



AGENDA ITEM # 4

AGENDA ITEM EXECUTIVE SUMMARY Committee of the Whole Meeting November 26, 2018

Item Title: **Utility Provision to Non-Contiguous Properties**

Staff Contact: Jeffrey D. O'Dell, Village Administrator

COMMITTEE OF THE WHOLE ACTION

Consider amendments to the Village Code establishing requirements for the provision and continuing provision of municipal water and/or sewer utilities to non-contiguous properties outside the corporate boundaries of the Village of Roselle.

Executive Summary:

At its November 12 Committee of the Whole meeting, the Village Board directed staff to work with the Village Attorney to prepare amendments to the Village Code establishing requirements for the provision and continuing provision of Village water and/or sewer utilities to non-contiguous properties outside the corporate boundaries.

The attached two draft ordinances reflect the direction of the Village Board, specifically as it relates to requirements for the approval of pre-annexation and restrictive covenant agreements prior to non-contiguous property owners receiving water and/or sewer utilities from the Village. In addition, a utility disconnection appeals hearing process has been established for those non-contiguous property owners who do not have current pre-annexation and restrictive covenant agreements in place.

The first ordinance amends Chapter 2, Administration, with the addition of a new Article XVI establishing requirements for non-contiguous properties to connect to Village water and/or sewer utilities. Those requirements are as follows:

- Execution of a 20 - year term pre-annexation agreement.
- Execution of a recordable restrictive covenant that is binding on the property owners, successors, and assigns and is not subject to the 20 year pre-annexation agreement term.
- Property owners that apply for pre-annexation are responsible for application fees, escrow fees, and all costs related to connection to water and/or sewer utilities.
- Property owners agree to annexation should the Village elect to annex the property if and when it becomes contiguous.

- Property owners shall install public sidewalks no later than 6 months from the date of annexation, but should weather make installation of the sidewalk unreasonable, the property owner shall post a bond in an amount equal to 110% of the Village Engineer's estimate of construction to guarantee construction when weather permits.
- The property owner may contract with a contractor to install the sidewalk.
- If the property owner is unwilling to comply with the terms of the pre-annexation agreement, the Village may (a) initiate litigation and the property owner shall reimburse the Village for any and all reasonable costs and expenses, including attorney fees resulting from the Village's efforts to enforce the terms of the pre-annexation agreement or (b) the Village may elect in its sole discretion to refuse annexation of the property and disconnect Village utilities.

The first ordinance also establishes a disconnection appeals process for any non-contiguous property owner being provided Village water and/or sewer utilities who does not have a current pre-annexation and restrictive covenant agreement in place. Property owners contesting disconnection shall have one of the following defenses to prevent the Village from disconnecting the property from water and/or sewer utilities:

- A pre-annexation agreement that is existing and legally effective prior to the adoption of this ordinance.
- The property owner has submitted an application for pre-annexation and restrictive covenant fully consistent with the terms and conditions of the ordinance.
- The property owner has applied for a well and/or septic field permit from DuPage or Cook Counties and a contract with a contractor to install the well and/or septic field.
- The property owner has 60 days from the adoption of the ordinance to file their written appeal including all pre-annexation, restrictive covenant, or permit documentation in support of the ordinance.

The second ordinance repeals and rescinds in its entirety Subsection C of Chapter 18, Section 18-9 as the requirements for the provision and continuing provision of Roselle water and/or sewer utilities for a non-contiguous property have been established in Chapter 2 of the Village Code.

Next Steps:

- If the Village Board concurs with the proposed amendments to the Village Code, staff will place the two ordinances on the December 3 Village Board meeting for approval.
- The 6 non-contiguous property owners that have recently signed pre-annexation agreements under terms and conditions approved by the Village Board earlier this year will be afforded an opportunity to reapply under the terms and conditions of the current ordinance. Should these property owners choose to reapply, staff recommends they not be subject to any application or escrow fees as part of the application process.

- The 16 non-contiguous property owners with expired pre-annexation agreements will be sent letters informing them of the new ordinance and policy for continued connection to Roselle water and/or sewer utilities.
- All new applications for pre-annexation and restrictive covenant agreements will require public hearings, including any property owners with expired agreements that choose to move forward with new terms and conditions.

Implications:

Is this item budgeted? N/A

Any other implications to be considered? Yes, there are two other property owners with expired pre-annexation agreements requiring connection to the Village's water utility. Sidewalks already exist on the frontage of the property. Staff will prepare a recommendation for Village Board consideration regarding these two properties and connection to water utilities if available.

Attachments:

Ordinance Amendment Chapter 2, Administration of the Village Code

Ordinance Repealing and Rescinding Subsection C of Chapter 18, Section 18-9

1 **ORDINANCE AMENDING CHAPTER 2 “ADMINISTRATION” OF THE**
2 **CODE OF ORDINANCES OF THE VILLAGE OF ROSELLE**
3 **BY THE ADOPTION OF ARTICLE XVI TO BE ENTITLED**
4 **“AN ORDINANCE ESTABLISHING REQUIREMENTS FOR THE PROVISION**
5 **AND CONTINUING PROVISION OF ROSELLE MUNICIPAL UTILITIES FOR**
6 **NON-CONTIGUOUS PROPERTIES OUTSIDE THE CORPORATE**
7 **BOUNDARIES OF THE VILLAGE OF ROSELLE”**
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9 **WHEREAS**, the Village has no duty to provide municipal water or sanitary
10 sewer services outside its corporate boundaries in absence of a legal agreement to do so;
11 and
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13 **WHEREAS**, the Village has legal authority to specify the terms of Pre-
14 Annexation Agreements or elect not to enter into Pre-Annexation or Annexation
15 Agreements; and
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17 **WHEREAS**, issues have recently arisen related to the relationship between the
18 requirement that sidewalks be installed on properties subject to pre-annexation and
19 annexation within the Village of Roselle; and
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21 **WHEREAS**, the Corporate Authorities of the Village of Roselle desire to have a
22 sidewalk policy which is consistent in its application to all properties within the corporate
23 boundaries of the Village of Roselle and properties subject to Pre-Annexation
24 Agreements; and
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26 **WHEREAS**, in the past some property owners had refused to honor sidewalk
27 installation obligations required by Annexation Agreements or Village Code; and
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29 **WHEREAS**, the Corporate Authorities of the Village of Roselle have concluded
30 that the tax payers of incorporated Roselle should not bear the burden of financing the
31 construction of public sidewalks on properties subject to Annexation or Pre-Annexation
32 Agreements; and
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35 **NOW, THEREFORE, BE IT ORDAINED**, by the President and Board of
36 Trustees for the Village of Roselle, DuPage and Cook Counties, Illinois, that there is
37 adopted Article XVI, Sections 2-291 through 2-295 such Article to be entitled “An
38 Ordinance Establishing Requirements for the Provision of Village Services for Non-
39 Contiguous Properties Outside the Corporate Boundaries of the Village of Roselle”
40 which shall read as follows:
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42 **SECTION 1.**
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44 **SECTION 2-291. DEFINITIONS.**
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46 *Property or Properties.* Property or Properties shall mean real property
47 located outside the corporate boundaries of the Village of Roselle which is not
48 contiguous to the Village.
49

50 *Village Services.* Village Services in this Ordinance shall mean potable
51 water and/or sanitary sewer service.
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53 **SUBSECTION 2-292.**
54 **PROVISION OF VILLAGE SERVICES TO NON-CONTIGUOUS**
55 **UNINCORPORATED PROPERTIES.**
56

57 Properties shall not connect to, or maintain a connection to, Village
58 Services, unless:
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- 60 a) Those properties, as of the adoption of this ordinance, have
61 an existing and legally effective Pre-Annexation
62 Agreement; or
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- 64 b) Those properties apply for and execute Pre-Annexation
65 Agreements and also have an executed recordable
66 restrictive covenant, which shall survive the termination of
67 the Annexation Agreement and which shall, at a minimum,
68 contain the terms and conditions set forth in Subsection 2-
69 293 and 2-294 of this Ordinance;
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- 71 c) The Pre-Annexation Agreement and restriction covenant
72 shall be subject to approval of the corporate authorities of
73 the Village; and
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- 75 d) Applicants for pre-annexation shall comply with all other
76 fees, costs, and procedures of the Village as are applicable
77 for annexations.
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80 **SUBSECTION 2-293.**
81 **PRE-ANNEXATION AGREEMENTS, TERMS, AND CONDITIONS.**
82

83 The Corporate Authorities shall retain their sole legislative discretion
84 in determining whether or not to approve the pre-annexation of any property
85 located outside of the Village's corporate boundaries. Pre-Annexation
86 Agreements approved for properties provided Village services shall, at a
87 minimum, contain the following terms and conditions:
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- 89 a) Twenty-year terms; and
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- b) Shall be binding upon the property owners, successors, and assigns; and
- c) Shall be recorded by the Village Clerk against the effected property at the pre-annexed owner's sole cost and expense; and
- d) Shall agree to annexation, should the Village, by its Corporate Authorities, elect annexation when the property becomes contiguous to the corporate boundaries of the Village; and
- e) That the Property when annexed shall install public sidewalks in conformance with Chapter 18, Section 18-9(a) and (b) of the Roselle Village Code, including all work necessary to make ready the area for the sidewalk installation, no later than six (6) months from the date of the adoption of the Annexation Agreement. If weather conditions make the installation of the sidewalk unreasonable within the concrete industries' customs and practices for adverse weather installation during the six (6) months, the owner shall post a bond in an amount equal to 110 percent of the Village Engineer's estimate of construction to guarantee installation when weather permits; and
- f) The property owner of a property posting a bond may contract with a contractor to perform the sidewalk work when the weather permits and apply the bond posted pursuant to Subsection (e) of this section towards that construction; and
- g) If any owner is unwilling to comply with any term or condition of the Pre-Annexation Agreement, the Village may initiate litigation to enforce the Agreement and the owner: (a) shall reimburse the Village for any and all reasonable costs and expenses, including attorneys' fees and expert witness fees resulting from the Village's efforts to enforce the terms of the Pre-Annexation Agreement; or (b) or the Corporate Authorities of the Village may elect in their sole discretion to refuse annexation of the property and disconnect the Village Services; and
- h) As long as the Pre-Annexation Agreement remains in effect, the Village shall provide sanitary sewer and/or water services

137 to the property if the property owner is not in breach of the Pre-
138 Annexation Agreement and has paid all applicable sewer
139 and/or water fees to the Village.
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142 **SUBSECTION 2-294.**
143 **RESTRICTIVE COVENANT.**
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145 Independent of the Pre-Annexation Agreement, an owner shall execute a
146 covenant which shall run with the land, prepared by the Village Attorney and
147 submitted to the Village Board for its consideration and approval. All covenants
148 shall, at a minimum, contain the conditions set forth in the Annexation
149 Agreement, but shall not be subject to its 20-year limitation.
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152 **SECTION 2-295.**
153 **DISCONNECTION APPEALS AND MATERIAL DEFENSES.**
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155 Any owner being provided sewer and/or water service by the Village
156 services who does not have a Pre-Annexation and Covenant with the Village shall
157 be disconnected from service subject only to the following defenses:
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- 159 a) That the owner has a Pre-Annexation Agreement that is
160 existing and legally effective prior to the adoption of
161 this Ordinance; and
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- 163 b) That the owner has submitted an application for a Pre-
164 Annexation Agreement and covenant fully consistent
165 with the terms and conditions of this Ordinance, as of
166 the date of any hearing scheduled to contest
167 disconnection; and
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- 169 c) That the owner has applied for a well and/or septic field
170 permit with the County of DuPage or County of Cook
171 and has a contract with a contractor to install the well
172 and/or septic field; and
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- 174 d) No other defenses shall be legally material; and
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- 176 e) The owner of a Property contesting disconnection
177 pursuant to the terms of this subsection shall have 60
178 days from the adoption of this Ordinance to file their
179 written appeal including all documents in support of
180 subsections 1, 2, and 3 of this subsection. The Notice of
181 Appeal shall specify which specific defense allowed by
182 this subsection of the Ordinance is asserted. If

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documents supporting the appeal are not filed in conjunction with the appeal, the appeal shall be stricken as inadequate as a matter of law; and

- f) The appeals shall be filed with the Village’s Community Development Department and shall include all documents supporting the material defenses; and
- g) Hearings on material defenses shall be conducted by the Hearing Officer who conducts code violations and hearings under Chapter 24, Section 24-2 of the Village Code; and
- h) The owner shall have the opportunity to appear at the hearing before the Hearing Officer to submit any evidence establishing a material defense; and
- i) If the Hearing Officer determines that the material defense is proven by a preponderance of the evidence, the Hearing Officer shall deny the Village’s petition for disconnection. Where the Hearing Officer determines that the defense is not proven by a preponderance of the evidence, the Hearing Officer shall set a date for disconnection.

SECTION 2: Any Ordinance which is inconsistent with this Ordinance is repealed to the extent of such inconsistency.

SECTION 3: This Ordinance shall become effective upon passage, execution by the Mayor and publication as required by law.

AYES:
NAYES:
ABSTAIN:
ABSENT:

PASSED AND APPROVED THIS _____ DAY of _____, 2018.
PUBLISHED in pamphlet form this _____ DAY of _____, 2018.

Andrew J. Maglio, President, Village of Roselle

1 **ORDINANCE REPEALING SUBSECTION (c) OF SECTION 18-9**
2 **“SIDEWALK TO BE CONSTRUCTED WHEN BUILDING BUILT” OF**
3 **CHAPTER 18 “STREETS AND SIDEWALKS” ARTICLE I “GENERAL” OF**
4 **THE**
5 **CODE OF ORDINANCES OF THE VILLAGE OF ROSELLE**
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7 **WHEREAS**, the Corporate Authorities of the Village of Roselle have deemed it
8 reasonable and necessary to amend Chapter 2 “Administration” to include an article
9 pertaining to the establishment of requirements for the provision and continuing
10 provision of Roselle municipal utilities for non-contiguous property outside the corporate
11 boundaries of the Village of Roselle; and
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13 **WHEREAS**, the adoption of Article XVI of Chapter 2 renders subsection (c) of
14 Section 18-9 of Chapter 18 of the Code of Ordinances of the Village of Roselle
15 unnecessary.
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17 **NOW, THEREFORE, BE IT ORDAINED**, by the President and Board of
18 Trustees for the Village of Roselle, DuPage and Cook Counties, Illinois, that Subsection
19 (c) of Section 18-9 “Sidewalk to be Constructed When Building Built” is:
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21 **SECTION 1:** Hereby repealed and rescinded in its entirety.
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23 **SECTION 2:** That in all other respects Section 18-9(a) and (b) shall remain in
24 full force and effect.
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26 **SECTION 3:** This Ordinance shall become effective upon passage, execution by
27 the Mayor and publication as required by law.
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30 AYES:
31 NAYES:
32 ABSTAIN:
33 ABSENT:
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35 PASSED AND APPROVED THIS ____ DAY of _____, 2018.
36 PUBLISHED in pamphlet form this ____ DAY of _____, 2018.
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41 Andrew J. Maglio, President, Village of Roselle
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42 ATTEST:
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45 Village Clerk