

ORDINANCE NO. 291

AN ORDINANCE TO REGULATE RIGHT-OF-WAY OBSTRUCTIONS
AND EXCAVATIONS IN THE VILLAGE OF OCONOMOWOC LAKE

WHEREAS, the Village Administrator has recommended that the Village regulate obstructions and excavations in the Village right-of-way, in order to protect the Village infrastructure and the safety of the traveling public; and

WHEREAS, the Village Board of the Village of Oconomowoc Lake intends to adopt the recommendation of the Village Administrator in this regard.

NOW, THEREFORE, the Village Board of the Village of Oconomowoc Lake, Waukesha County, Wisconsin, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Obstructions and Excavation Prohibited

No person shall encroach upon or obstruct or encumber any street, alley, sidewalk, public grounds or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way adjoining the premises of which they are the owner or occupant, except as provided in sub. (2) and (3).

SECTION 2: Exceptions

The prohibition of Section 1 shall not apply to the following:

1. Official signage, official traffic control devices, and utilities owned or leased by the Village.
2. Mailboxes for the collection of mail from the United States Postal Service are exempted from Section 1 if they comply with the Village's standard for mailbox dimensions and installation guidelines.
3. A legally placed use in existence prior to June 18, 2018.
[Clerk to insert date of adoption]
4. Special Privileges permitted pursuant to Wisconsin Statutes §66.0425.

SECTION 3: Permit Required

A right-of-way permit from the Village is required prior to placing any encroachment, obstruction, or excavation in the right-of-way.

1. Application requirements.

- a. A right-of-way permit application shall be filed with the Village Administrator.
- b. The applicant shall pay the right-of-way permit fee. The right-of-way permit fee shall be in the amount as established by Resolution of the Village Board and may be amended from time to time. In addition, a professional fee charge back agreement shall be signed to ensure compliance with Village Ordinance that professional fees incurred by the Village to review said applications are not paid by the taxpayers, but by the applicant seeking special review and benefit.
- c. The applicant shall provide a detailed plan with structural engineering, scale drawings, visual rendering, and survey showing the exact location, size, appurtenances and or attachments of the equipment or structure to be placed in the right-of-way, along with the exact location of all streets, sidewalks, utilities, trees, and any other obstructions in the vicinity of the proposed installation, and the location of structures on abutting properties.
- d. The applicant shall provide a detailed report describing potential hazards to the public from said encroachment, obstruction or excavation, and impacts due to location on safety for the driving public, pedestrians, and owners and users of adjacent property for such things as, but not limited to; fall zone, fire, explosion, chemical, environmental impacts, and vehicle crash impacts. Said report shall indicate the risk of the safety hazard and the proposed design element to address said safety hazard. The Village Engineer may require the applicant's report to be provided by a structural engineer or other expert approved by the Village Engineer, if the Village Engineer deems it to be necessary to have such an expert opinion in light of the circumstances of the application, for the protection of public health and safety, in which case the applicant shall provide such an opinion at the applicant's cost.
- e. The plan must show how the installation and maintenance of said right-of-way use will not impact snow or grass removal from the terrace, sidewalk or street, or conflict with the operation or maintenance of vehicular travel and existing utilities above or below ground.
- f. An alternative analysis shall be provided to show what options other than locating in the right-of-way exists and the approximate costs of such alternatives.

2. Application process.

- a. The Village Engineer shall review said permit application and determine if all application materials have been submitted within 15 days of receipt of the initial

application. If the application materials are not complete the Village shall provide written notice to the person on the application that said application is incomplete. The applicant shall have up to 30 days from the date of initial application to provide a complete application or the application shall be deemed insufficient and denied. The Village shall have 60 days to review and act on the permit from the date that the Village determines the application is complete and all fees paid

- b. Staff approval. The Village Engineer shall determine whether to approve or conditionally grant right-of-way permits for any new encroachment, obstruction, or excavation, and for any equipment added to either a previously approved use or one that was legally placed prior to _____ [*Clerk to insert date of adoption*], unless the Village Engineer concludes the new encroachment, obstruction, or excavation may obstruct or incommode the public use in which case the application shall be subject to the determination of the Village Board as follows.
- c. In the event the matter is referred to the Village Board, the Village Board shall give consideration to the application, staff and expert reports, public safety, alternative options and the public good, and other information as the Village Board deems appropriate. The Village Board may then grant the permit, grant the permit with conditions, or deny the permit

SECTION 4: Right-of-Way Restoration

The work to be done under the permit, and the repair and restoration of the right-of-way as required herein, must be completed within the dates specified in the permit to the satisfaction of the Village Administrator or his or her designee. In addition to repairing its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work and must inspect the area of the work and use reasonable care to maintain the same condition for thirty-six (36) months thereafter.

The permittee shall perform repairs and restorations according to the standards and with the materials specified by the Village Administrator or his or her designee. The Village Administrator or his or her designee shall have the authority to prescribe the manner and extent of the restoration and may do so in written procedures of general application or on a case-by-case basis. The Village Administrator or his or her designee in exercising this authority shall be guided by the following standards and considerations:

1. The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way.
2. The traffic volume carried by the right-of-way.

3. The character of the neighborhood surrounding the right-of-way; the pre-excavation condition of the right-of-way.
4. The remaining life-expectancy of the right-of-way affected by the excavation.
5. Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way.
6. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place.

Methods of restoration may include, but are not limited to, patching, replacement of the right-of-way base, restoration of landscaping, and milling and overlay of the entire area of the right-of-way affected by the work. During this thirty-six (36) month period, it shall, upon notification from the Village Administrator or his or her designee, correct all restoration work to the extent necessary using the method required by the Village Administrator or his or her designee. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Village Administrator or his or her designee. If the permittee fails to restore the right-of-way in the manner and to the condition required by the Village Administrator or his or her designee or fails to satisfactorily and timely complete all repairs required by the Village Administrator or his or her designee, the Village Administrator or his or her designee, at his or her option, may do such work. In that event, the permittee shall pay to the Village, within thirty (30) days of billing, the cost of restoring the right-of-way.

SECTION 5: Bond

Prior to commencing the work, any permittee performing work within the right-of-way shall post a financial guarantee in an amount approved by the Village Administrator or his or her designee and in a form approved by the Village Attorney, provided that the limitations of Wisconsin Statutes Section 66.0425(2) shall apply as applicable. If, thirty-six (36) months after completion of the restoration of the right-of-way, the Village Administrator or his or her designee determines that the right-of-way has been properly restored, the surety on the performance bond shall be released.

SECTION 6: Indemnification Agreement

Before any person, entity, or utility commences work pursuant to this section, such person, entity or utility shall file an agreement with the Village Clerk to hold the Village harmless, indemnify, and defend the Village from and against any and all injury and damage of any kind caused or occurring as a result of such work. The agreement shall be in a form approved by the Village Attorney and shall have continuing effect during the course of such work and for all time that the obstruction or facilities or installation remain within the right-of-way, and thereafter until such obstruction is removed and the site is fully restored to the satisfaction of the Village Administrator or his or her designee.

SECTION 7: Reservation of Rights

The Village retains all rights in Village right-of-way. The grant of a right-of-way permit per this section does not constitute a waiver of any Village rights and remedies regarding ongoing compliance obligations toward such installations. All persons, entities and utilities installing obstructions, encroachments or conducting excavation in Village right-of-way shall remove or relocate the obstruction, encroachment or excavation upon 10-day notice, except as otherwise provided by law.

SECTION 8: Compensation

The Village may require payment of compensation, in an amount determined by the Village Board, for the grant of any permit pursuant to this section, provided that compensation for more than applicable fees and cost recovery shall not be required of utilities that have the right to use the right-of-way by Wisconsin Statutes Section 182.017(1r).

SECTION 9: Waiver of Deadlines

Timeline deadlines in this process may be waived by written mutual agreement of the applicant and the Village.

SECTION 10: Appeals

Any person who wishes to dispute actions taken by the Village pursuant to this ordinance may contact the Village Clerk and request to appear before the Village Board at an upcoming regular Village Board meeting and may, at that time, present the matter to the Village Board for resolution. Appeal from the decision of the Village Board shall be by writ of certiorari to the Waukesha County Circuit Court.

SECTION 11: Compliance with Laws

Approval of a permit pursuant to this section does not waive the requirement to comply with all other applicable laws and ordinances. All applicable federal, State, Waukesha County, and Village of Oconomowoc Lake codes, statutes, regulations, administrative rules, ordinances and other laws must be followed.

SECTION 12: SEVERABILITY


The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 13: EFFECTIVE DATE

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this 18th day of June, 2018.

VILLAGE OF OCONOMOWOC LAKE



Joe Birbaum, Village President

ATTEST:



Jennifer A. Moore, Village Clerk/Treasurer
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