

ORDINANCE NO. 11-1-3

**AN ORDINANCE AMENDING CERTAIN PROVISIONS OF THE VILLAGE
CODE CONCERNING ROAD SPECIAL SERVICE AREAS**

WHEREAS, the Village of Riverwoods (the "Village") is a home rule municipality in accordance with the Constitution of the State of Illinois of 1970;

WHEREAS, the Village has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs that protect the health, safety and welfare of its citizens;

WHEREAS, the President and Board of Trustees passed Ordinance No. 09-9-18, "An Ordinance Requiring a Service Agreement When SSA Maintenance Costs Include Snow Plowing and Removal" and now deem it to be in the best interest of the health, safety and welfare of the residents of the Village to amend the Village Code to clarify certain procedures in special service areas formed for purposes of maintaining private streets pursuant to Section 27-90 of the Special Service Area Tax Law, 35 ILCS 200/27-5 *et seq.*;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF RIVERWOODS, as follows:

SECTION ONE: The facts, statements and findings contained in the preamble to this Ordinance are found to be true and correct, and are hereby adopted as part of this Ordinance.

SECTION TWO: Chapter 5 of Title 7 of the Riverwoods Village Code is hereby restated in its entirety to read as follows:

Chapter 5

SPECIAL SERVICES IN ROAD SPECIAL SERVICE AREAS

7-5-1: DEFINITIONS: For purposes of this chapter, the following terms shall have the following definitions:

ACT: The Special Service Area Tax Law 35 ILCS 200/27-5 *et seq.*

DIRECTOR: The director of community services, as defined in Chapter 2 of Title 8 of this Code.

ESTABLISHING ORDINANCE: An ordinance adopted by the Village pursuant to Sections 27-40 and 27-90 of the Act that establishes a Road SSA and authorizes

the provision of Special Services, as the same may be amended pursuant to the Act.

INDEMNIFIED PARTY: Each of the Village and its elected and appointed officials and officers, employees, agents, volunteers and representatives, including any of the foregoing who shall resign, and its engineers, foresters, attorneys and other consultants.

MAINTENANCE FUND: The account maintained by the Village for each Road SSA to receive special service area taxes when levied and extended within the Road SSA. The term "Maintenance Fund" shall not include any debt service fund in which such taxes are deposited to provide for the retirement of special service area bonds over a period of time.

RIVERWOODS INSURANCE AND INDEMNITY ORDINANCE: As defined in Title 8, Chapter 11 of this Code.

ROAD COMMITTEE: As defined in Section 7-5-2.

ROAD CONTRACT: A contract in which a Road Committee acting on behalf of a Road SSA hires a contractor to furnish Special Services in the Road SSA, and in which the Village is named as an intended third party beneficiary.

ROAD SSA: A special service area formed in the Village under the Act and this Chapter for purposes of providing Special Services.

SERVICE AGREEMENT: An agreement between a Road Committee and the Village conforming to the provisions of this Chapter by means of which the Road Committee agrees to award and administer a Road Contract and comply with the provisions of this Chapter as a condition of the Village agreeing to levy and extend special service area taxes in the Road SSA for Special Services.

SPECIAL SERVICES: Snowplowing, salting and snow removal services and/or repairing, reconstructing and maintaining the private streets located in a Road SSA.

7-5-2: ROAD COMMITTEES: To be eligible to enter into a Service Agreement, interested owners residing in the Road SSA shall incorporate an Illinois not-for-profit corporation herein referred to as the "Road Committee". The Road Committee shall obtain the written consent of the owners of 51% or more in number of the lots, tracts or parcels of real estate that are subject to the special service area taxes levied in the Road SSA. If a homeowners association already exists with the authority to administer and manage the private streets within a Road SSA, then such association shall serve as the Road Committee upon sharing of appropriate legal documentation with the Village concerning its organization and due authority. Each Road Committee shall provide such copies

of its recorded covenants, association documents, bylaws, proxies and consents as the Village requires. Such legal documentation shall specify that the vote of owners of 51% of the parcels in the Road SSA shall be the necessary majority to approve a Service Agreement and all actions of the Road Committee pursuant to the Service Agreement.

7-5-3: SERVICE AGREEMENTS NECESSARY FOR ROAD SSA: The Village may enter into a Service Agreement to regulate the terms and conditions of payment for Special Services in a Road SSA. The Village shall not apply tax revenues collected from the special service area taxes levied within a Road SSA formed after the effective date of the Ordinance from which this Chapter derived, unless the Village and Road Committee for such Road SSA shall have entered into a Service Agreement.

7-5-4: MANDATORY PROVISIONS OF SERVICE AGREEMENTS: Each Service Agreement shall contain substantially the provisions set forth in this Section 7-5-4 or incorporate such provisions by reference:

- A. The Road Committee shall be solely responsible for selecting, engaging, administering, supervising and terminating the contractor(s) from time to time providing Special Services in the Road SSA, provided that the foregoing shall not bar the Village from enforcing all applicable laws, ordinances, codes, rules or regulations. The members of the Road Committee shall certify to the Village a complete and true copy of a Road Contract for which the Road Committee intends to have invoices paid under its service agreement with the Village. The receipt by the Village of any Road Contract shall not impose any liability upon the Village for any ambiguity or error in any contract term or provision, and the Road Committee, by signing any Road Contract, acknowledges that it is satisfied with the terms and provisions of such Road Contract and received the advice of counsel of its choosing and is not relying on the Village or Village consultants in any manner before choosing to enter into such Road Contract.
- B. No officer or member of the Road Committee shall have any direct or indirect financial interest in the contractor engaged to provide Special Services under the Road Contract. The Director is authorized to request financial certifications from the relevant parties as may be necessary to verify compliance with the foregoing.
- C. The Road Committee shall negotiate, specify and approve the provisions in the Road Contract concerning the cost, scope and manner of performing the Special Services, whether the contractor is paid in a lump sum or whether payment is to be based on some other basis. The Road Committee shall administer all day to day aspects of the performance by the contractor under the Road Contract and shall have sole liability for

ensuring adequate performance by the contractor and for making full payment of all charges due under the Road Contract (notwithstanding that certain amounts, as provided in this Chapter, may be paid by the Village). The Village shall not be a guarantor of payment by the Road Committee under the Road Contract.

- D. Although the Road Committee shall have sole liability for full payment of all charges due under the Road Contract, the Village shall apply tax revenues collected from the annual maintenance taxes levied within the Road SSA, to the extent on deposit in the Maintenance Fund and lawfully available to pay the cost of the Special Services, in the amounts invoiced by the contractor to the Road Committee and certified by the Road Committee to the Village to be correctly due and owing. To effectuate payment, the Road Committee shall furnish the contractor's invoices to the Village, as and when services are performed and payment becomes due, and shall include an affidavit from an officer of the Road Committee stating that the amounts invoiced by the contractor are for services performed under the Road Contract and are correctly due and owing. The Village shall be entitled to rely on such affidavit as conclusive that the amounts stated therein are due and owing to the contractor for services validly performed and the Village shall have no liability to the Road Committee or any owner residing in the Road SSA on account of any payment so made when the basis for such payment is subsequently found to be mistaken; if the Director has reason to question any invoice, the Village may withhold payment until the validity of the payment is established. If the Village is unable or unwilling to make full payment of any invoice presented, it shall notify the representative of the Road Committee designated to receive notices and specify the reason why it is withholding payment. Any question over such validity, if not earlier resolved, shall be determined by the Village Board. Except in the case where payment is questioned, the Village shall make direct payment to the contractor within 30 days after presentation of each invoice and affidavit, subject, however, to the availability of tax revenues collected from the annual maintenance taxes levied within the Road SSA and remaining on deposit in the Maintenance Fund established for this purpose.
- E. To ensure that annual maintenance taxes levied within the Road SSA are sufficient for the scope and extent of Special Services desired by the Road Committee, a Road Committee may submit a request to the Village for one or more Special Services and shall recommend the rate or amount of special service area taxes to be levied in the Road SSA for each ensuing calendar year. The Road Committee shall forward such request to the Village no later than October 31 of each year. In making the request, the Road Committee is deemed to acknowledge that (i) the costs of such Special Services shall be paid for from monies held in the Maintenance Fund for the Road SSA and/or from the levy and extension of additional

special service area taxes in the Road SSA and (ii) the rate or amount of special service area taxes to be levied and extended in a Road SSA pursuant to this Chapter shall not exceed the maximum rate or amount of special service area taxes from time to time authorized in the Establishing Ordinance. The Village may add to the tax levy request an amount sufficient to cover the administrative costs and consulting fees incurred by the Village in administering the Road SSA. The Village may decline to provide the requested Special Services whenever the monies held in the Maintenance Fund for the Road SSA are likely to be insufficient to cover the projected costs of the Special Services and the Village's administrative costs and consulting fees. The Village shall have the right to reimburse itself for its administrative costs and consulting fees at any time by withdrawing monies on deposit in the Maintenance Fund.

- F. The Road Committee shall release, defend, indemnify and hold harmless each Indemnified Party from and against any and all injuries, claims, demands, payments, suits, actions, recoveries, liabilities, judgments, damages, losses and expenses of every nature or description, including reasonable attorney fees, opinion witness fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from: 1) the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the contractor under the Road Contract or its affiliates, officers, employees, agents, contractors or subcontractors in the execution and performance of the Special Services, 2) by reason of goods, merchandise or supplies or materials supplied or used by any of them, regardless of whether such acts or omissions are authorized, allowed or prohibited by other applicable law, rule or regulation authorizing or regulating the work, 3) the Village's payment of any costs charged by the contractor for Special Services or any other action of any indemnified party which is alleged to constitute a permit, certificate, or acceptance of the work by the Village or 4) any claim or suit alleging the Village acted improperly or unlawfully in relying on the apparent authority of the Road Committee to execute the Service Agreement and/or the Road Contract. The Establishing Ordinance shall authorize the levy and extension of additional special service area taxes in the Road SSA in such amount as may be required to perform the indemnification obligations of the Road SSA.
- G. The Road Committee shall designate one or more officers to receive notices from the Village and shall agree to update such notice list whenever new officers succeed to office. Any notice from the Village to the Road Committee may be delivered personally to the officers designated for receiving notice (which officer designation may be amended from time to time by notice to the Village) and shall be sent by mail by U.S. certified mail, return receipt requested, to the taxpayer of record for the property as shown in the most recently issued tax bill. For purposes of giving the

notice required in this section, the refusal by the designated officer to acknowledge receipt of certified or registered mail or to accept notice given by personal delivery shall constitute a waiver by such officer of the need for further notice. The acceptance of the officer of notice delivered personally shall also constitute a waiver by such owner of the need for further notice, including notice by mail.

7-5-5: PROVISIONS FOR BOND ORDINANCES: The special service area taxes to be levied and extended in a Road SSA pursuant to this Chapter shall be in addition to any special service area taxes as may be levied and extended to retire bonds which are secured by the full faith and credit of the area included in the Road SSA. In no event shall monies collected for retirement of bonds in a Road SSA be applied other than as allowed by the ordinances authorizing the issuance and sale of such bonds.

7-5-6: SPECIAL TAXES: The Establishing Ordinance may specify that special service area taxes may be levied and extended in the Road SSA as a special tax in lieu of an ad valorem property tax, to the extent permitted by Section 27-75 of the Act.

7-5-7: INSURANCE: A Road Contract with a Road SSA that has entered into a Service Agreement shall be deemed to incorporate the insurance coverages and endorsements set forth in the Riverwoods Insurance and Indemnity Ordinance as if such provisions were set out verbatim in such Road Contract. The contractor shall demonstrate that it has provided such coverages and endorsements. Original, executed certificates of insurance, naming the Village as certificate holder, shall be filed with the Village. If requested by the Village, all certificates of insurance must have attached thereto or be accompanied by the actual, signed endorsements to the underlying policies or copies of the policies so as to demonstrate, in a manner acceptable to the Village, that the required endorsements have been bound by the insurance company. All additional insureds must be listed on the certificate of insurance. The members of the Road Committee shall obtain similar coverages and endorsements insuring the owners residing in the Road SSA, as well as directors and officers liability insurance insuring the members of the Road Committee against defense costs and damages arising from their alleged wrongful acts while acting in the capacity of a member of the Road Committee. The Road Committee shall similarly demonstrate that it has complied with these provisions. The Village shall have the right to withhold payment to the contractor until such compliance is demonstrated.


SECTION THREE: Ordinance No. 09-9-18 is hereby repealed.

SECTION FOUR: This Ordinance shall be in full force and effect after its passage, approval and publication in the manner provided by law.

AYES: Chamberlain, Graditor, Haber, Koomjian, Masterson, Svatik (6)

NAYS: None

PASSED AND APPROVED this 18th day of January, 2011.



Village President



Attest:



Village Clerk