

Bill No 700

ORDINANCE NO. 700

**TITLE**

**AN ORDINANCE AUTHORIZING THE APPOINTMENT OF LEGAL OFFICERS OF THE VILLAGE, SETTING FORTH THE SCOPE OF THEIR DUTIES AND PROVIDING FOR COMPENSATION THEREOF**

**PREAMBLE**

**THIS ORDINANCE**, duly filed, considered and adopted on the date first written below by the Board of Trustees of the Village of Uplands Park, of St. Louis County, Missouri (hereinafter "Village")

**WITNESSETH THAT WHEREAS**, the Village is in need of legal services in connection with the management of the affairs of the Village and the enforcement of the ordinances thereof, and

**WHEREAS**, the Ordinances of the Village should provide for the appointment of legal officers to provide such legal services as may be needed by the village, and

**NOW THEREFORE**, in consideration of the aforesaid, the Village of Uplands Park does hereby enact and adopt this Ordinance for the retention of legal officers to provide legal services to the Village

**ORDINANCE**

**BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF UPLANDS PARK, COUNTY OF SAINT LOUIS, STATE OF MISSOURI, AS FOLLOWS:**

**Section 1.00 Village Attorney**

**Section 1.01 Appointment and Qualifications**

The Chairperson of the Board of Trustees shall, with the advice and consent of the Board of Trustees of the Village, appoint a Village Attorney, who shall be licensed to practice law in the state of Missouri and in good standing.

## **Section 1.02 Scope of Services to be Rendered**

1 The Village Attorney shall perform the following legal services for the village:

(a.) Attend all, regular and special, open and closed, meetings of the Village's Board of Trustees, unless excused by the Board of Trustees.

(b.) Draft proposed ordinances and resolutions for the Village at the request of the Board of Trustees or any member thereof and to certify such ordinances and resolutions as correct.

(c.) Provide oral opinions to the Board of Trustees, members thereof, and officers, employees, agents and representatives of the village to decide any questions of law.

(d.) Advise the Board of Trustees, members thereof, officers, employees, agents and representatives of the Village concerning any questions of law relating to their official duties or affecting the Village's interests.

(e.) Examine and certify as to legality and form all contracts, deeds, bonds and other documents to be signed in the name of, or made to or with, the Village.

(f.) Represent the Village in judicial, quasi-judicial and administrative legal matters in which the Village is a party or interested, when requested to do so by the Board of Trustees of the Village ; provided however that the Village Attorney may enter into the defense of any action to which the Village may be a party, without prior approval of the Board of Trustees, if the matter be of an emergency nature or when the exigencies of the circumstances does not permit prior approval of the Board of Trustees or the Chairperson of the Village, in order to prevent (a) a default, (b) issuance of an ex parte temporary restraining order or preliminary injunction, (c) unnecessary expense or (d) hardship to the Village. Ratification and approval by the Board of Trustees of the Village of the Village Attorney's representation shall be sought at the next regular or special meeting of the Board of Trustees following entry of appearance in the case by the Village Attorney.

(g.) Draft written opinions, legal documents, and such other documents as the Board of Trustees, Chairperson of the Board, or village officers may require.

(h.) Perform such other duties of a legal nature as the Board of Trustees, Chairperson or Officers of the Village may require and as is otherwise provided by law or Ordinance.

2. In the event of a conflict arising between a minority and the majority of the members of the Board, or between a member of the Board and the best interest of the Village, or the investigation or prosecution of a board member on an information of impeachment, the Village Attorney shall appoint a Special Counsel, with the advice and consent of the Board of Trustees, who shall be independent of and not be under the supervision of the Village Attorney, and shall perform the duties of special counsel to the board majority to address the conflict between the board majority or the village and the minority or member of the board. The Village Attorney shall be released from personally performing any duties involving a conflict among or between a minority and the majority of board members and between a member of the board and the best interest of the village.

**Section 1.03            Term of Appointment and Termination**

1. The Village Attorney shall be appointed for a term of two years commencing with the month of May, 2013 and ending on April 30, 2015 or until his/her successor is appointed and qualified.

2. The Village Attorney shall continue in office on or after the expiration of his/her term of office until a new Village Attorney or his/her successor has been appointed and qualified.

3. The Village Attorney may not be removed from office by the Board of Trustees, prior to the end of his/her term of office, except for breach of professional responsibilities under the Code of Professional Conduct of the Supreme Court of Missouri, for disbarment or suspension from the practice of law by the Supreme Court of Missouri, for conviction of a felony or a misdemeanor involving moral turpitude or for willful failure to perform any duties set forth in this or other Village Ordinances, or as provided by law.

4. Termination of the Village Attorney, with cause, prior to the end of his/her term of office, shall be subject to the provisions of state law, this and any other applicable Village Ordinances, and shall require the Board of Trustees to give the Village Attorney thirty (30) days written notice of the specific causes for termination and shall not be effective until a hearing on the cause for termination and a finding by a majority vote of the full Board of Trustees finding cause for

removal of the Village Attorney from office. The hearing shall be closed in accordance with the provisions of Chapter 610 RSMo related to personnel matters.

5. In the event of termination of the Village Attorney's appointment, prior to the end of the term thereof, without cause, the Village shall, within thirty (30) days subsequent to the termination hereof, pay the Village Attorney severance pay in a sum equivalent to the attendance fees the attorney would have earned to appear at one regular session of the board, per month, plus the monthly retainer fees that would have been earned from date of termination up to and through the end of his/her term of office, as liquidated damages, and such other sums as are and remain actually due and owing to the Village Attorney as earned and accrued.

#### **Section 1.04 Compensation and Remuneration**

1. Except as otherwise provided by resolution of the Board, the compensation and remuneration of the Village Attorney shall be as hereinafter provided:

(a.) **Attendance at board meetings.** The compensation and remuneration for attendance at each regular and special meeting of the Village's Board of Trustees, including concurrent closed meetings, during the term of office, or providing legal services under Section 1.02.1(a) shall be an attendance fee, per diem, of Four Hundred Dollars (\$400.00) for each regular and/or special meeting of the board of trustees, payable monthly on the second Tuesday of each month, beginning with the first month following the commencement of duties herein, which shall be paid likewise each month thereafter up to and through the first month following the end of the Village Attorney's term of office, without any accounting for the time expended by the Village Attorney in attending said meetings.

(b.) **Advice and Counsel.** The compensation and remuneration for providing legal services under Section 1.02.1(b) through (d), shall be a monthly retainer of Three Hundred Fifty Dollars (\$350.00) for preparation of a maximum of two, two letter sized page Ordinances or Resolutions per month, without any credit for preparation of less than two ordinances per month, plus not more than an aggregate of one hour of office consultation per month, payable monthly on the second Tuesday of each month, beginning with the first month following the commencement of duties herein, which shall be paid likewise each month thereafter up to and through the first month following the end of the Village Attorney's term of office.

(c.) **Litigation, administrative and written advice, counsel and extraordinary legal services.** The Village shall pay the Village Attorney a fee of Two Hundred Twenty-Five Dollars (\$225.00) per hour, for providing legal services under Section 1.02.1(e) through (f) and office consultations over and above the one hour allowed under subsection (b) above and for preparation of any ordinances or resolutions over and above two or two pages in a month. In addition, the Village agrees to pay support staff employed by the Village Attorney in providing judicial and administrative litigation legal services, not covered by insurance, to the Village at the following rates: Time billed for secretarial and clerical staff shall be Twenty-five dollars (\$25.00) per hour. Time billed for Paralegal staff shall be One Hundred dollars (\$100.00) per hour. Time billed for Investigative and Technical staff shall be Fifty dollars (\$50.00) per hour.

(d.) Time billed for Associate and Special Counsel shall be Two Hundred dollars (\$200.00) per hour.

**Section 2.00 Village Prosecuting Attorney**

**Section 2.01 Appointment and Qualifications**

The Village Attorney shall, with the advice and consent of the Board of Trustees of the Village, appoint a Village Prosecuting Attorney and an Assistant Village Prosecuting Attorney, who shall be licensed to practice law in the state of Missouri and in good standing, and who shall be under the general supervision and report to the Village Attorney.

**Section 2.02 Scope of Services to be Rendered**

1 The Village Prosecuting Attorney shall perform the following legal services for the village:

(a.) Except as otherwise provided herein, attend all, regular and special, sessions of the Village's Court, and of the Associate Circuit Court as relate to any appeals or transfers from the Village Court to the Associate Circuit Court, unless excused by the Village Attorney, Chairperson of the Board or the Board of Trustees.

(b.) Prosecute any and all violations of Ordinances of the Village.

(c.) Perform such other duties in the prosecution of ordinance violations as may be required.

(d.) Suggest proposed ordinances and resolutions to the Village Attorney and/or Board of Trustees as the Village Prosecuting Attorney may deem requisite to the performance of said prosecutor's duties.

(e.) Respond to any appeals of convictions of Ordinance violations to the Missouri Court of Appeals and the Supreme Court only upon the express agreement of the Village Board of Trustees.

2. On those occasion in which the Village Prosecuting Attorney may not attend a session of court or in which the Village Prosecuting Attorney has a conflict of interest, and upon the express direction of the Village Prosecuting Attorney or the Village Attorney, the Assistant Village Prosecuting Attorney shall perform the aforesaid duties of the Village Prosecuting Attorney, in the Village Prosecuting Attorney's place or absence. In case the Village Prosecuting Attorney has a conflict of interest in one or more cases appearing on a specific or particular docket, the Village Prosecuting Attorney shall not attend or appear at the session of court on the date on which he/she has a case in which he/she has a conflict of interest, but shall instead direct the Assistant Village Prosecuting Attorney to prosecute the whole docket, on that date, including cases in which the Village Prosecuting Attorney has no conflict.

3. In the event of an alleged violation of an Ordinance by a member of the Board of trustees, or an officer, employee or representative of the Village, the Village Attorney may appoint, a Special Village Prosecuting Attorney, with the advice and consent of the Board of Trustees, who shall be independent of and not be under the supervision of the Village Attorney nor the Village Prosecuting Attorney, and shall perform the duties of special prosecutor in the prosecution of said ordinance violation. The Village Prosecuting Attorney shall be released from personally performing any duties involving an alleged violation of a Village Ordinance by a member of the Board of trustees, or an officer, employee or representative of the Village.

### **Section 2.03 Term of Appointment and Termination**

1. The Village Prosecuting Attorney shall be appointed for a term of two years commencing with the month of May, 2013 and ending on April 30, 2015 or until his/her successor is appointed and qualified.

2. The Village Prosecuting Attorney shall continue in office on or after the expiration of his/her term of office until a new Village Prosecuting Attorney or his/her successor has been appointed and qualified.

3. The Village Prosecuting Attorney may not be removed from office by the Board of Trustees, prior to the end of his/her term of office, except for breach of professional responsibilities under the Code of Professional Conduct of the Supreme Court of Missouri, for disbarment or suspension from the practice of law by the Supreme Court of Missouri, for conviction of a felony or a misdemeanor involving moral turpitude or for willful failure to perform any duties set forth in this or other Village Ordinances, or as provided by law.

4. Termination of the Village Prosecuting Attorney, with cause, prior to the end of his/her term of office, shall be subject to the provisions of state law, this and any other applicable Village Ordinances, and shall require the Board of Trustees to give the Village Prosecuting Attorney thirty (30) days written notice of the specific causes for termination and shall not be effective until a hearing on the cause for termination and a finding by a majority vote of the full Board of Trustees finding cause for removal of the Village Prosecuting Attorney from office. The hearing shall be closed in accordance with the provisions of Chapter 610 RSMo related to personnel matters.

5. In the event of termination of the Village Prosecuting Attorney's appointment, prior to the end of the term thereof, without cause, the Village shall pay, within thirty (30) days subsequent to the termination hereof, the Village Prosecuting Attorney severance pay in a sum equivalent to the attendance fees the attorney would have earned from appearing at one regular session of the Village Court, per month, from date of termination up to and through the end of his/her term of office, as liquidated damages, and such other sums as are and remain actually due and owing to the Village Prosecuting Attorney as earned and accrued.

6. The Assistant Village Prosecuting Attorney shall be appointed for a term of two years commencing with the month of May, 2013 and ending on April 30, 2015 or until his/her successor is appointed and qualified. Notwithstanding the appointment for a term of two years, the Assistant Village Prosecuting Attorney shall serve at the will of the Village Attorney and may be removed from office by the Village Attorney or the board of trustees, with or without cause, upon oral or written notice at anytime prior to the end of his/her term of office, without penalty or hearing before the board of trustees.

#### **Section 2.04 Compensation and Remuneration**

1. Except as otherwise provided by resolution of the Board of Trustees, the compensation and remuneration for prosecutorial services shall be as provided in this Ordinance.

2. The compensation and remuneration for attendance at each regular and special session of the Village Court, and/or the Associate Circuit Court, during his/her term of office, or providing prosecutorial services under Section 2.02.1(a) thru (d) shall be an attendance fee, per diem, of Three Hundred Fifty Dollars (\$350.00) for each regular and/or special session of the Village or Associate Circuit Court, respectively, actually attended by the Village Prosecuting Attorney, which shall be payable monthly on the second Tuesday of each month, beginning with the first month following the commencement of duties herein, which shall be paid likewise each month thereafter up to and through the first month following the end of the Village Prosecuting Attorney's term of office, without any accounting for the time expended by the Village Prosecuting Attorney in attending said sessions of court.

3. The Village shall pay the Village Prosecuting Attorney a fee of Two Hundred Dollars (\$200.00) per hour for providing legal services under Section 2.02.1(e) above, for responding to any appeals before the Missouri Court of Appeals or Supreme Court of any convictions for Ordinance violations, upon express authority granted by the Board of Trustees for the Village Prosecuting Attorney to respond to any such appeal.

4. The Assistant Village Prosecuting Attorney shall receive an attendance fee, per diem, of Three Hundred Dollars (\$300.00) for each regular and/or special session of the Village or Associate Circuit Court, respectively, actually attended by the Assistant Village Prosecuting Attorney, to be paid within thirty (30) days after the Village receives an invoice therefor.

5. The Special Village Prosecuting Attorney shall receive an attendance fee, per diem, of Two Hundred dollars (\$200.00) for each appearance at a session of court, actually attended by the Special Village Prosecuting Attorney.

### **Section 3.00 General Provisions Applicable to All Legal Officers.**

#### **Section 3.01 Resignation or Termination of Legal Officers**

1. A Legal Officer may resign his/her office prior to the end of the term thereof, with or without cause, upon thirty (30) days written notice, without penalty.

2. In the event of termination, resignation or removal of a Legal Officer from office, with or without cause, the Village shall pay in full any amounts remaining due and owing for legal services provided under this Ordinance. Final



bills for attendance fees, litigation and other legal services shall be submitted by the respective Legal Officer to Village within thirty (30) days after termination. The Village shall disburse to the respective Legal Officer, within thirty (30) days after submission of such bills, all moneys earned by said Legal Officer, up to date of termination, for the performance of services under his/her appointment.

3. The Legal Officer shall, within a reasonable time after resignation, removal or termination of office, with or without cause, withdraw as counsel for the Village on any litigation then pending to which the Legal Officer may safely withdraw; and the Legal Officer shall facilitate the smooth transition into office of any successor Legal Officer appointed to succeed said Legal Officer, without jeopardizing the Village's interests on any matters then pending.

4. Upon the termination, removal or resignation of a Legal Office, the respective Legal Officer may, upon the written and express mutual agreement of the parties, continue as special counsel to the Village on any litigation then pending, which in the opinion of the parties, it would be in the best interest of the Village that the Legal Officer continue to represent the Village until final disposition thereof or in which the Court does not grant leave to the Legal Officer to withdraw.

5. Upon the resignation, removal or termination of a Legal Officer prior to the end of his/her term, the appointing authority may appoint a successor, with the advice and consent of the Board of Trustees of the Village, who shall serve the balance of the resigning or terminating Legal Officer's term and until such time as his/her successor is appointed and qualified. Except as otherwise provided herein or by resolution or contract, such appointee shall possess the same qualifications, shall perform duties within the same scope, and shall receive the same compensation as has been established for his/her predecessor under this Ordinance, resolution or contract.

6. Any Special Legal Officers appointed hereunder this Ordinance shall serve at the will of the Board of Trustees, and may be removed from office by the board of trustees, with or without cause, upon oral or written notice at anytime prior to the end of his/her appointment or engagement, without penalty or hearing before the board of trustees.

### **Section 3.02          Status of Legal Officers**

1.     The Board of Trustees shall ratify or reject any appointment of a Legal Officer upon nomination or at the next regular or special meeting of the board following nomination to office.

2.     In the case of a vacancy in a Legal Office, other than a Special Legal Office, an appointee may qualify and act in the Legal Office, and be compensated therefor, on an interim and temporary basis for a period of no more than thirty days, pending a vote by the Board of Trustees on his/her nomination to office.

3.     For all purposes and legal services provided under this Ordinance, legal officers are not and shall not be employees of the Village but shall be and remain Independent Contractors as that term is commonly understood and interpreted under the law.

4.     Nothing contained in this Ordinance shall be deemed to deny or derogate the Village's and such Legal Officers' rights and privileges inuring from the existence of an Attorney-Client relationship.

### **Section 3.03          Modification of Scope, Terms and Conditions of Appointment**

The appointment, scope, terms and conditions of employment and compensation of Legal Officers, under the provisions of this Ordinance, may be modified by Resolution of the Board or upon an express, written and signed agreement of the Village and respective Village Legal Officer.

### **Section 3.04          Assignment and Subcontracting**

1.     The rights, privileges and duties of Village Legal Officers, respectively, are not assignable, in whole or in part, by the Legal Officer. Except as expressly approved in writing by the Board of Trustees, or as otherwise provided in this Ordinance, the Village Legal Officer shall not appoint any person to undertake or perform the duties of said respective Village Legal Officer and/or to represent the Village in any legal matters, except as otherwise provided in this Ordinance or by law.

2.     Nothing herein shall be interpreted to construe that the Village Attorney may not employ Associate counsel and staff, both legal and otherwise, to assist in the performance of Village Attorney's duties under this Ordinance. Any Association with co-counsel and employment of staff by Village Attorney, in the

ordinary course of business and in providing legal services to the Village under this Ordinance shall be as provided herein as to scope of duties and compensation therefor.

**Section 3.05 Compensation and Remuneration**

1. **Out of Pocket Expenses.** The Village shall also reimburse the Village Legal Officers for reasonable and necessary expenses incurred in the completion of his/her duties, including but not limited to copying, postage, mileage, expert fees, witness fees, filing fees, court costs, deposition costs, process server fees, mediation costs, and any other usual and customary costs of litigation and litigation support.

2. **Billings and Invoices.** No Legal Officer shall be paid for rendering legal services, including attendance and retainer fees, under this Ordinance, except upon warrant issued by the Board of Trustees pursuant to invoice submitted by the Legal Officer to the Village Clerk. Invoices shall be submitted to the Clerk and the Board and payment shall be made thereon within thirty days after performance of services and incurrence of out of pocket expenditures.

3. **Payee.** In the event that a Legal Officer practices law in a professional firm or entity, all sums payable to or for said Legal Officer shall be paid to and in the name of said firm or entity or such successor professional firm as is designated to Village by the Legal Officer.

**Section 3.06 Non-Discrimination**

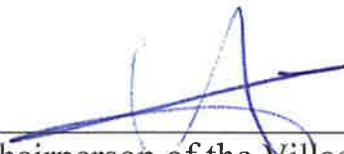
Legal Officers shall not discriminate nor permit discrimination in the performance of his/her duties against any persons on any basis proscribed by Federal or State law or Ordinances of the Village.

**Section 3.07 Definition of Legal Officers**

The term "Legal Officer" includes the Village Attorney, the Village Prosecuting Attorney, the Assistant Village Prosecuting Attorney, Special Village Counsel, and Associate and Assistant Attorney's employed or associated in the practice of law with the Village Attorney.

ADOPTED this 20 day of May, 2013.

**VILLAGE OF UPLANDS PARK**

By:   
Chairperson of the Village

Attest:   
Village Clerk

**APPROVED AS TO FORM**

By:   
Village Attorney