lot or pad that you rent, as well as to other areas that are under your exclusive use and control. However, the rule does not apply if you want to install the antenna in a common area or other area outside of what you rent.

Q: I want a conventional "stick" antenna to receive a distant over-the-air television signal. Does the rule apply to me?

A: No. The rule does not apply to television antennas used to receive a distant signal.

Q: I want to install an antenna for broadcast radio or amateur radio. Does the rule apply to me?

A: No. The rule does not apply to antennas used for AM/FM radio, amateur ("ham") radio (see 47 C.F.R. §97.15), Citizen's Band ("CB") radio or Digital Audio Radio Services ("DARS").

Q: I want to install an antenna to access the Internet. Does the rule apply to me?

A: Yes. Antennas designed to receive and/or transmit data services, including Internet access, are included in the rule.

Q: Does this mean that I can install an antenna that will be used for voice and data services even though it does not provide video transmissions?

A: Yes. The most recent amendment expands the rule and permits you to install an antenna that will be used to transmit and/or receive voice and data services, except as noted above. The rule will also continue to cover antennas used to receive video programming.

Q: I'm a board member of a homeowners' association, and we want to revise our restrictions so that they will comply with the FCC rule. Do you have guidelines you can send me?

A: The Commission does not have sample guidelines because every community is different. We can provide you the rule and the relevant orders, which will give you general guidance. (See list of documents at the [end of this Information Sheet](#). Some communities have written restrictions that provide a prioritized list of placement preferences so that residents can see where the association wants them to install the antenna. The residents should comply with the placement preferences provided the preferred placement does not impose unreasonable delay or expense or preclude reception of an acceptable quality signal.

Q: What restrictions are permitted if the antenna must be on a very tall mast to get a signal?

A: If you have an exclusive use area that is covered by the rule and need to put your antenna on a mast, the local government, community association or landlord may require you to apply for a permit for safety reasons if the mast extends more than 12 feet above the roofline. If you meet the safety requirements, the permit should be granted. Note that the Commission's rule only applies to antennas and masts installed wholly within the antenna user's exclusive use area. Masts that extend beyond the exclusive use area are outside the scope of the rule. For installations on single family homes, the "exclusive use area" generally would be anywhere on the home or lot and the mast height provision is usually most relevant in these situations. For example, if a homeowner needs to install an antenna on a mast that is more than 12 feet taller than the roof of the home, the homeowners' association or local zoning authority may require a permit to ensure the safety of such an installation, but may not prohibit the installation unless there is no way to install it safely. On the other hand, if the owner of a condominium in a building with multiple dwelling units needs to put the antenna on a mast that extends beyond the balcony boundaries, such installation would generally be outside the scope and protection of the rule, and the condominium association may impose any restrictions it wishes (including an outright prohibition) because the Commission rule does not apply in this situation.

Q: Does the rule apply to commercial property or only residential property?

A: Nothing in the rule excludes antennas installed on commercial property. The rule applies to property used for commercial purposes in the same way it applies to residential property.

Q: What can a local government, association, or consumer do if there is a dispute over whether a particular restriction is valid?

A: Restrictions that impair installation, maintenance or use of the antennas covered by the rule are preempted (unenforceable) unless they are needed for safety or historic preservation and are no more burdensome than necessary to accomplish the articulated legitimate safety purpose or for preservation of a designated or eligible historic site or district. If a person believes a restriction is preempted, but the local government, community association, or landlord disagrees, either the person or the restricting entity may file a Petition for Declaratory Ruling with the FCC or a court of competent jurisdiction. We encourage parties to attempt to resolve disputes prior to filing a petition. Often contacting the FCC for information about how the rule works and applies in a particular situation can help to resolve the dispute. If a local government, community association, or landlord acknowledges that its restriction impairs installation, maintenance, or use and is preempted under the rule but believes it can demonstrate "highly specialized or unusual" concerns, the restricting entity may apply to the Commission for a waiver of the rule.

Q: How do I file a petition or request a waiver at the Commission?

A: See Guidance on Filing a Petition at the end of this document.

Q: Can I continue to use my antenna while the petition or waiver request is pending?

A: Yes, unless the restriction being challenged or for which a waiver is sought is necessary for reasons of safety or historic preservation. Otherwise, the restriction cannot be enforced while the petition is pending.

Q: Who is responsible for showing that a restriction is enforceable?

A: When a conflict arises about whether a restriction is valid, the local government, community association, property owner, or management entity that is trying to enforce the restriction has the burden of proving that the restriction is valid. This means that no matter who questions the validity of the restriction, the burden will always be on the entity seeking to enforce the restriction to prove that the restriction is permitted under the rule or that it qualifies for a waiver.

Q: Can I be fined and required to remove my antenna immediately if the Commission determines that a restriction is valid?

A: If the Commission determines that the restriction is valid, you will have a minimum of 21 days to comply with this ruling. If you remove your antenna during this period, in most cases you cannot be fined. However, this 21-day grace period does not apply if the FCC rule does not apply to your installation (for example, if the antenna is installed on a condominium general common element or hanging outside beyond an apartment balcony. If the FCC rule does not apply at all in your case, the 21-day grace period does not apply.

Q: Who do I call if my town, community association or landlord is enforcing an invalid restriction?

A: Call the Federal Communications Commission at (888) CALLFCC (888-225-5322), which is a toll-free number, or 202-418-7096, which is not toll-free. Some assistance may also be available from the direct broadcast satellite company, broadband radio service provider, television broadcast station, or fixed wireless company whose service is desired.

Links to Relevant Orders and the Rule

- (First) Report and Order, FCC 96-328, released August 6, 1996: [[Text Version](#) | [WordPerfect Version](#)]
- Declaratory Ruling, Star Lambert, DA 97-1554, released July 27, 1997: [[Text](#)]
- Declaratory Ruling, Jay Lubliner, DA 97-2188, released October 14, 1997: [[Text](#)]
- Declaratory Ruling, Michael MacDonald, DA 97-2189, released October 14, 1997: [[Text](#)]
- Declaratory Ruling, Omnivision, DA 97-2187, released October 14, 1997: [[Text](#)]
- Declaratory Ruling, Wireless Broadcasting Systems (WBSS), DA 97-2506, released November 28, 1997: [[WordPerfect](#) | [Text](#)]
- Declaratory Ruling, Victor Frankfurt, DA 97-2305, released December 31, 1997: [[Text](#)]
- Declaratory Ruling, Jason Peterson, DA 98-0188, released February 4, 1998: [[Text](#)]
- Declaratory Ruling, Jordan Lourie, DA 98-1170, released June 17, 1998: [[WordPerfect](#) | [Text](#)]
- Declaratory Ruling, James Sadler, DA 98-1284, released July 1, 1998: [[WordPerfect](#) | [Text](#)]
- Memorandum Opinion and Order, Denial of Application of Review of Declaratory Ruling for Jay Lubliner (above), FCC 98-201, released August 21, 1998: [[WordPerfect](#) | [Text](#)]
- Order on Reconsideration, FCC 98-214, released September 25, 1998: [[WordPerfect](#) | [Text](#)]
- Second Report and Order, FCC 98-273, released November 20, 1998: [[Text](#) | [WordPerfect](#) | [Acrobat](#) | [News Release and Statements](#)]
- Declaratory Ruling, Stanley and Vera Holliday, DA 99-2132, released October 8, 1999: [[MSWord](#) | [Acrobat](#)]
- Second Order on Reconsideration, FCC 99-360, released November 24, 1999: [[Text](#) | [MSWord](#)]
- Declaratory Ruling, Bell Atlantic Video, DA 00-927, released April 26, 2000: [[MSWord](#) | [Acrobat](#)]
- Competitive Networks Report and Order, FCC 00-366, released October 25, 2000: [[Text](#) | [MSWord](#) | [Acrobat](#) | [News Release and Statements](#)]
- Declaratory Ruling, Victor Frankfurt, DA 01-0153, released February 7, 2001: [[MSWord](#) | [Acrobat](#)]
- Declaratory Ruling, Corey Roberts, DA 01-1276, released May 24, 2001: [[MSWord](#) | [Acrobat](#)]
- Memorandum Opinion and Order, Denial of Application of Review of Declaratory Ruling for Victor Frankfurt (above), FCC 03-210, released August 27, 2003 : [[MSWord](#) | [Acrobat](#)]
- Memorandum Opinion and Order, Philip Wojcikewicz, DA 03-2971, released September 29, 2003: [[MSWord](#) | [Acrobat](#)]
- Declaratory Ruling, Michael and Alexandra Pinter, DA 04-2839, released September 1, 2004: [[MSWord](#) | [Acrobat](#)]
- Shadow Wood Condominium Association. Denied the petition for waiver of the Commission's OTARD Rules, 47 C.F.R. 1.4000. (By MO&O [DA 06-100] adopted January 19, 2006 by the Deputy Chief, Media Bureau. [[Word](#) | [Acrobat](#) | [Text](#)]
- OTARD Rule, 47 C.F.R. Section 1.4000.

- Petition for Declaratory Ruling Regarding the Over-the-Air Reception Devices (OTARD) Rules, released November 1, 2006.
[Order: [Word](#) | [Acrobat](#); Copps Statement: [Word](#) | [Acrobat](#); Adelstein Statement: [Word](#) | [Acrobat](#)]
- Memorandum Opinion and Order, Philip Wojcikewicz, FCC 07-98, released May 25, 2007: [[MSWord](#) | [Acrobat](#) | [Text](#)]

GUIDANCE ON FILING A PETITION

Q: How do I file a petition or request a waiver at the Commission?

A: There is no special form for a petition. You may simply describe the facts, including the specific restriction(s) that you wish to challenge. If possible, include contact information such as telephone numbers for all parties involved, if available, and attach a copy of the restriction(s) and any relevant correspondence. If this is not possible, be sure to include the exact language of the restriction in question with the petition. General or hypothetical questions about the application or interpretation of the rule cannot be accepted as petitions. To file a Petition for Waiver, follow the requirements in Section 1.4000(c) of the rule. The local government, community association or landlord requesting the waiver must demonstrate "local concerns of a highly specialized or unusual nature."

Petitions for declaratory rulings and waivers must be served on all interested parties. For example, if a homeowners' association files a petition seeking a declaratory ruling that its restriction is not preempted and is seeking to enforce the restriction against a specific resident, service must be made on that specific resident. The homeowners' association will not be required to serve all other members of the association, but must provide reasonable, constructive notice of the proceeding to other residents whose interests foreseeably may be affected. This may be accomplished, for example, by placing notices in residents' mailboxes, by placing a notice on a community bulletin board, or by placing the notice in an association newsletter. If a local government seeks a declaratory ruling or a waiver from the Commission, the local government must take steps to afford reasonable, constructive notice to residents in its jurisdiction (*e.g.*, by placing a notice in a local newspaper of general circulation). Proof of constructive notice must be provided with a petition. In this regard, the petitioner should provide a copy of the notice and an explanation of where the notice was placed and how many people the notice reasonably might have reached.

Finally, if a person files a petition or lawsuit challenging a local government's ordinance, an association's restriction, or a landlord's lease, the person must serve the local government, association or landlord, as appropriate. You must include a "proof of service" with your petition. Generally, the "proof of service" is a statement indicating that on the same day that your petition was sent to the Commission, you provided a copy of your petition (and any attachments) to the person or entity that is seeking to enforce the antenna restriction. The proof of service should give the name and address of the parties served, the date served, and the method of service used (*e.g.*, regular mail, personal service, certified mail).

All allegations of fact contained in petitions and related pleadings before the Commission must be supported by an affidavit signed by one or more persons who have actual knowledge of such facts. You must send an original and two copies of the petition and all attachments to:

Secretary, Federal Communications Commission

145 12th Street, S.W.

Washington, D.C. 20554

Attention: Media Bureau

PREMIER COMMUNICATIONS AN HSP FOR DIRECTV

Installation Site Survey

DAN UNDERWOOD
Customer Name

PHONE#

Date 1-29-08 Tech # 7300

Own Rent Landlord Permission Yes No

Dish
Pole Mount Roof Mount Wall Mount Deck Mount Skid Mount

Location Lag Bolts Concrete Anchors
Concrete Silicone Bishop Tape

Comments Dish PUT TOWARD FRONT RIGHT SIDE OF GARAGE IN ORDER TO GET (LINE OF SIGHT) OVER ROOF.

Cable Routing

Wall Gutter Eave Soffit Fascia Vinyl Corner Trench Cable
Flex Clips Feed Thru Tubes Nylon Ties
Nail On Rokas Outside Point of Entry Ground Block Location

Comments

Drill Holes

Wall Floor Attic Closet Wall Fish Other
Single Wall Plate Phone Biscuit Dual Wall Plate
Feed Through Tube Silicone Combo Wall Plate

Comments

Phones Lines

All receivers are required to be connected to a permanent phone line
Phone lines are for:

Receiving current updates Upgrades Sporting events
 Future updates Remote Pay-per-View

I elect to maintain a working phone connection to all receivers:

Customers Signature

The technician explained the wireless phone jack option to provide phone line connectivity to my DirecTV system in each room. The wireless phone jack option is the best option because no drilling or wiring through walls are required. The cost for the customer is minimal. See the technician for more details.

I acknowledge that the installer explained the installation process to me prior to starting any work. I understand where the holes are located, how the cable is to be routed, how the dish will be attached and what type of outlets will be installed inside the residence. I hereby grant permission to install my DirecTV system according to the plan that I have approved.

DirecTV Protection Plan:

I elect to add the DirecTV Protection Plan (\$5.99/monthly for standard receivers, \$7.99/monthly for advanced products).
 I decline the DirecTV Protection Plan

Technician Signature Merry Gouch (SENIOR TECH)

Date 1-29-08

January 12, 2008

RECEIVED

JAN 14 2008

Dennis R. Herzing:

Your strange letter, 1/7/08, is acknowledged. Why do you pretend not to comprehend my request for the name(s) of the "civilian" (presumably a neighbor) who came on to my property and berated my son in the presence of police officers?? The "someone" (your words) who trespassed is known to the police since he accompanied them - I never told you that there were prior incidents, why you checked for records of past trespasses is unknown.

Perhaps, the term trespasser is confusing to you, which is why, in anticipation of your ignorance, I used the term civilian. You should know (perhaps you should confer with Steve Wiggington) that one who goes upon the property of another is either an invitee, a licensee, or a trespasser; the aggrieved neighbor was certainly not an invited guest nor was he a licensee. Perhaps your confusion is caused by the fact that there is civil trespass which is actionable even though the damages may be unexpected, such as the emotional distress alluded to previously; and there is criminal trespass which requires prior notice to the offender (see my previous letter).

My request is quite simple - I want the names and addresses of all persons who complained to Freeburg employees (police or other wise) about the barking problem; you stated in your Dec 27/07 letter that the police received several complaints (plural) from residents (plural) - I seek verification of those assertions for the purposes described in my previous letter.

Your search for police records pertaining to non existent, non requested prior trespasses was nonsensical- it reminds me of your search for stagnant water during a thunderstorm.

You previously provided me with a copy of Ord. 93.39 but you failed to furnish me with the Penalty section related to this offense; please send me a copy.

The Law

Under Illinois law, a trespasser is one who enters the premises of another for his own purposes without permission, invitation or other right.

Carter v. Rosenbeck, 214 F. Supp. 2d 899 (C. D. Ill. 2002)

To enter upon another's land without consent is trespass.

Desnick v. A.B.C. Inc. 44F. 3d 1345

Chicago Title & T. Co. v. Weis 605 NE 2A 1092, 238 Ill A. 3d 921

Under Illinois law landowner is not required to give notice of trespass to obtain damages.
Burns Philip Food Inc. v. Cavalea Continental F. Inc. 135 section 526,
aff'd 191F 3d 455.

American Trans. Co. v. US. Sanitary S. Corp. 118 NE 2d 793, 2 Ill App.
2d 144.

Landowners were not required to prove actual damage to recover in case of trespass to
property.

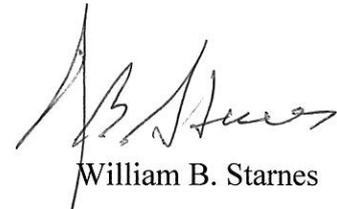
First Nat'l Bank of Des Plaines v. AMCO Eng. Co. 335 NE 2d 591, 32 Ill,
App, 3d 451.

According to Black's Law:

A Trespasser is one who intentionally and without consent or privilege
enters on another's property.

A licensee is one who has permission to enter or use another's premises
but only for one's own purposes and not for the occupiers benefit.

An invitee is a person who has an express or impied invitation to enter or
use another's premises, such as business visitor.



William B. Starnes