

Chapter 25 PUBLIC RIGHTS-OF-WAY*

*Cross reference(s)—Section 8-9, Review Authority of Board of Managers; Section 8-10, Review procedures; Section 8-11, Administrative Special Permits and Administrative Variances; and the Building Officer; and Chapter 12, Signs.

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Sec. 25-1. Definitions.

Building Officer: One member of the Board of Managers, appointed annually or at such other times as the Board of Managers may determine is in the public interest, to act as the designee of the Board of Managers to perform the functions of the Building Officer as described in this Chapter.

Curb cut: A depression in the curb, for the purpose of accommodating a driveway that provides vehicular access between private property and an improved roadway, or where there is no curb, the intersection of the driveway and edge of the improved roadway.

Dumpster: A receptacle designed or used to store construction and/or demolition debris awaiting transportation to a disposal site, including, but not limited to, detached wheeled trailers.

Lot: The land designated as a separate and distinct lot or parcel of a land on a legally recorded subdivision plat or deed filed among the Land Records of the County (also sometimes referred to as a "property").

Public right-of-way: Any land within the borders of the Village over which the Village has control, ownership, or which has been dedicated to public use, including any sidewalk or street.

Public right-of-way devoted to private use: The public property located between public sidewalks and abutting private property (or, in the absence of public sidewalks, located between the paved roadways and abutting private property) where such public property is, by license or otherwise allowed, under the immediate care and keeping by an abutting property owner or occupant.

Right-of-way license agreement: A written agreement setting forth the terms and conditions upon which a right-of-way license may be granted pursuant to the provisions of Secs. 25-2, 25-3, 25-4, 25-5 and

25-6. Such agreement may be recorded in the County Land Records at the abutting property owner's expense.

Street: A public or dedicated right-of-way, including, but not limited to, roadways, parkways, avenues, highways or other public thoroughfares or ways for vehicular or pedestrian traffic. A public sidewalk constitutes an adjunct or accessory to a street to be used for pedestrian traffic.

Structure: An assembly of materials forming a construction including, but not limited to, buildings, accessory buildings, open sheds, shelters, tennis courts, antennas, air conditioners, generators, heat pumps, swimming pools, therapeutic baths and permanently anchored play equipment, but not including walkways, patios or driveways.

Unimproved public right-of-way: A right-of-way which has not been improved with a paved roadway.

(No. 06-01-13, 06-10-13; No. 04-03-14, 04-14-14; No. 03-01-16, 03-14-16.)

Sec. 25-2. Maintenance of public right-of-way devoted to private use.

(a) The Village, by this Chapter, grants to abutting property owners or occupants so using the public right-of-way a license to continue to use the public right-of-way devoted to private use, subject to the provisions of Sec. 25-6; provided that this license may be revoked at any time by the Village in accordance with the provisions of this Chapter. In no case shall any part of any unimproved public right-of-way be considered to be a public right-of-way devoted to private use, and no license to use such right-of-way shall be implied and no license may be issued by the Board of Managers or the Village Manager. Notwithstanding the foregoing, any written license to devote public property to private use executed prior to March 14, 2011 issued by the Board of Managers or the Village Manager shall not be revoked by the adoption of this ordinance and shall remain in effect as issued until revoked or modified in accordance with the terms of said license.

(b) All written licenses to use the public right-of-way issued by the Building Officer and the Village Manager, as provided in this Chapter, shall contain a provision requiring the licensee, and the licensee's successors in interest, to indemnify and hold the Village harmless from any and all losses, claims, damages, demands, liabilities and other obligations to persons or property resulting or arising in any way from the licensee's use of the area subject to the license or from the licensee's failure to properly maintain the licensed area.

(c) In cases where a written license to use the public right-of-way is required by this Chapter or by a decision granting a variance or Special Permit, the license shall be recorded in the land records of Montgomery County, by the Village, at the expense of the property owner receiving such license. Notwithstanding the foregoing, the Building Officer and the Village Manager may waive the requirement that the written license be recorded in the land records if they find that the benefits of recording the license do not exceed the cost and inconvenience of recording the license.

Editor's Note(s)—This section, previously Chapter 8 Buildings and Building Regulations, Sec. 8-27, was incorporated into this Chapter without amendment.

(No. 06-01-13, 06-10-13.)

Sec. 25-3. Disruption of Village streets or sidewalks.

(a) Any person intending to undertake construction, which will disrupt a Village street or sidewalk, whether such construction is for public or private use, must first obtain a building permit. Where such construction involves excavation, alteration, modification or planting in the Village street or sidewalk, or might damage the Village street or sidewalk, the Village Manager may require a cash, surety or performance bond sufficient to cover the cost of restoring the street or sidewalk to its original state. The

person to whom such building permit is issued shall be responsible for restoring the disrupted area. If the disrupted area is not restored within fifteen (15) days of demand by the Village Manager, the Village may restore the area and charge the permit holder, or may claim the bond to reimburse the Village for the cost of restoration. If the bond is not sufficient to cover such costs, the permit holder shall, as directed by the Village Manager, pay to the Village any such deficiency. The unexpended balance of any bond shall be returned to the permit holder.

(b) No person shall store or allow an accumulation of refuse, excavation or construction debris, or any construction materials on any public street or sidewalk. Accumulation of mud or dirt must be removed from the street daily.

(c) Temporary repair, alteration, or modification to any street or sidewalk which prohibits the free passage of vehicles or pedestrians shall be clearly marked with barricades and/or safety barriers. Temporary closing of any sidewalk shall not exceed ten (10) days unless specifically authorized by the Village Manager.

(d) It shall be unlawful for any person or persons to leave any obstruction on, or excavation in, any street, park, or other public right-of-way, after sunset and before sunrise, without having such obstruction or excavation denoted by at least two (2) visible warning lights placed in such a manner as to show the extent of such obstruction or excavation.

(e) No person shall place or maintain a dumpster in any portion of any public right of way.

Editor's Note(s)—This section, previously Chapter 8 Buildings and Building Regulations, Sec. 8-28, was incorporated into this Chapter without amendment.

(No. 06-01-13, 06-10-13.)

Sec. 25-4. Overhead or underground wires, cables, hoses, pipes, and similar facilities.

(a) Any person or persons, firm or corporation desiring to string, lay, hang, suspend or in any manner place wires of any kind, cables, hoses, pipes, and similar facilities on, over, or under any street or other public right-of-way within the Village must obtain a building permit from the Village Manager. The Village Manager shall issue a building permit upon such terms and conditions as the Village Manager deems appropriate to protect the current and future use of the public right-of-way by the public, and governmental and utility entities. Such building permit shall contain a contract provision for holding the Village harmless from loss, injury or damage related to any such construction.

(b) A written revocable license to use the public right-of-way shall be required for the installation or replacement of wires, cables, hoses, pipes, and similar facilities installed on, over, or under any street or other public right-of-way, except for telecommunication, electric transmission lines, and other facilities operated by a public utility or similar service. The Building Officer and the Village Manager may issue a written license to use the public right-of-way upon such terms and conditions as the Building Officer and the Village Manager deem appropriate to protect the current and future use of the public right-of-way by the public, and governmental and utility entities.

Editor's Note(s)—This section, previously Chapter 8 Buildings and Building Regulations, Sec. 8-29, was incorporated into this Chapter without amendment.

(No. 06-01-13, 06-10-13.)

Sec. 25-5. Driveways and walkways crossing public right-of-way.

(a) Any portion of a private driveway which crosses the public right-of-way may not exceed ten (10) feet in width without a Special Permit from the Board of Managers, except that the apron where the

driveway connects with the street shall be allowed a five-foot radius on each side of the driveway for a total entrance at the curbside not to exceed twenty (20) feet in width.

(b) There shall be no more than one (1) curb cut for a property.

(c) All residential driveways and aprons shall be installed in accordance with current County standards.

(d) When a driveway is installed or removed, the abutting property owner shall restore the area from which the driveway was removed by installing a curb, sidewalk, grass or other ground cover and/or plantings consistent with the adjacent area.

(e) In addition to the requirement in Sec. 8-5 for a Building Permit, a written revocable license to use the public right-of-way and a right-of-way license agreement signed by the owner shall be required for the installation of any private walkway within the public right-of-way. The Building Officer and the Village Manager may issue a written license to use the public right-of-way upon such terms and conditions as the Building Officer and the Village Manager deem appropriate to protect the current and future use of the public right-of-way by the public, and governmental and utility entities.

(f) Any private walkway located within the public right-of-way shall be maintained, replaced, or removed by and at the expense of the owner or occupant of the abutting property.

Editor's Note(s)—This section, previously Chapter 8 Buildings and Building Regulations, Sec. 8-30, was incorporated into this Chapter without amendment.

Cross-reference(s)—Driveways, Sec. 8-26.

(No. 06-01-13, 06-10-13; No. 04-03-14, 04-14-14.)

Sec. 25-6. Structures, fences, walls, lamp posts, hand rails, trees, hedges and shrubbery in public right-of way.

(a) No structures, fence, wall, lamp post, hand rails, tree, hedge or shrubbery or any other growth, except grass, ground cover, flowers, and similar plantings, shall be placed on public property devoted to private use without the property owner first having obtained a license and having signed a right-of-way license agreement, in addition to any required building or Special Permit. Such agreement may be recorded in the county land records at the abutting property owner's expense. For the purposes of this Section, masonry piers and pillars shall be considered to be walls.

(b) The Building Officer and the Village Manager are authorized to issue a license, without the need for a Special Permit, for a fence, wall, lamp post, hand rails, tree, hedge, shrub or other growth on public property devoted to private use provided the Building Officer and the Village Manager find that the following standards are met.

- (1) No fence, wall or hedge shall exceed 48 inches in height.
- (2) All fences, lamp posts, trees, hedges, shrubbery and other growth shall be installed at least three (3) feet from the public sidewalk, or if there is no public sidewalk in the public right-of-way abutting the applicant's property, six (6) feet from the curb, or if there is no public sidewalk and no curb, six (6) feet from the nearest edge of the paved edge of the street.
- (3) All trees, hedges, shrubs and other growth shall be installed and maintained so as to not extend into public sidewalks or streets in a manner which may interfere with pedestrians or vehicular traffic.

- (4) All walls shall be constructed at least three (3) feet from the public sidewalk, or if there is no public sidewalk in the public right-of-way abutting the applicant's property, six (6) feet from the curb, or if there is no public sidewalk and no curb, six (6) feet from the nearest edge of the paved edge of the street. A retaining wall that measures more than thirty (30) inches in height from the ground on the lower side next to the wall and will retain more than twenty four (24) inches of earth must be designed by a structural engineer.
- (5) The fence, wall, tree, hedge, shrubbery or other growth will not adversely affect the public health, safety or welfare, nor the reasonable use of any adjoining property, and the issuance of the license is consistent with the purpose and intent of this Chapter.
- (6) One lamp post with a single lantern, not exceeding ten (10) feet in height, may be installed.
- (7) A hand rail on or beside steps in a yard where there is a change in grade, upon a finding by the Building Officer and Village Manager that the handrail is required for safety.

(c) Except as provided in Sec. 25-6 (b), no structures, fence, wall, lamp post, hand rail, tree, hedge or shrubbery, or any other growth shall be permitted on public property devoted to private use without a Special Permit from the Board of Managers.

(d) Any structures, fence, wall, lamp post, hand rail, tree, hedge or shrubbery, or any other growth placed on public property devoted to private use shall be maintained, replaced or removed by and at the expense of the owner or occupant of the abutting property.

(e) No structures, fence, wall, lamp post, hand rail, tree, hedge or shrubbery or any other growth located on public property devoted to private use by an abutting owner or occupant shall be permitted to extend into any public sidewalk, street, or alley so as to interfere in any manner with pedestrians or vehicular traffic.

(f) Any structures, fence, wall, lamp post, hand rail, tree, hedge or shrubbery, or any other growth placed on public property devoted to private use by an abutting owner or occupant at or near any street intersection shall be maintained by such owner or occupant in such a manner and at such height that a clear and unobstructed view is available to approaching pedestrians or vehicular traffic.

(g) The Village Manager may revoke the license to use the public right-of-way for private purposes for failing to maintain and/or meet the requirements of this Chapter.

- (1) Before revoking the license to use the public right-of-way for private purposes, the Village Manager shall serve written notice upon the owner or occupant of the abutting property specifying the violation, the necessary corrective action to be taken, and the period of time within which such corrective action is to be taken.
- (2) The owner or occupant so notified shall have the right to appeal the decision of the Village Manager to the Board of Managers or apply for a Special Permit or variance (see Section 8-10). Notice of such an appeal must be filed within ten (10) days after receipt of the written notice of violation.
- (3) The Village Manager may enter such public property devoted to private use and take such action as is necessary to return the public property to a condition required by this Chapter. The cost of any corrective action may be specially assessed against the abutting property and collected with the property taxes or collected by a suit for damages.

Editor's Note(s)—This section, previously of Chapter 8 Buildings and Building Regulations, Sec. 8-31, was amended and incorporated into this Chapter.

(No. 06-01-13, 06-10-13; No. 04-03-14, 04-14-14; No. 03-01-16, 03-14-16.)

Sec. 25-7. Removal of snow and ice from public sidewalks.

(a) Every person who owns, occupies or controls any lot fronting or abutting an improved public sidewalk, except an improved public sidewalk that is within a state highway right-of-way, whether as an owner, tenant, occupant, lessee, or otherwise, shall remove and clear away, or cause to be removed and cleared away, all snow and ice from so much of such sidewalk as is in front of or abuts on such lot or parcel of land within the first forty-eight (48) hours after the cessation of the falling of any snow, sleet or freezing rain.

(b) In the event snow and/or ice on a sidewalk has become so hard that it cannot be removed without the likelihood of damage to the sidewalk, the person charged with its removal in subsection (a) above shall, within the time set forth in subsection (a) above, cause enough sand or other abrasive to be put on the sidewalk to make travel thereon reasonably safe and shall then, as soon thereafter as weather permits, cause the sidewalk to be thoroughly cleaned.

(c) In the event any person fails to clear away snow and ice, or treat with abrasive and subsequently clear away snow and ice, from any sidewalk or cause this to be done as hereinbefore provided, the Village Manager may, in his/her discretion, cause such work to be done. The Village Manager shall ascertain and keep a record of the cost of all such work that he/she causes to be done in accordance with this subsection.

(d) Each person whose act or omission makes it necessary that the Village Manager cause the work to be done in accordance with subsection (c) above shall be liable to the Village for the cost of such work, plus a penalty of fifty (50) percent of such cost. The cost and expenses incident to such removal shall become a tax lien against the property and may be collected with the property taxes or collected by a suit for damages.

(e) No person shall deposit or cause to be deposited any snow or ice on or against any fire hydrant or on any public sidewalk or street.

Editor's Note(s)—This section, previously Chapter 8 Buildings and Building Regulations, Sec. 8-32, was incorporated into this Chapter without amendment.

(No. 06-01-13, 06-10-13.)

Sec. 25-8. Trees in the public right-of-way.

No person shall remove or destroy, or cause the removal or destruction of, a tree or undertake any action that will substantially impair the health or growth of a tree of any size or description in the public right-of-way without first obtaining a permit from the Village Manager, whose decision to issue or deny the permit shall be governed by the requirements of State law and relevant Village right-of-way agreements.

No person shall prune a tree in the Village Tree Inventory without first obtaining a permit from the Village Manager, who shall not grant a permit unless the Village Manager finds that such pruning is consistent with the Village tree pruning program.

Editor's Note(s)—This section, previously Chapter 17 Urban Forest, Sec. 17-7, was incorporated into this Chapter without amendment.

(No. 06-01-13, 06-10-13.)

Sec. 25-9. Maintenance of the public right-of-way.

Except for the parks, greenspaces, Village owned property and dedicated improved and unimproved rights of way that will continue to be maintained by the Village, the public property located

between the paved roadways and abutting private property shall be considered to be Village public right-of-way for purposes of this Section. Except as otherwise set out in this Chapter, no resident, occupant or owner of a property abutting a Village public right-of-way shall permit or allow any non-ornamental grasses or weeds to grow to a height in excess of ten (10) inches above the ground in that right-of-way. The areas that will continue to be maintained by the Village are reflected on a map, a copy of which shall be available for public review at the Village Hall. These areas may be modified from time to time as appropriate by the Village Manager.

(No. 06-01-13, 06-10-13.)

Sec. 25-10. Municipal infraction; penalties.

(a) Violation of any provision of this Chapter shall be a municipal infraction unless specifically provided. Any person or persons guilty of a municipal infraction shall be subject to such prosecution and penalties as are provided in Chapters 5 and 6 of this code. Any person who violates this Chapter or directs or allows another to commit an act that violates this Chapter, the person's employer if the person acted in the course of his or her employment, and any property owner who allows a violation of this Chapter on his or her property, shall be guilty of a violation and shall be jointly and severally subject to prosecution and the penalties provided in Chapters 5 and 6 of this code. If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation.

(b) The Village may institute injunctive or any other appropriate action or proceedings at law or equity for enforcement of this Chapter in any court of competent jurisdiction.

(No. 06-01-13, 06-10-13.)

Sec. 25-11. Remedial action and stop work order.

(a) Any person violating or failing to comply with this Chapter in whole or in part shall make or cause to be made such alteration or removal of construction equipment or work commenced or finished as may be necessary to remedy a condition which violates this Chapter.

(b) Whenever the Village Manager or the manager's designee finds that any person is in violation of this Chapter or is failing to comply with the terms and conditions of a license or permit issued pursuant to this Chapter, in whole or part, he/she may issue an order to stop work, unless the Village Manager determines that stopping such work would threaten the public safety. The stop work order described herein shall be issued by the Village Manager and served upon the permit holder, his agent or the person doing the work. The posting of the notice on the property shall be sufficient service upon all persons physically on the property. It shall be unlawful for any person to continue work in or about such construction after having been served with a stop work order, except such work as he is directed to perform to remove a violation or to eliminate an unsafe condition.

(c) If any person shall fail or refuse to abate any condition prohibited by this Chapter within fifteen (15) days from the notification of violation, such condition may be abated by the Village, and the cost of such work and the damages resulting therefrom shall be paid by such person upon request of the Village. Within ten (10) days of notification, such person may in writing request a review by the Board of Managers of whether the notice of violation was properly issued. The cost of abatement for a violation of this Section shall be a lien upon the abutting property to be collected in the same manner as Village taxes are collected. Abatement by the Village is in addition to any other remedies available under law.

(No. 06-01-13, 06-10-13.)

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