

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL WORKSHOP**  
**APRIL 20, 2010 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Amend Procedures for Granting of Encroachment Licenses	✓ Resolution Ordinance Motion Discussion Only	Dave Fieldman Village Manager

**SYNOPSIS**

A resolution has been prepared amending procedures for granting encroachment licenses on properties over which the Village holds an easement. This item is associated with the proposed user-fee, license and fine updates for the Village Manager's Office (VMO), Finance Department and Clerk's Office.

**STRATEGIC PLAN ALIGNMENT**

The FY10 Strategic Plan identifies *Fee Schedule and Related Code Revisions* as an action agenda item for 2010.

**FISCAL IMPACT**

N/A.

**UPDATE & RECOMMENDATION**

This item was discussed at the April 13, 2010 meeting. Staff recommends approval on the April 20, 2010 active agenda.

**BACKGROUND**

The Village Council approved the User-Fee, License and Fine Umbrella Policy on February 16, 2010. Since the adoption of the new policy, staff has begun a comprehensive review process for all Village fees, licenses and fines. The goal of this comprehensive fee review process will be to ensure that all Village charges are properly aligned with the newly approved User-Fee, License and Fine Umbrella Policy. This fee review process will be conducted on a department-by-department basis and staff will regularly submit departmental fee update recommendations to the Village Council for formal consideration throughout 2010.

The proposed resolution would amend the Village Council policy regarding the granting of encroachment licenses on property over which the Village holds an easement. This amendment is being proposed as part of the Village's comprehensive user-fee, license and fine review process. The proposed resolution would accomplish the following:

- Remove the encroachment license fee amount from the Village Council policy and place the fee in the User-Fee, License and Fine Schedule
- Increase the fee amount for encroachment licenses from \$50 to \$60

Staff has reviewed the proposed encroachment license fee increase and has determined the charge complies with the Village's cost recovery guidelines as outlined in the User-Fee, License and Fine Umbrella Policy.

**ATTACHMENTS**

Resolution  
 User-Fee, License and Fine Umbrella Policy



**V VILLAGE OF DOWNERS GROVE**  
**COUNCIL ACTION SUMMARY**

**INITIATED:** Village Manager **DATE:** April 20, 2010  
(Name)

**RECOMMENDATION FROM:** \_\_\_\_\_ **FILE REF:** \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

- Ordinance
- Resolution
- Motion
- Other

**STEPS NEEDED TO IMPLEMENT ACTION:**

Motion to Adopt "A RESOLUTION AMENDING THE PROCEDURE TO BE FOLLOWED FOR THE GRANTING OF LICENSES FOR CERTAIN ENCROACHMENTS ON PROPERTY OVER WHICH THE VILLAGE HOLDS AN EASEMENT", as presented.

**SUMMARY OF ITEM:**

Adoption of the attached resolution will amend the Council Policy concerning the granting encroachment licenses.

**RECORD OF ACTION TAKEN:**

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# Village of Downers Grove

## Official Village Policy Approved by Village Council

Description:	<b>Granting of Licenses for Certain Encroachments on Property Over Which the Village Holds an Easement</b>	
Res. or Ord. #:	<b>Res. 2010-41</b>	Effective Date: <b>04/20/10</b>
Category:	<b>Engineering and Public Works</b>	
	<input type="checkbox"/> New Council Policy	
	<input checked="" type="checkbox"/> Amends Previous Policy Dated: <b>9/26/94; 3/12/90</b>	
	Description of Previous Policy (if different from above):	
	Combining Inappropriate Use of Local Streets with Traffic Calming	

### **RESOLUTION 2010-41**

#### **A RESOLUTION AMENDING THE PROCEDURE TO BE FOLLOWED FOR THE GRANTING OF LICENSES FOR CERTAIN ENCROACHMENTS ON PROPERTY OVER WHICH THE VILLAGE HOLDS AN EASEMENT**

WHEREAS, the Village has been granted certain easements for its utilities, including storm sewers, water mains, and storm water detention; and

WHEREAS, from time to time the Village received requests from private property owners for permission to utilize such easement areas for certain private uses which may encroach into such easement areas; and

WHEREAS, it is deemed to be appropriate from time to time for the Village to permit such encroachments into easement areas, so long as the encroachments do not unduly interfere with the Village's necessary use thereof,

WHEREAS, the Council of the Village of Downers Grove has determined that it is in the best interests of the Village to establish a procedure to be followed in determining whether a particular license should be granted,

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Downers Grove, in DuPage County, Illinois, as follows:

- I. That the following procedure shall, in all events, be followed in processing, considering and acting upon requests for a license to permit certain encroachments on Village easements:
  - a. The person or persons desiring the license shall file with the Village Manager's office a written request on a prescribed form, which request shall contain the following information:
    - (i) name and address of the Petitioner;

- (ii) the location, the legal description and the parcel identification number for the petitioner's property (the "Property");
  - (iii) a description of the encroachment including a site plan or drawing which shows the location of the encroachment in relationship to any Village easements or other interest in the Property;
  - (iv) if there are any public service facilities over, under or upon the Property that are known to the Petitioner, a statement as to the type of such facility and the public utility owning same;
  - (v) a fee as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule" shall be paid to the Village, provided that no such fee shall be required if the Petitioner is a public body. This fee shall be used to pay for staff processing of the request and recordation costs.
- b. The staff of the Village shall verify the information contained in the request.
  - c. That subject to the conditions established in paragraph "d" hereof, the Village Manager of the Village of Downers Grove is hereby authorized to execute and grant on behalf of the Village from time to time as he may deem necessary and appropriate, licenses to permit certain encroachments, such as landscaping improvements or deck areas on property over which the Village holds a utility easement, on which are located or across which access may be gained to stormwater detention and drainage facilities, sidewalks, portions of the Village's water distribution or stormwater control systems, or other Village owned facilities. In connection with the granting of such licenses, the Village Manager is authorized to execute encroachment licenses, on behalf of the Village, provided that the encroachment permitted does not adversely affect the flow of drainage through or from the easement areas, and does not create any right of the private property owner to utilize the area and any public utilities located therein; and further provided that the Village is fully indemnified by the private property owner for any liability which may result as a result of the encroaching use.
  - d. An encroachment license shall run with the title of the Property and bind the successors, heirs and assigns of the Property Owner(s). Such license shall contain a provision that it may be terminated by either party on thirty (30) days notice. Upon termination, the licensee shall be responsible for removing the encroachment and returning the area to the same condition as when the license was executed.
  - e. That no licenses for such encroachments shall be granted by the Village Manager unless he has given written notice of his intent to take such action to the Village Council at least forty-eight (48) hours prior to a regularly scheduled Council meeting. At such meeting, the Village Council may direct the Village Manager to take some other action appropriate to the particular situation.
  - f. That the Village Clerk is hereby authorized to attest, seal and deliver encroachment licenses executed by the Village Manager pursuant to the authority granted by this resolution, and the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform the obligation of the Village in connection therewith.
  - g. The Village Clerk shall record the license against the Property in the Office of the Recorder of Deeds of DuPage County.

2. The validity of any grant of license otherwise carried out in accordance with applicable law shall not be invalidated, impaired or otherwise affected by noncompliance with any part of the procedure set forth herein.

3. That Resolutions 94-35 and 90-9, and all other resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed.

4. That this resolution shall be in full force and effect from and after its passage and approval as provided by law.

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Ronald L. Sandack, Mayor

Passed:

Attest:

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April Holden, Village Clerk



# Village of Downers Grove

## Official Village Policy Approved by Village Council

Description:	<b>Granting of Licenses for Certain Encroachments on Property Over Which the Village Holds an Easement</b>	
Res. or Ord. #:	Res. <b>94-35</b>	Effective Date: <b>9/26/94</b>
Category:	<b>Engineering and Public Works</b>	
	<input type="checkbox"/> New Council Policy <input type="checkbox"/> Amends Previous Policy <input checked="" type="checkbox"/> Dated: <b>9/26/94; 3/12/90</b>	
	Description of Previous Policy (if different from above):  Combining Inappropriate Use of Local Streets with Traffic Calming	

### **RESOLUTION ~~94-35~~**

### **A RESOLUTION ESTABLISHING-AMENDING THE PROCEDURE TO BE FOLLOWED FOR THE GRANTING OF LICENSES FOR CERTAIN ENCROACHMENTS ON PROPERTY OVER WHICH THE VILLAGE HOLDS AN EASEMENT**

WHEREAS, the Village has been granted certain easements for its utilities, including storm sewers, water mains, and storm water detention; and

WHEREAS, from time to time the Village received requests from private property owners for permission to utilize such easement areas for certain private uses which may encroach into such easement areas; and

WHEREAS, it is deemed to be appropriate from time to time for the Village to permit such encroachments into easement areas, so long as the encroachments do not unduly interfere with the Village's necessary use thereof,

WHEREAS, the Council of the Village of Downers Grove has determined that it is in the best interests of the Village to establish a procedure to be followed in determining whether a particular license should be granted,

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Downers Grove, in DuPage County, ~~Illinois~~ Illinois, as follows:

- I. That the following procedure shall, in all events, be followed in processing, considering and acting upon requests for a license to permit certain encroachments on Village easements:
  - a. The person or persons desiring the license shall file with the Village Manager's office a written request on a prescribed form, which request shall contain the following information:

- (i) name and address of the Petitioner;
  - (ii) the location, the legal description and the parcel identification number for the petitioner's property (the "Property");
  - (iii) a description of the encroachment including a site plan or drawing which shows the location of the encroachment in relationship to any Village easements or other interest in the Property;
  - (iv) if there are any public service facilities over, under or upon the Property that are known to the Petitioner, a statement as to the type of such facility and the public utility owning same;
  - (v) a fee ~~of fifty dollars (\$50.00) as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule"~~ shall be paid to the Village, provided that no such fee shall be required if the Petitioner is a public body. This fee shall be used to pay for staff processing of the request and recordation costs.
- b. The staff of the Village shall verify the information contained in the request.
  - c. That subject to the conditions established in paragraph "d" hereof, the Village Manager of the Village of Downers Grove is hereby authorized to execute and grant on behalf of the Village from time to time as he may deem necessary and appropriate, licenses to permit certain encroachments, such as landscaping improvements or deck areas on property over which the Village holds a utility easement, on which are located or across which access may be gained to stormwater detention and drainage facilities, sidewalks, portions of the Village's water distribution or stormwater control systems, or other Village owned facilities. In connection with the granting of such licenses, the Village Manager is authorized to execute encroachment licenses, on behalf of the Village, provided that the encroachment permitted does not adversely affect the flow of drainage through or from the easement areas, and does not create any right of the private property owner to utilize the area and any public utilities located therein; and further provided that the Village is fully indemnified by the private property owner for any liability which may result as a result of the encroaching use.
  - d. An encroachment license shall run with the title of the Property and bind the successors, heirs and assigns of the Property Owner(s). Such license shall contain a provision that it may be terminated by either party on thirty (30) days notice. Upon termination, the licensee shall be responsible for removing the encroachment and returning the area to the same condition as when the license was executed.
  - e. That no licenses for such encroachments shall be granted by the Village Manager unless he has given written notice of his intent to take such action to the Village Council at least forty-eight (48) hours prior to a regularly scheduled Council meeting. At such meeting, the Village Council may direct the Village Manager to take some other action appropriate to the particular situation.
  - f. That the Village Clerk is hereby authorized to attest, seal and deliver encroachment licenses executed by the Village Manager pursuant to the authority granted by this resolution, and the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform the obligation of the Village in connection therewith.
  - g. The Village Clerk shall record the license against the Property in the Office of the Recorder of Deeds of DuPage County.
2. The validity of any grant of license otherwise carried out in accordance with applicable law shall not be invalidated, impaired or otherwise affected by noncompliance with any part of the procedure set forth herein.
  3. That Resolutions 94-35 and 90-9, and all other resolutions or parts of resolutions in conflict



with the provisions of this resolution are hereby repealed.

4. That this resolution shall be in full force and effect from and after its passage and approval as provided by law.

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~~Betty M. Cheever~~Ronald L. Sandack, Mayor

Passed: ~~September 26, 1994~~

Attest:

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~~Barbara Waldner~~April Holden, Village Clerk

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# Village of Downers Grove

## Official Village Policy Approved by Village Council

Description:	<b>User-Fee, License and Fine Umbrella Policy</b>	
Res. or Ord. #:	<b>Ord. No. 5122</b>	Effective Date: <b>02/16/2010</b>
Category:	<b>Legislative and General Management</b>	
	<input checked="" type="checkbox"/> New Council Policy	
	Amends Previous Regulation Dated: _____	
	Description of Previous Regulation (if different from above): _____	

### **ORDINANCE 5122**

#### **AN ORDINANCE ESTABLISHING A VILLAGE COUNCIL POLICY REGARDING USER-FEES, LICENSES AND FINES**

WHEREAS, the Village of Downers Grove provides services to the public and charges user-fees to recover the costs of providing these services; and,

WHEREAS, the Village of Downers Grove issues licenses to regulate certain activities within Village boundaries and charges fees upon issuance of these licenses; and,

WHEREAS, the Village charges monetary fines to individuals for acts in violation of the Municipal Code.

NOW, THEREFORE, BE IT ORDAINED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

#### **SECTION 1: USER-FEES**

1. User-fees are defined as monetary charges for services which benefit either a limited group or all members of the community and the individual benefit of each user can be measured or fairly approximated.
2. User-fees shall be implemented which are uncomplicated, easy to understand and easy to calculate. Additionally, fees shall be established which are easily administered by Village staff.
3. User-fees shall be established which recover the full costs of providing a particular service. "Full" costs are defined as the sum of all direct and indirect costs associated with providing a particular service. "Direct" costs shall include all costs associated with performing the service including staff time and employee benefits. "Indirect" costs shall include items which are administrative, supportive or attributable to municipal facilities or capital assets.

4. In cases where the full costs of providing a particular service to the community are disproportionately high or low, the Village shall consider the user-fees charged in comparable municipalities for similar services when establishing and updating specific user-fees.
5. In certain cases, user-fees shall be adjusted in an effort to encourage specific behaviors as determined by the Village.
6. Fee waivers shall be addressed separately in the official Village Council policy entitled "Council Policy with Regards to Fee Waivers."

## **SECTION 2: LICENSES**

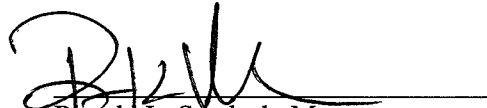
1. The Village shall issue a license in an effort to regulate a specific activity based on the following guidelines:
  - a. To protect the public from health or safety hazards
  - b. To comply with statutory mandates to govern certain activities
  - c. To maintain the aesthetic value of the community
  - d. To protect consumers from undue interference from solicitors
2. The Village shall consider the following items when establishing or updating license fees:
  - a. The full costs associated with issuing, administering and enforcing the license
  - b. The objective of the license
  - c. Market factors
  - d. Policy goals
  - e. Competitiveness with comparable communities

## **SECTION 3: FINES**

1. The Village may charge a fine for a Municipal Code violation in an effort to achieve the following:
  - a. To correct past behavior
  - b. To encourage compliance with Village rules and regulations
  - c. To discourage a particular behavior or practice
  - d. To ensure the timely payment of Village fees
  - e. To promote the public good
2. The Village shall establish fines which are proportional to the Municipal Code violation which they are trying to discourage (i.e. fines for more serious offenses shall be higher than fines for lesser offenses).

**SECTION 4.** That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

**SECTION 5.** That this Ordinance shall be in full force and effect from and after its passage as provided by law.

  
Ronald L. Sandack, Mayor

Passed: February 16, 2010  
Published: February 17, 2010  
Attest: April K. Holden, Village Clerk