

## ORDINANCE NO. 308

**AN ORDINANCE TO REPEAL ORDINANCE 291 AND CREATE AN ORDINANCE TO REGULATE THE PLACEMENT, REMOVAL, REPLACEMENT, OR REPAIR OF ANY ITEM, WALLS, STRUCTURE OR PLANTINGS EXCEPT GRASS, ON ANY PUBLIC STREET (INCLUDING THAT PORTION OF THE DRIVEWAY IN THE VILLAGE OWNED RIGHT-OF-WAY), VILLAGE OWNED GROUNDS OR LAND DEDICATED TO PUBLIC USE IN THE VILLAGE OF OCONOMOWOC LAKE**

**WHEREAS**, the Village Administrator has recommended that the Village regulate the placement, removal, replacement, or repair of any item, walls, structure or plantings except grass, on any public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use, in order to protect the Village infrastructure, significant historical structures 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:

1. encroach upon, excavate on or obstruct or encumber any public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use, or any part thereof except as provided in sub. (2) and (3), or
2. permit any excavation, encroachment or encumbrance to be placed or remain on any public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use, adjoining the premises of which they are the owner or occupant except as provided in sub. (2) and (3), or
3. place, remove, replace or repair any item, walls, structure or plantings except grass, on any public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use, 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. Special privileges permitted pursuant to Wisconsin Statutes §66.0425.
4. Existing driveway replacement or repair.

**SECTION 3: Permit Required**

A right-of-way permit from the Village is required prior to excavating, placing, removing, replacing, or repairing any encroachment, obstruction, item, walls, structure or plantings except grass, on any public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use.

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 in a form acceptable to the Village Administrator which shall include if required by the Village Administrator the structural engineering, scale drawings, visual rendering, and survey showing the work proposed to be done including 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 (including that portion of the driveway in the village owned right-of-way), sidewalks, utilities, trees, and any other obstructions in the vicinity of the proposed work, and the location of structures on abutting properties.
2. Application process:
- a. The Village Administrator shall review said permit application and determine if all application materials have been submitted. If the application materials are not complete the Village shall provide written notice to the person on the application that said application is incomplete.
  - b. Staff approval. The Village Administrator shall determine whether to approve or conditionally grant right-of-way permits unless the Village Administrator concludes the work proposed to be done 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: Public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use**

**Restoration**

The work to be done under the permit, and the repair and restoration of public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use as required herein, must be completed within the dates specified in the permit to the satisfaction of the Village Administrator or 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 twelve (12) months thereafter.

The permittee shall perform repairs and restorations according to the standards and with the materials specified by the Village Administrator or designee. The Village Administrator or 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 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 public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use.
- 2. The traffic volume carried by the public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use.
- 3. The character of the neighborhood surrounding the public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use; the pre-excavation condition of the public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use.

4. The remaining life expectancy of the public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use 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 public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use that would otherwise result from the excavation, disturbance or damage to the public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use.
6. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use 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 twelve (12) month period, it shall, upon notification from the Village Administrator or designee, correct all restoration work to the extent necessary using the method required by the Village Administrator or designee. Said work shall be completed within five (5) calendar days of the receipt of the notice from the Village Administrator or designee. If the permittee fails to restore the public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use in the manner and to the condition required by the Village Administrator or designee or fails to satisfactorily and timely complete all repairs required by the Village Administrator or designee, the Village Administrator or designee, at their 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 public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use.

#### **SECTION 5: Cash Bond or Letter of Credit Surety**

Prior to commencing the work, any permittee performing work shall post a financial guarantee in an amount approved by the Village Administrator or 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, twelve (12) months after completion of the restoration of the right-of-way, the Village Administrator or designee determines that the public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use has been properly restored, the surety 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 Administrator 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 public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use, and thereafter until such obstruction is removed and the site is fully restored to the satisfaction of the Village Administrator or designee.

#### **SECTION 7: Reservation of Rights**

The Village retains all rights in public street (including that portion of the driveway in the village owned right-of-way), Village owned grounds or land dedicated to public use. The grant of a 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, item, walls, structure or plantings except grass, or conducting excavation in Village right-of-way shall remove or relocate the obstruction, encroachment, item, walls, structure or plantings except grass, 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 Administrator.

**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 17th day of May, 2021.

VILLAGE OF OCONOMOWOC LAKE



Michael Bickler, Sr, Village President

ATTEST:

  
Teri Sayles, Village Clerk/Deputy Treasurer