

Chapter 38

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES¹

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¹ **Cross reference**— Any ordinance dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing or vacating any street or public way or public grounds and parks and other public places saved from repeal, § 1-9(6); any ordinance levying or imposing taxes or special assessments saved from repeal, § 1-9(8); any ordinance establishing and prescribing the street grades of any street curb or bulkhead lines or width of sidewalks or streets saved from repeal, § 1-9(11); any ordinance providing for local improvements and assessments for such improvements saved from repeal, § 1-9(12); any ordinance regarding lighting of streets, sidewalks and alleys, water, sewer and electric main and line construction or municipal utility regulations or construction of public works saved from repeal, § 1-9(20); buildings and building regulations, ch. 10; moving buildings, § 10-291 et seq.; peddlers, canvassers, solicitors and transient merchants, § 14-171 et seq.; mobile homes and mobile home parks, § 14-301 et seq.; environment, ch. 22; land division, ch. 28; required improvements for streets in subdivisions, § 28-43; design standards for streets in subdivisions, § 28-81; obstructing streets and sidewalks prohibited, § 30-91; traffic and vehicles, ch. 50; utilities, ch. 54.

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Article I. In General

Sec. 38-1. Penalty.

Any person who violates any provision of this chapter, or any order, rule or regulation made under this chapter, or any order, rule or regulation made under this chapter, upon conviction thereof, shall be subject to a penalty as provided in section 1-14.
(Code 1982, § 8.15)

Secs. 38-2—38-30. Reserved.

Article II. Streets ^[2]

State Law reference— Village highways, Wis. Stat. chs. 82, 86, § 61.36.

Division 1. Generally

Sec. 38-31. Sale of abutting lands.

No owner of any land abutting upon any road accepted by the village board under this chapter and no owner of any land abutting upon any road accepted as a part of a subdivision pursuant to this chapter shall offer for sale any of such land unless such proposed road or highway within such area has been constructed according to the terms and provisions of this chapter. The village board may waive compliance with this section upon the filing of a surety bond as provided in section 38-64. (Code 1982, § 8.05)

Secs. 38-32 - 38-50. Reserved.

Division 2. Standards

Sec. 38-51. Acceptance of highways in subdivisions.

No plat of any subdivision shall be accepted by the village pursuant to Wis. Stat. ch. 236 unless such plat shall provide that all roads and highways shown thereon shall be at least 66 feet in width.
(Code 1982, § 8.01)

Sec. 38-52. Acceptance of highways other than in subdivisions.

No road or highways not a part of a subdivision shall be accepted by the village as a village road unless such road or highway is 66 feet in width.
(Code 1982, § 8.02)

Sec. 38-53. Highway design standards.

Prior to the acceptance of the subdivision plat as described in section 38-51, and prior to the acceptance of a village road as described in section 38-52, the subdivider or other dedicatory, as the case may be, shall enter into a contract with the village that the roads and highways shall be constructed in accordance with the specifications in this division.
(Code 1982, § 8.03)

Sec. 38-54. Survey required.

The subdivider or petitioner shall furnish the village with a survey by a licensed surveyor, showing the centerline, right-of-way lines, section lines, section corner monuments and any encroachments within the right-of-way for the proposed highway.
(Code 1982, § 8.03(1))

Sec. 38-55. Right-of-way width.

The minimum right-of-way width for a local street shall be 66 feet and the minimum right-of-way width for a collector street shall be 80 feet.
(Code 1982, § 8.03(2))

Sec. 38-56. Cross sections.

The following sections are typical cross sections required for the village. The use of a particular section shall be determined by the village board prior to the preparation of the plans. An illustration showing each section is on file with the administrator/clerk and is incorporated in this section by reference.

- (1) *Rural section.* The following are required for a rural section:

- a. Local street: 66 feet right-of-way. Typical section R-1.
 - b. Commercial/industrial street: 80 feet right-of-way. Typical section R-2.
- (2) *Urban section.* The following are required for an urban section:
- a. Local street: 66 feet right-of-way. Typical section U-1.
 - b. Commercial/industrial street: 80 feet right-of-way. Typical section U-2.

(Code 1982, § 8.03(3))

Sec. 38-57. Plans.

The subdivider or petitioner shall submit two sets of plans for the proposed road construction to the village for review for conformance with the village standards. The plans shall include a plat of such street showing legal descriptions of the road rights-of-way and of all drainage easements, together with documents for recording of such plans.

(Code 1982, § 8.03(4))

Sec. 38-58. Inspection.

Upon completion of final subgrade work and prior to the placement of crushed aggregate base material, the roadway will be inspected by the village for conformance to the proposed grades.

(Code 1982, § 8.03(5))

Sec. 38-59. Specifications.

Any village road constructed in the village shall conform to one of the typical sections referred to in section 38-56 and in accord with the following minimum specifications:

- (1) The type of roadway shall be determined by the type of drainage facilities available. Where the village board determines that there are storm sewer facilities available or are to be made available, the roadway section shall incorporate a curb and gutter section conforming to the typical sections. If storm sewer facilities are not available, the rural roadway section may be utilized.
- (2) The crushed aggregate base course will vary in width in conformance with the typical section utilized and will conform to the following depth requirements. The base course for the local street sections shall be ten inches of crushed stone (six inches of #2 (one-half-inch) and four inches of three-quarter-inch T.B.). Crushed stone shall have 85 percent to 100 percent fractured faces on the material to be furnished. Such stone shall be of a quality at least equal to the quality of stone used on streets maintained by the village. The grade of crushed stone shall be approved by the village prior to application.

- (3) Concrete curb and gutter utilized in the residential sections shall conform to the typical section for a four-inch mountable curb and gutter. In the commercial and industrial street sections, the curb and gutter shall conform to the 30 inches Type D standard curb and gutter section. The concrete curb and gutter shall not be placed sooner than nine months nor later than three years after construction of the base course. Prior to construction of the curb and gutter, approval shall be obtained from the village. Whenever the construction of curb and gutter is required, the subdivider or petitioner shall furnish a document or surety bond sufficient to ensure that he/she will comply with such construction within such time period as provided in this subsection without expense to the village.
- (4) In areas where the rural section is incorporated, the drainage ditches on each side shall have a maximum of 3:1 side slopes and a depth sufficient to provide adequate drainage. Drainage ditches shall not be less than two feet two inches in depth below the finished grade of the centerline of the street. The bottom of the drainage ditch, where deemed necessary by the village board, shall be sodded with sod acceptable to the village and in such manner that any and all erosion will be eliminated. Sod used shall measure 18 inches by 72 inches, and the distance of laying the sod shall be determined by the village. Sod shall be laid at both ends of all culverts unless otherwise stated.
- (5) Culverts of sufficient length and diameter to provide adequate drainage and access shall be placed at all driveway entrances. These culverts are subject to approval by the village prior to installation.
- (6) A cul-de-sac with a minimum right-of-way radius of 75 feet or a turnaround "T" with a minimum roadway length of 66 feet and minimum width of 20 feet shall be constructed to the specifications in this section and shall be provided on all dead-end streets and roads greater than one lot or 200 feet in length.
- (7) The slopes of the ditches and/or terrace areas within the right-of-way shall be dressed with a minimum of four inches of topsoil and seeded with Seed Mixture No. 1 of Section 630.2.1.5.1.1 of the State of Wisconsin Department of Transportation Standard Specifications for Highway and Structure Construction, 1996 Edition, as amended by Supplemental Specifications, 2000 Edition. Such seeding shall be completed prior to the acceptance of the base course. Following construction of curb and gutter, all disturbed areas shall be restored to the satisfaction of the village board.
- (8) All culverts crossing rural streets shall be at least 44 feet in length and of such diameter as prescribed by the village. Any culverts needed for entrance to any village road shall be of sufficient length and diameter as prescribed by the village.
- (9) All black dirt and other topsoil shall be removed from under the roadway and curb areas.
- (10) No crushed stone shall be allowed to be laid on frozen ground or ground which has too high of water content, all in accordance with the approval of the village.

- (11) All road work shall conform to the State of Wisconsin Department of Transportation Standard Specifications for Highway and Structure Construction, 1996 Edition, as amended by Supplemental Specifications, 2000 Edition.

(Code 1982, § 8.03(6))

Sec. 38-60. Use.

The use of land included in the development adjacent to curves and intersections of such roads shall be restricted by appropriate easements of sufficient width and length for adequate vision along such roads.

(Code 1982, § 8.03(7))

Sec. 38-61. Notification.

The village shall be notified before:

- (1) Culverts are ready to be installed.
- (2) Rough and finished grading has been completed.
- (3) Crushed stone is applied.
- (4) Construction of curb and gutter.

(Code 1982, § 8.03(8))

Sec. 38-62. Inspection.

The village shall make one inspection after the required amount of stone has been placed and shall provide full-time inspection for curb and gutter construction.

(Code 1982, § 8.03(9))

Sec. 38-63. Costs.

All costs incurred by the village for legal, engineering and administration expenses, including, but not limited to, review and inspection, shall be the liability of the subdivider or petitioner.

(Code 1982, § 8.03(10))

Sec. 38-64. Performance bond may be required.

The village board, as a condition precedent to the acceptance of a subdivision and roads, may require the subdivider or petitioner to file a performance bond with the administrator/clerk guaranteeing compliance with the terms and conditions of the contract specified in this division. Such bond shall be approved by the village board.

(Code 1982, § 8.04)

Sec. 38-65. County and state specifications.

All roads and approaches adjoining county and state roads shall be required to meet county and state specifications.

(Code 1982, § 8.06)

Secs. 38-66 - 38-80. Reserved.

Division 3. Excavations

Sec. 38-81. Occupancy of public rights-of-way.

(a) General Provisions.

- (1) *Purpose and findings.* In the exercise of governmental functions, the village has priority over all other uses of the public rights-of-way. The village desires to anticipate and minimize the number of obstructions, degradation, and excavations taking place in the rights-of-way by regulating the placement of facilities in the rights-of-way to ensure that the rights-of-way remain available for public services and are safe for public use, and to ensure that facilities are timely maintained, supported, protected or relocated to accommodate reconstruction or repairs. The taxpayers of the village bear the financial burden for the upkeep, maintenance and reconstruction of the rights-of-way and a primary cause for the early and excessive deterioration of the rights-of-way is the frequent excavation by persons who locate facilities therein.

The village finds increased use of the public rights-of-way results in increased costs to the taxpayers of the village and that these costs are likely to continue into the foreseeable future.

The village finds that the above-ground use of public rights-of-way creates special and unique public health, safety, and general welfare concerns for the village, including, but not necessarily limited to, traffic safety, sightline and vision triangle issues, break-away design consistent with other utility pole or structure requirements, public snow plowing and snow storage, property access and public parking, obstruction to municipal police, fire, and rescue services, and related issues.

The village finds that the preservation of prime farmland is one of its primary goals as set forth in the "2020-2050 Village of Yorkville Comprehensive Plan ("Comprehensive Plan") and that maintenance of the agricultural drainage tile system found throughout the village is an essential part of accomplishing that goal.

The village finds that delays by occupants of the rights-of-ways in maintaining, supporting, protecting or relocating facilities, if they impact public construction projects, have the potential to significantly increase public works project costs borne

by the taxpayers. Moreover, the village finds that some right-of-way occupants have a history of delays and non-responsiveness.

The village finds that rights-of-way, by definition, are limited in area, use, and availability, and, as a result, require regulation and limitation of use and occupancy, subject to all applicable state, federal, and constitutional laws and regulations and the provision of all necessary utility services to the public.

The village finds that occupancy and excavation of its rights-of-way causes costs to be borne by the village and its taxpayers, including but not limited to:

- a. Administrative costs associated with public right-of-way projects, such as permitting, inspection and supervision, supplies and materials.
- b. Management costs associated with ongoing management activities necessitated by public right-of-way users.
- c. Repair or restoration costs to the roadway associated with the actual excavation into the public right-of-way.
- d. Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life due to excavations in the public right-of-way.

In response to the foregoing facts and findings, the village hereby adopts this ordinance relating to access to, administration of, and issuance of permits to excavate, obstruct and/or occupy the public rights-of-way. This ordinance imposes reasonable regulations on the placement and maintenance of facilities currently within its rights-of-way or to be placed therein in the future. It is intended to complement the regulatory roles of state and federal agencies.

The purpose of this ordinance is to provide the village a framework within which to regulate and manage the public rights-of-way and to provide for recovery of the costs incurred in doing so. This ordinance provides for the health, safety and welfare of the residents of the village as they use the right-of-way of the village, as well as to ensure the structural integrity of the public rights-of-way.

- (2) *Definitions.* The following definitions apply in this ordinance. References hereinafter to "sections" are, unless otherwise specified, references to sections in this ordinance. Defined terms remain defined terms whether capitalized or not.

Administrator/clerk means the appointed administrator/clerk of the village.

Applicant means any person requesting permission to excavate, cut into, bore into, obstruct and/or occupy a right-of-way.

Bridge means any bridge or culvert or series of culverts.

Degradation means the decrease in the useful life of the paved portion of the right-of-way, excluding the sidewalk right-of-way, caused by an excavation of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur.

Emergency means a condition that (1) poses a clear and immediate danger to life or health or of a significant loss of property; or (2) requires immediate repair or replacement in order to restore service to a customer.

Excavate means to dig into or in any way remove, physically disturb, penetrate or in any manner affect the existing condition any part of a right-of-way.

Facilities means all equipment, whether publicly or privately owned, operated, leased or subleased in connection with the operation of a service or utility service, and shall include, but is not limited to, poles, wires, pipes, cables, underground conduits, ducts, manholes, vaults, fiber optic cables, lines, laterals and other structures and appurtenances.

In, when used in conjunction with right-of-way, means over, above, across, within, in, on or under a right-of-way.

Local representative means a local person or persons, or designee of such person or persons, authorized by an applicant to accept service, and to make decisions for and act as a responsible party on behalf of that applicant regarding all matters within the scope of this ordinance.

Municipal Code means the Municipal Code of the Village of Yorkville, as amended.

Obstruct means to place any object in a right-of-way so as to hinder free and open passage over any part of the right-of-way.

Permittee means any person or utility to whom a permit to occupy, excavate or obstruct a right-of-way has been granted under this ordinance.

Person means corporation, company, association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees, receivers, heirs, personal representatives, agents and all others acting on their behalf.

Repair means to perform construction work necessary to make the right-of-way useable for travel or its intended use according to village specifications, or to restore equipment to an operable condition.

Restore means the process by which the excavated right-of-way and surrounding area, including pavement and foundation, is reconstructed to village specifications.

Right-of-way means the surface and space above and below an improved or unimproved public roadway, highway, street, bicycle lane, drainage ditches, shoulders, and public sidewalk in which the village has an interest, including other dedicated rights-of-way for travel purposes.

Section without reference to the Municipal Code shall mean a subsection within Section 38-81.

Utility means a public utility as defined in Wis. Stat. §196.01(5) and includes a telecommunications carrier, as defined in Wis. Stat. §196.01(8)(m).

Village means the Village of Yorkville, Wisconsin, a municipal corporation.

- (3) *Administration.* The village administrator/clerk or his/her designee is responsible for administration of the rights-of-way of the village and the permits and ordinances related thereto.
 - (4) *Exemption.* The Village and its contractors are exempt from the provisions of Section 38-81.
- (b) *Permit to install in, excavate, or otherwise occupy right-of-way required.*
- (1) No cut, excavation, or service connection or disconnection shall be made by any person or utility in any village property or right-of-way unless a permit under this Section is applied for, the fee paid for, the permit issued by the administrator/clerk, obtained and held under this ordinance and then only in strict accord with all provisions and requirements of this ordinance. An application for a permit for a project involving an open cut in the paved portion of the village's right-of-way must be approved by the village board before the permit's issuance by the administrator/clerk. The administrator/clerk may require village board approval of other applications that, in the opinion of the administrator/clerk, significantly impact village rights-of-way or the public's use of village rights-of-way.
 - (2) No person or utility shall undertake to perform the work of making any connection with, disconnection from, installing or repair of any facilities, gas pipe, water pipe, sewer, communication, cable, or electric line or facility laid or constructed in any road or public ground, or to repair or remove any such item without having obtained a permit under this Section authorizing such work. No annual permit fee is required but individual permits and permit fees for each excavation are required.
 - (3) Every cut, excavation and service connection or disconnection in any village property that is not a right-of-way shall also require, in addition to the permit, payment of fees and fulfillment of other requirements set forth in this ordinance, and separate permission, lease(s) and/or easement(s) from the village board, as applicable. Such additional permission is discretionary with the Village Board, is not a matter of right regardless of whether a permit has been applied for and/or issued under this ordinance. Compliance with this ordinance does not take the place of such additional required permission.
- (c) *Application for permit.*

Written application for a right-of-way permit shall be made to the administrator/clerk prior to any occupancy. Permit applications shall contain and will be considered complete only upon compliance with each of the following requirements:

- (1) *Application Form.* An accurate and complete written permit application form shall be submitted to the administrator/clerk. The application shall be signed and dated by a duly authorized representative of the applicant. The application form shall be in such form, content and requirements as the administrator/clerk may determine

and/or direct from time-to-time. The application form shall contain, at a minimum, the following information:

- a. Each applicant's name, diggers hotline registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
 - b. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of application.
 - c. A detailed description of the scope and plan of the excavation work and repair/restoration proposed, including a description of the property and name of the right-of-way, if applicable, the approximate location of the excavation(s), the purpose for the excavation, and the method by which the excavation is to be made.
 - d. Indemnification language protecting and holding harmless the village and its elected and appointed officials, officers, employees, agents, contractors and representatives from and against any and all injury, payments, penalties and damages arising from any and all intentional and negligent activities of the applicant and the applicant's appointed officials, officers, employees, agents, contractors and representatives.
 - e. The application shall be signed by the applicant's authorized representative or agent. If the work is not to be performed by the applicant directly, the person engaged to do the work shall co-sign the application and the permit shall be issued in the name of the person performing the work along with the applicant.
- (2) *Form and Drawings.* Submission of the completed permit application form as established by the administrator/clerk, including all required attachments, drawings showing the location and area of the proposed facilities, and the size and depth of the cut, excavation or service connection or disconnection. The proposed excavation must accommodate all existing underground facilities within the proposed route.
- (3) *Insurance Certificate.* Except for a utility governed by Chapter 196 of the Wisconsin Statutes, the applicant shall file certificates of insurance with the administrator/clerk giving evidence of liability insurance in the following minimum amounts:

Worker's Compensation	Statutory Limits
Commercial Automobile Liability	\$2,000,000.00 per Accident for Bodily Injury and Property Damage Liability Combined.
Commercial General Liability	\$2,000,000.00 per Occurrence for Bodily Injury and Property Damage Liability Combined.

The village board may reduce the liability insurance limits required or require higher amounts of liability insurance depending on the scope of the project. The village and its officials, employees and agents shall be named as additional insureds on the commercial general and automobile liability policies. The insurance shall cover liability to third parties for the acts of the applicant and applicant's officials and employees, agents, contractors, representatives and related others. The insurance shall cover bodily injury and property damage for the individual incidents and aggregates required by the administrator/clerk. Such insurance shall not be cancelled or reduced without the insurer giving at least 10 days prior written notice to the administrator/clerk. Cancellation or reduction of insurance shall automatically suspend the permit, and no further work shall be done under such permit until a new certificate of insurance complying herewith is filed with the administrator/clerk. The certificate of insurance shall remain in full force and effect for not less than one year from the date of the Village's final inspection and acceptance after completion of the project. The insurance requirements under this subsection may be applied to a utility if the administrator/clerk has reasonable grounds to question the financial responsibility or compliance ability of the utility.

- (4) *Bond.* A bond in the form of cash, performance bond issued by a licensed company in Wisconsin or irrevocable letter of credit issued by a financial institution acceptable to the village shall be deposited or filed with the administrator/clerk and preserved by the village treasurer prior to the issuance of the permit. The amount of the cash bond, performance bond, or letter of credit shall be determined by village board resolution, setting forth a schedule based upon such factors as the estimated cost of the project and restoration of village right-of-way and village property disturbed. The bond or letter of credit shall be payable to the village upon demand by the administrator/clerk for any actual or suspected violation of any provision of this ordinance. The administrator/clerk shall be able to demand payment upon the bond or letter of credit in whole or in-part at any time and from time-to-time. The bond or letter of credit shall be in such further form, content and requirements as the administrator/clerk and village attorney may determine necessary and/or desirable to effect the intent of this ordinance. The Village need not resort to any other remedy or provide any prior notice to the applicant or permittee before making demand upon, resorting to or receiving payment from the bond or letter of credit. In the event the cash bond, performance bond or letter of credit shall be insufficient for such purposes, the permittee shall be liable to the village for the excess cost over the amount of the bond or the amount collected by the village on the irrevocable letter of credit. The bond or letter of credit shall remain in full force and effect for one (1) year from the date of the Village's final inspection and acceptance after completion of the project. The bond requirements under this subsection may be applied to a utility if the administrator/clerk has reasonable grounds to question the financial responsibility or compliance ability of the utility.
- (5) *Certificate of Authority.* A copy of the applicant's certificate of authority from the Wisconsin Public Service Commission or other applicable state or federal agency, where the applicant is lawfully required to have such certificate from said commission or other state or federal agency.
- (6) *Corporate or Similar Certificate.* If the registration is a corporation, LLC or LLP, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified by the Wisconsin Department of Financial Institutions.

- (7) *Site Plan.* Each application shall contain, attached thereto, an accurate diagram and description of the excavation site.
 - (8) *Payment.* Payment of the permit fees and costs as set forth in this ordinance, including unpaid fees or costs due for prior excavations as well as any loss, damage, or expense suffered by the village because of applicant's prior excavations of village rights-of-way or any emergency actions taken by the village.
 - (9) *Notice of Change.* The applicant shall keep all of the information listed above current at all times by providing to the administrator/clerk information as to changes within three (3) working days following the date on which the applicant has knowledge of any change.
 - (10) *One Permit Per Site.* A separate permit must be applied for and held, and a separate fee paid, for each site, excavation, cut and/or project, except as otherwise authorized by the village board. A separate permit is required for a new or emergency excavation at a previously permitted site if the previous work or excavation was completed.
 - (11) *Permits Not Transferable.* Permits are not transferable to a different person or utility. Permits are not transferable from place to place.
 - (12) *Permit Posting Required.* A photocopy of each issued village excavation permit shall be conspicuously posted and maintained at the site until the project is completed.
- (d) *Installation/excavation/occupancy permit fee.* The permit fee shall be established by the village in an amount sufficient to recover the costs incurred by the village. This fee shall recover administrative and inspection costs, excavation costs, as well as degradation costs, as defined below. Payment of said fees shall be collected prior to issuance of the permit. However, the administrator/clerk may establish a fee collection process from governmental agencies and utilities to expedite the permitting system and recognize that certain excavations are deemed emergencies.
- (1) *Waiving of fees.* Fees shall not be waived unless the work involved is a direct result of the administrator/clerk's or designee's demand that facilities owned by a utility be removed or relocated, or unless waived by the village board upon review of the administrator/clerk's or designee's decision.
 - (2) *Fee schedule.* The minimum fee for each excavation permit shall be as set forth by resolution of the village board, a copy of which shall be maintained by the administrator/clerk and posted on the village's website. The fee for a permit issued after commencing work, except in cases of emergency as determined by the administrator/clerk, shall be double the fees set forth herein. This permit fee shall be in addition to any forfeiture provided for elsewhere in the Municipal Code.

For those permit applications which provide for a substantial undertaking of excavation within the public right-of-way attended by disruption of the general public and traffic, the administrator/clerk is authorized to assess the actual cost of the village employee's or consultant's time engaged in the review and inspection of the anticipated work.

- (3) Permit fees paid for a permit that the village has revoked are not refundable.
- (e) *Right-of-way repair/restoration.*
- (1) The permittee shall be required to repair the public right-of-way to current village specifications, subject to inspection and acceptance by the administrator/clerk or designee. In addition to repairing its own work, the permittee must repair the general area of the work, and the surrounding areas, including the paving and its foundations, to the specifications of the village. The permittee shall reconstruct, relocate or replace any drain tile line which may be disturbed or damaged by its work so as to provide for the continued operation of such drain tile line, whether or not such drain tile was located or otherwise discovered before commencement of its work. The administrator/clerk or designee, shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the village.
 - (2) *Guarantees.* The permittee guarantees its work and shall maintain it for 36 months following its completion. During this period, it shall, upon notification from the administrator/clerk or designee, correct all work to the extent necessary, in accordance with village specifications. Said work shall be completed within ten business days of the receipt of the above notice, not including days during which work cannot be done due to circumstances constituting force majeure.
 - (3) *Failure to repair/restore.* If the permittee fails to repair/restore the right-of-way to the condition required by the administrator/clerk or designee or fails to satisfactorily and timely complete all work required by the administrator/clerk or designee, the village at its option may do such work. In that event the permittee shall pay to the village, within 30 days of billing, the cost of repairing/restoring the right-of-way.
- (f) *Inspection.*
- (1) *Notice of completion.* When the work under any permit hereunder is begun and completed, the permittee shall notify the administrator/clerk or designee.
 - (2) *Site inspection.* Permittee shall make the work site available to the administrator/clerk or designee and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
 - (3) *Authority of administrator/clerk or designee.* At the time of inspection, the administrator/clerk or designee may order the immediate cessation of any work which poses a threat to the life, health, safety or well-being of the public. The administrator/clerk or designee may issue an order to the applicant or permittee for any work that does not conform to applicable village standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten days after issuance of the order, the applicant or permittee shall present proof to the administrator/clerk or designee that the violation has been corrected. If such proof is not presented within the required time, the administrator/clerk or designee may revoke the permit pursuant to subsection (i).
- (g) *Ongoing management fees.* The cost of trimming trees or cutting grass around facilities is an ongoing expense to the village. Such costs will be determined and a fee to offset costs may be assessed against permit holders in the future.

- (h) *Compliance with other laws.* Obtaining a permit to excavate, install in and/or occupy the right-of-way does not relieve the applicant or permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any other village, county, state, or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.
- (i) *Revocations, suspensions, refusals to issue or extend permits.*
- (1) The administrator/clerk or designee may refuse to issue a permit or may revoke, suspend or refuse to extend an existing permit if it finds any of the following grounds:
- a. Issuance of a permit or installation of facilities for the requested date or location would interfere with another project occupying the same right-of-way, an exhibition, celebration, festival or other event.
 - b. Misrepresentation of any fact by the applicant or permittee.
 - c. Failure of the applicant or permittee to maintain required bonds and/or insurance.
 - d. Failure of the applicant or permittee to complete work in a timely manner.
 - e. The proposed activity is contrary to the public health, safety, or welfare.
 - f. The proposed activity requires above-ground structures causing safety issues including, but not limited to, sight-line safety, vision triangles, break-away structures, public plowing and snow storage, obstruction to municipal police, fire, and rescue services, and related issues with the use of the right-of-way.
 - g. The extent to which right-of-way space where the permit is sought is available.
 - h. The competing demands for the particular space in the right-of-way.
 - i. The availability of other locations in the right-of-way or in other rights-of-way for the facilities of the permittee or applicant.
 - j. The applicability of village ordinances, or other regulations of the right-of-way, including, but not limited to, Wis. Stats. §§ 86.16 (prohibiting interference with use of highway by the public) and 182.17 (prohibiting poles in front of residence or occupied business), that affect the location, type, height, size and/or use of facilities in the right-of-way.
- (2) *Discretionary issuance.* The administrator/clerk or designee may issue a permit where issuance is necessary (a) to prevent substantial economic hardship to a customer of the permittee or applicant, or (b) to allow such customer to materially

improve its utility service, or (c) to allow the permittee or applicant to comply with state or federal law or village ordinances or an order of a court or administrative agency.

- (3) *Appeals.* Any person aggrieved by a determination made with respect to the repair or restoration of a public right-of-way, or by a decision of the administrator/clerk or designee revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review with the village board. A request for review shall be filed within ten days of the decision being appealed. Following a hearing, the village board may affirm, reverse or modify the decision of the administrator/clerk or designee.

(j) *Work done without a permit.*

- (1) *Emergency situations.* Each person or utility shall immediately notify the village by verbal notice on an emergency phone number provided by the village of any event regarding its facilities that it considers to be an emergency. The person or utility may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the person or utility shall apply for the necessary permits, pay the fees associated therewith and otherwise fully comply with the requirements of this ordinance.

If the village becomes aware of any emergency regarding a person's or utility's facilities, the village may attempt to contact the local representative of each person or utility affected, or potentially affected, by the emergency. The village may take such action it deems necessary to protect public safety or property as a result of the emergency, the cost of which shall be borne by the person or utility whose facilities occasioned the emergency.

- (2) *Non-emergency situations.* Except in an emergency, any person or utility who, without first having obtained the necessary permit, excavates, installs facilities within or otherwise attempts to occupy a right-of-way shall be subject to a stop-work order or other appropriate legal remedy, and must subsequently obtain a permit, and shall, in addition to any penalties prescribed by the Municipal Code, pay double the normal fee for said permit, pay double all the other fees required by this ordinance or other provisions of the Municipal Codes, deposit with the village the fees necessary to correct any damage to the right-of-way, and comply with all of the requirements of this ordinance.

(k) *Location of facilities.*

- (1) *Underground.* Unless in conflict with state or federal law, except when existing above-ground facilities are used, the installation of new facilities and replacement of old facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.
- (2) *Limitation of space.* The village may prohibit or limit the placement of new or additional facilities within the right-of-way if there is insufficient space to accommodate all of the requests of persons or utilities to occupy and use the right-of-way. In making such determination, the village shall strive to the extent possible to accommodate all existing and potential users of the right-of-way, but may prohibit

or limit the placement of new or additional facilities when required to protect public health, safety or welfare.

- (3) *Attachment to bridges.* Whenever an applicant or permittee under this section requests permission to attach pipes, conduits, cables or wires to any village bridge structure, the applicant shall pay a fee of \$1,000.00 upon the granting of such permission to defray administrative expense in the analysis and inspection of such installation. The owner of such pipes, conduits, cables or wires shall be entitled to no compensation for removal or relocation of the same in the case of repair, removal, or replacement of said bridge structure by the village.
- (l) *Relocation and protection of facilities.* A person or utility shall promptly and at its own expense maintain, support, protect or relocate its facilities in the right-of-way whenever the village, or its agent, acting in its governmental capacity, requests such action to allow for public work in the right-of-way. The village, or its agent, shall issue a due date for completion of the work to the representative of the person or utility of not less than 72 hours, which due date shall be reasonable and based upon the actions to be undertaken by the person or utility. If requested, the person or utility shall restore the right-of-way following the completion of the work. If a person or utility fails to perform the actions required herein by the due date, in addition to all other available legal remedies available to the village, the person or utility shall be subject to forfeitures as provided in the Municipal Code. Notwithstanding the foregoing, a person or utility shall not be required to remove or relocate its facilities from a right-of-way which has been vacated in favor of a nongovernmental entity unless the reasonable costs thereof are first paid to that person therefore.
- (m) *Village right to self-help.* In the event that a person or utility does not proceed to maintain, support, protect or relocate its facilities as ordered in subsection (l), the village may arrange to do the work and bill the registrant, said bill to be paid within 30 days of the date of its mailing to the registrant.
- (n) *Abandoned facilities.*
 - (1) *Discontinued operations.* A person who has determined to discontinue its operations in the village must either:
 - a. Provide information satisfactory to the village that its obligations for its facilities under this ordinance have been lawfully assumed by another person or utility; or
 - b. Submit to the village a proposal and instruments for dedication of its facilities to the village. If a person proceeds under this clause, the village may, at its option:
 - 1. Accept the dedication for all or a portion of the facilities; or
 - 2. Require the person, at its own expense, to remove the facilities in the right-of-way at ground or above-ground level; or

3. Require the person to post a bond or provide payment sufficient to reimburse the village for reasonably anticipated costs to be incurred in removing the facilities.

However, any person who has unusable and abandoned facilities in any right-of-way shall remove it from that right-of-way within two years, unless the village waives this requirement in writing.

- (2) *Abandoned facilities.* Facilities of a person who fails to comply with sections (n)(1)a or b., and which, for two years, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a public nuisance. In addition to any remedies or rights it has at law or in equity, the village may, at its option (i) abate the nuisance, (ii) take possession of the facilities, or (iii) require removal of the facilities by the person, or the person's successor in interest.
- (3) *Public utilities.* This section (n) shall not apply to a public utility, as defined in Wis. Stats. § 96.01(5), that is required to comply with Wis. Stats. § 196.81.
- (o) *Reservation of regulatory and police powers.* The village, by the granting of a permit to excavate, install facilities within, obstruct and/or occupy the right-of-way, does not surrender in any manner or to any extent lose, waive, impair or lessen the lawful powers and rights which it now has or which may be hereafter granted to the village under the Constitution and Statutes of the State of Wisconsin to regulate the use of the right-of-way by the permittee; and the permittee, by its acceptance of a permit to excavate, install facilities within, obstruct and/or occupy the right-of-way, agrees that all lawful powers, rights, and regulatory powers shall be in full force and effect, and permittee is subject to the regulatory and police powers of the village to adopt and enforce general ordinances and ordinances necessary to protect the health, safety and welfare of the public, and is deemed to agree to comply with all applicable general ordinances and ordinances enacted by the village pursuant to such powers.
- (p) *Severability.* If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.
- (q) *Penalty.* Except as otherwise provided herein, and in addition to all other legal remedies available to the village, any person who violates this ordinance or fails to comply with the provisions hereof shall be subject to forfeitures as provided in the Municipal Code.

Secs. 38-82 - 38-110. Reserved.

Article III. Driveways And Culverts

Sec. 38-111. Permit required.

No person shall install or make any improvement of a private driveway extending into a public right-of-way without a permit from the village building inspector. The village building inspector shall issue the permit upon a complete application and the payment of a fee set by resolution of the village board from time-to-time subject to the following terms and conditions:

- (1) The culvert shall be of such size as required for proper drainage along the right-of-way, but not less than 15 inches by 24 feet, and installed with end walls.
- (2) The property owner or permittee will not construct any abutment above the existing road grade at the ends of the culvert underlying the driveway. At a distance of eight feet from the edge of the pavement, the finished grade of the driveway shall be at least four inches below the grade of the edge of the adjacent highway.
- (3) The cost of any and all repairs to driveways extending into public rights-of-way, including, but not limited to, the moving of existing culverts, maintenance and the covering with gravel, shall be borne by the property owner or permittee, unless such repairs were necessitated by the reconstruction of any portion of the public right-of-way by the village.
- (4) Any drainage ditch and public right-of-way affected by the construction of a driveway entrance shall be reconstructed to the original shape, grade and contour of such ditch and right-of-way at the expense of the property owner or permittee.

(Code 1982, § 8.07(1))

Sec. 38-112. Construction required.

No building permit shall be issued by the village building inspector unless a permanent driveway has been constructed from the right-of-way to and on the site upon which construction is to take place. Unless waived by the village board, no driveway shall be deemed permanent unless a culvert of required strength and dimension has been laid under such driveway and has been covered with sufficient gravel to bring it to the same grade as the public right-of-way adjacent thereto. The property owner or permittee shall comply with all regulations relating to the construction or reconstruction of private driveways in section 38-111.

Sec. 38-113. Improperly installed culvert.

If a culvert is not properly installed by the property owner, his agent, employee or contractor, the village shall have the right to remove, reset or replace the culvert at the owner's cost. Prior to removal, resetting or replacement, the village shall notify the property owner in writing of any defect as to such culvert and shall order the owner to correct any defect within such period of time as the village board shall specify, but not less than 30 days. If the property owner requests a hearing before the village with respect to the order, the order shall be stayed until after such

hearing. The village shall promptly bill the property owner for the costs of removal, resetting or replacement. If such bill is not paid, the bill shall be carried onto the tax rolls and collected like other taxes.

Sec. 38-114. Obstructions of ditches.

No person shall fill or obstruct any ditch or culvert alongside any village or public road or underneath any such road with any dirt or debris. No person shall cultivate, plow or remove soil from his land in such manner as to obstruct or fill any ditch along any village road or public highway.

Secs. 38-115 - 38-140. Reserved.

Article IV. Numbering Of Property

Sec. 38-141. Uniform numbering system.

A uniform system of numbering properties and principal buildings as shown on the map identified by the title "Street and House Numbering System—Village of Yorkville" which is filed in the office of the administrator/clerk is adopted for use in the village. This map and all explanatory matter thereon is adopted and made part of this Code.

(Code 1982, § 8.10(1))

Sec. 38-142. Assignment of numbers.

- (a) All properties or parcels of land within the boundaries of the village shall be identified by reference to the uniform numbering system adopted in this article.
- (b) A separate number shall be assigned for each 20 feet of frontage.
- (c) All properties on the east side of north-south streets and all properties on the south side of east-west streets shall be assigned odd numbers. All properties on the west side of north-south streets and all properties on the north side of east-west streets shall be assigned even numbers.
- (d) Each principal building shall bear the number assigned to the frontage on which the front entrance is located. In case a principal building is occupied by more than one business or family dwelling unit, each separate front entrance of such principal building shall bear a separate number.
- (e) Numerals indicating the official numbers for each principal building or each front entrance to such building shall be posted in a manner as to be visible from the street on which the property is located. Such numerals may be obtained at cost from the administrator/clerk, as provided in section 38-143.

(Code 1982, § 8.10(2))

Sec. 38-143. Administration.

- (a) The administrator/clerk shall be responsible for maintaining the numbering system. In the performance of this responsibility he shall be guided by the provisions of section 38-142.
- (b) The administrator/clerk shall keep a record of all numbers assigned under this article.
- (c) The administrator/clerk shall issue to any property owner in the village upon request and at cost a set of numerals for each principal building or separate front entrance to such building. In doing so, he shall issue only numerals for the number assigned to such building under the provisions of this article. Provided, however, that the administrator/clerk may issue additional numerals in accord with the official numbering system whenever a property has been subdivided, a new front entrance opened or undue hardship has been worked on any property owner.

(Code 1982, § 8.10(3))

Secs. 38-144 - 38-160. Reserved.

ARTICLE V. Mailboxes

Sec. 38-161. Placement of mailboxes in the right of way.

Mailboxes are prohibited on village rights-of-way except as hereinafter provided:

- (a) Mailboxes are approved only if they are of a construction or design approved by the United States Postal Service or previously approved by the Postmaster. A copy of the Postmaster General's current guidelines can be obtained at the administrator/clerk's office.
- (b) Newspaper tubes are permitted only if provided by the newspaper or of a construction or design that will not present a hazard to the public use of the right-of-way. Where the newspaper tube used has not been provided by the newspaper, the administrator/clerk or designee shall have authority to approve the tube. If the administrator/clerk or designee refuses to approve the newspaper tube, it must be removed.
- (c) A nameplate bearing the name and address number of the mailbox owner shall be permitted on each box.
- (d) The support for the mailbox and newspaper tube shall adhere to the standards governing construction of mailbox supports as established by the Wisconsin Department of Transportation ("DOT"), and shall not constitute a hazard to the public use of the right-of-way. A copy of the DOT's current guidelines can be obtained at the administrator/clerk's office.
- (e) Mailbox and newspaper tubes must be located on the side of the road required by the United States Postal Service and so that the door to the mailbox or protruding end of the newspaper tube is at least one (1) foot from the paved portion of the highway.

- (1) Where there are guardrails, mailboxes should be installed behind the guardrails, projecting enough for the carrier to reach them.
- (2) In the event no shoulder exists due to a tree line or other obstacle, the face of the mailbox must be flush with the tree line or obstacle.
- (f) The owner of each mailbox and/or newspaper tube shall, within twenty-four (24) hours after the end of each snowfall, remove all snow and ice which has fallen or accumulated in front of said mailbox and/or said newspaper tube and shall remove the snow for a distance of fifteen (15) feet to each side of said mailbox and/or newspaper tube.
- (g) No other object of any kind shall be attached to the mailbox, newspaper tube or their supports. No other objects, including, but not limited to, landscaping boulders or fences may be placed on the right-of-way. As provided in Wis. Stat. §346.41(3), blue reflectors may be placed on the mailboxes to increase visibility.
- (h) This Section is not intended to and shall not be construed to create any affirmative duty on the part of the village to locate and remove obstructing mailboxes. The village is not liable for damage to mailboxes caused by snowplowing, nor for bodily injury or property damage caused to third parties by mailboxes.

Secs. 38-162 - 38-170. Reserved.

Article VI. Ponds

Editor's note— Section 1 of Ord. No. 2006-05, adopted Aug. 14, 2006, amended art. V, which consisted of §§ 38-171—38-250, in its entirety to read as herein set out. Former art. V, pertained to similar subject matter and derived from §§ 8.11 and 8.12 of the 1982 Code.

Division 1. Generally

Secs. 38-171 - 38-190. Reserved.

Division 2. Permit

Sec. 38-191. Required.

No person shall construct or make improvements to any pond located within the village without first obtaining a permit from the village board. Except as set forth in this article, the provisions of this article apply to all ponds including, but not limited to, those ponds utilized for drainage, recreation, aesthetics, sediment control, and fish management.

(Ord. No. 2006-05, § 1, 8-14-2006)

Sec. 38-192. Exceptions.

The following ponds are excluded from the provisions of this article: Ponds used primarily for ornamental, decorative or waterfowl purposes (e.g., fountains, reflection pools, koi ponds, wildlife scrapes, etc.) with a depth of less than 24 inches, a diameter less than 25 feet or an area less than 500 square feet, stormwater drainage ponds created by or for a village drainage utility district, and ponds which have been previously reviewed and approved as part of an erosion control plan. Existing ponds are also excluded from the provisions of this article, but any enlargement, dredging or modification to such ponds makes them subject to this article.
(Ord. No. 2006-05, § 1, 8-14-2006)

Sec. 38-193. Site plan required.

Before a permit may be issued, the applicant shall provide the village with a detailed site plan of the proposed pond excavation showing cross-section, depth, area and location of the pond as well as addressing disposition and storage of spoils from the excavation. The plan shall be drawn at a scale of not less than one inch equals 100 feet using the National Geodetic Vertical datum (NGVD) of 1929 for elevations and a bearings base of grid north of the Wisconsin coordinate system, South Zone. Racine County topographic maps may be used for undeveloped or minimally disturbed areas. Areas that have been developed or where substantial disturbance to the original grade has been made will require a survey. The plan shall contain measures to protect against overflow and shall address drainage into and surrounding the pond area. The plan shall detail the flow of drainage in the event of overflow and demonstrate that adjacent properties will be adequately protected in the event of overflow or from new or altered runoff patterns created by relocated excavation materials. A restoration plan for the excavation is also required. Additional information shall be supplied to the village, as requested by the village engineer.
(Ord. No. 2006-05, § 1, 8-14-2006)

Sec. 38-194. Engineering report.

At the discretion of the village board, an engineering report may be required. The engineering report shall be submitted to the village at the applicant's expense.
(Ord. No. 2006-05, § 1, 8-14-2006)

Sec. 38-195. Conditions to permit.

The village board may attach conditions to the issuance of a pond permit to address such things (without limitation) as maintenance, weed control, depth of pond, landscaping and aesthetics, and measures to secure the pond to avoid personal injury to trespassers. Temporary seeding and/or silt fencing may be required by the village engineer for partially completed projects. Other conditions appropriate to the area under consideration may be added to the permit by the village board, after consultation with the village engineer.
(Ord. No. 2006-05, § 1, 8-14-2006)

Sec. 38-196. Additional permits.

Before proceeding with excavation, the applicant, in addition to obtaining a permit from the village, must secure all necessary permits from pertinent county, state and federal government agencies. It is the applicant's responsibility to verify that any potential environmental features such as wetlands, flood plain, navigable waterways, environmental corridors, etc, are identified and all necessary permits relating thereto are obtained.

(Ord. No. 2006-05, § 1, 8-14-2006)

Sec. 38-197. Permit fee.

At the time the application is filed, the applicant shall pay fees as set forth in the schedule of fees on file in the village administrator/clerk's office and may be revised by village board resolution. In addition, the applicant shall reimburse the village for engineering, planning legal and administrative expenses incurred in processing, reviewing, revising, and approving the permit and site plan, where those expenses exceed the amount of the permit fee.

(Ord. No. 2006-05, § 1, 8-14-2006; Ord. No. 2008-01, § 21, 12-22-2008)

Sec. 38-198. Variance/waiver.

The village board may waive or grant a partial variance from any requirement or prohibition created by this article if the Board specifically determines that the permittee's special circumstances make such a waiver or variance appropriate.

(Ord. No. 2006-05, § 1, 8-14-2006)

Secs. 38-199 - 38-220. Reserved.

Division 3. Standards For Construction

Sec. 38-221. Technical requirements.

Side slopes of ponds shall not exceed a 4:1 ratio. The boundaries of the pond, as shown on the approved site plan, shall be set back a minimum of 50 feet from all property lines. The village engineer may require safety ledges, where appropriate, in accordance with the specifications set forth below. All ponds shall have a minimum depth of five feet. In addition, ponds shall be constructed in conformance with the standards of the Soil Conservation Service Technical Guide and, where applicable, the Wet Detention Basin of the Wisconsin Department of Natural Resources Conservation Practice Standard, copies of which are available through the village engineer, as well as other applicable provisions of Wis. Admin. Code NR 151 (Runoff Management) and NR 333 (Dam Design and Construction). The village engineer may require the applicant to submit an engineering analysis certifying the structural adequacy of the proposed pond.

(Ord. No. 2006-05, § 1, 8-14-2006)

Sec. 38-222. Excavated material.

All excavated material shall remain on-site and shall be integrated into the restoration of the pond area.

(Ord. No. 2006-05, § 1, 8-14-2006)

Sec. 38-223. Rezoning.

If the excavated material from the project site is sold, given away, or is otherwise removed from the site in a manner in which the principal use appears to be soil removal, and pond construction appears to be a secondary result, the parcel shall be rezoned to M-4 quarrying district and a mineral extraction conditional use permit shall be obtained prior to any excavation or grading on the parcel.

(Ord. No. 2006-05, § 1, 8-14-2006)

Sec. 38-224. Penalty.

- (1) *Forfeiture.* Any person who violates any provision of this chapter or who shall construct or make improvements to any pond located within the Village of Yorkville without first obtaining a permit as required herein shall, upon conviction thereof, forfeit not less than \$50.00 nor more than \$500.00 together with the cost of prosecution. Further, each such day of continued violation of the provisions of this chapter shall be considered a separate offense.
- (2) *Injunction.* In case any premises are used in violation of this chapter, an action in the name of the village may be instituted to enjoin such violation or intended violation, and this remedy shall be in addition to other remedies set forth in this section.
- (3) *Abatement.*
 - (a) *Notice to owner.* In the event that any person shall construct or make improvements to any pond located within the Village of Yorkville without first obtaining a permit as required herein or who shall construct or make improvements to any pond located within the Village of Yorkville contrary to this chapter, the village may serve notice on the person causing, permitting or maintaining such a violation and upon the owner or the occupant of the premises on which such a violation is caused, permitted or maintained and to post a copy of said notice on the premises. Such notice shall direct that the person causing, permitting or maintaining such a violation or the owner or the occupant of the premises to abate or remove each such violation or to obtain the necessary permits required hereby within seven days from the date of posting and shall state that unless such action is taken, that the village will cause the same to be abated, removed or otherwise brought into compliance and will charge the costs thereof to the owner, occupant or person causing, permitting or maintaining the violation, as the case may be. The notice shall also inform the owner, occupant, or person causing, permitting, or maintaining the violation of the right to have the determination

of the village reviewed in accordance with chapter 2, article VII of the village's Code of Ordinances.

- (b) *Abatement or restoration by the village.* If the action required by the notice issued pursuant to this section is not taken within the time provided or if the owner, occupant or person causing, permitting or maintaining the violation cannot be found, the village shall cause the abatement or removal of such violation, and if necessary to bring the premises into compliance, the village shall take action to restore the property to a state consistent with the condition of the property prior to the construction of the pond or the improvements made to the pond which were made in violation of the chapter.
- (c) *Cost of abatement or restoration.* In addition to any other penalty imposed for this section, the cost of abating a violation of the chapter by the village shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the violation, and if notice to abate and/or remedy the violation has been given to the owner, such costs shall be assessed against the real estate as a special charge.

(Ord. No. 2006-05, § 1, 8-14-2006)

Secs. 38-225 - 38-250. Reserved.

Article VII. Special Assessments ^[4]

State Law reference— Special assessments, Wis. Stat. § 66.0701 et seq. (Code 1982, § 25.10)

Sec. 38-251. Purpose.

In addition to other methods provided by law, special assessments for any public work or improvement or any current service may be levied in accordance with the provisions of this article.
(Code 1982, § 8.12(1))

Sec. 38-252. Resolution required.

Whenever the village board shall determine that any public work or improvement or any current service shall be financed in whole or in part by special assessments levied under this article, the village board shall adopt a resolution specifying this intention and the time, either before or after completion of the work or improvement, when the amount of the assessment will be determined and levied, the number of annual installments, if any, in which assessments may be paid, the rate of interest to be charged on the unpaid balance and the terms on which any of the assessments may be deferred while no use of the improvement is made in connection with the property.
(Code 1982, § 8.12(2))

Sec. 38-253. Application of state statutes.

The provisions of Wis. Stat. §§ 66.0703 and 66.0721 shall apply to special assessments levied under this article except that, when the village board determines by resolution that the hearing on the assessments be held subsequent to the completion of the work or improvement or the rendering of the service, the report required by Wis. Stat. § 66.0703(5) shall contain a statement of the final cost of the work, service or improvement in lieu of an estimate of the cost.
(Code 1982, § 8.12(3))

Sec. 38-254. Notice of hearing.

Notice of the time and place of the public hearing on any special assessment proposed to be levied and notice of the final assessment and terms of payment thereof shall be given in the manner prescribed by Wis. Stat. § 66.0703(7) and (8)(d).
(Code 1982, § 8.12(4))

Sec. 38-255. Lien against assessed property.

Any special assessment levied under this article shall be a lien against the property assessed from the date of the final resolution of the village board determining the amount of the levy.
(Code 1982, § 8.12(5))

Sec. 38-256. Appeal.

Any person against whose property a special assessment is levied under this article may appeal therefrom in the manner prescribed by Wis. Stat. § 66.0703(12), within 40 days of the date of the final determination of the village board.
(Code 1982, § 8.12(6))

Article VIII. Official Map

Sec. 38-257. Introduction.

WHEREAS, the Village Board of the Village of Yorkville, upon recommendation of the Village Plan Commission, adopted on December 16, 2019, an Interstate 94 Corridor Neighborhood Plan as a part of the Village Comprehensive Plan; and

WHEREAS, the Village Plan Commission has recommended to the Village Board that an Official Map be established for a portion of the Village of Yorkville; and

WHEREAS, a public hearing was held before the Village Board of the Village of Yorkville to receive public input on April 10, 2023, and June 12, 2023, on the question of the adoption of an Official Map; and

WHEREAS, the Village Board of the Village of Yorkville has determined that it is necessary for the proper physical development of the Village to establish an Official Map for a portion of the Village of Yorkville;

NOW, THEREFORE, the Village Board of the Village of Yorkville, Racine County, Wisconsin, do hereby ordain as follows:

Sec. 38-258. Intent.

It is the intent of the Village Board establish an Official Map for the purpose of serving and promoting the public health, safety, convenience, economy, orderliness, and general welfare of the community; to further the orderly layout and use of land; to stabilize the location of real property boundary lines; to ensure proper legal descriptions and proper monumenting of land; to facilitate adequate provision for transportation, parks, playgrounds, and storm water drainage; and to facilitate the further subdivision of larger tracts into smaller parcels of land.

Sec. 38-259. Authority.

This Ordinance is enacted under the authority granted by Sections 61.35 and 62.23(6) of the Wisconsin Statutes.

Sec. 38-260. Jurisdiction.

The jurisdictional area of this Ordinance shall include all lands within the boundaries of Section 24, T3N, R21E within the Village of Yorkville.

Sec. 38-261. Official map.

There is hereby established, as the Official Map of the Village of Yorkville, the Map which accompanies and is made a part of this Ordinance bearing the date of May 24, 2023. This map is hereby designated as the "Official Map of the Village of Yorkville," and all notations, references, and other information shown thereon shall be as much a part of this Ordinance as though the matters and information thereon were fully described herein. The Official Map shall show the location and extent of all platted and existing streets, highways, drainageways, existing and planned public water and sanitary sewer facilities, parkways, parks and playgrounds, airports and airport affected areas, and historic districts within the jurisdictional area described above of the Village of Yorkville as heretofore laid out, adopted and established by law.

Sec. 38-262. Changes and additions.

The Village Board may change or add to the Official Map so as to establish the exterior lines of planned new streets, highways, historic districts, parkways, railroad rights-of-way, public transit facilities, waterways, parks or playgrounds, or to widen, narrow, extend, or close any platted, existing, proposed, or planned streets, highways, planned public water and sanitary sewer facilities, waterways which are included in a comprehensive surface water drainage plan, parkways, and parks or playgrounds. The locating, widening or closing, or the approval of the locating, widening or closing of streets, highways, waterways, parkways, railroad rights-of-way, public transit facilities, parks or playgrounds by the Village under provisions of law other than this section shall be deemed to amend the Official Map, and are subject to this section, except that

changes or additions made by a subdivision plat approved by the Village under Ch. 236, Wis. Stats., do not require the public hearing specified below if the changes or additions do not affect any land outside the platted area.

- (1) **Referral to Village Plan Commission.** The Village Board shall refer any change or addition to the Official Map to the Village Plan Commission for review and report thereon prior to adoption. The Village Plan Commission shall report its recommendation to the Village Board within sixty (60) days, but if the Village Plan Commission does not make its report within 60 days of referral, it forfeits the right to further suspend action.
- (2) **Public Hearing Required.** The Village Board shall hold a public hearing prior to adoption of any changes or additions to the Official Map. Notice of the public hearing shall be published as a Class 2 notice pursuant to Chapter 985 of the Wisconsin Statutes.
- (3) **Effect of Amendment.** When adopted, amendments become a part of the Official Map of the Village, and are conclusive with respect to the location and width of the streets, highways, public water and sanitary sewer facilities, historic districts, waterways and parkways and the location and extent of railroad rights-of-way, public transit facilities, parks and playgrounds shown on the map. The placing of any street, highway, waterway, parkway, railroad right-of-way, public transit facility, park or playground line or lines upon the Official Map does not constitute the opening or establishment of any street, parkway, railroad right-of-way, public transit facility, park or playground or alteration of any waterway, or the taking or acceptance of any land for these purposes.

Sec. 38-263. Building permits.

- (a) ***Building Permits Generally.*** No permit may be issued to construct or enlarge any building within the limits of any street, highway, waterway, railroad right-of-way, public transit facility or parkway, shown or laid out on the map except as provided in this section.
 - (1) ***Application.*** Any person desiring to construct or enlarge a building within the limits of a street, highway, waterway, railroad right-of-way, public transit facility or parkway shown on the Official Map within the incorporated limits of the Village shall apply to the authorized official of the Village for a building permit. Unless an application is made, and the building permit granted or not denied within 30 days, the person is not entitled to compensation for damage to the building in the course of construction of the street, highway, railroad right-of-way, public transit facility or parkway shown on the Official Map within the incorporated limits of the Village. Unless an application is made, and the building permit granted or not denied within 30 days, the person is not entitled to compensation for damage to the building in the course of construction or alteration of the waterway shown on the Official Map within the incorporated limits of the Village.
 - (2) ***Appeals.*** If the land within the mapped street, highway, waterway, railroad right-of-way, public transit facility or parkway is not yielding a fair return, the Village Board of Appeals may, by the vote of a majority of its members, grant a permit for a building or addition in the path of the street, highway, waterway, railroad right-of-

way, public transit facility or parkway, which will as little as practicable increase the cost of opening the street, highway, waterway, railroad right-of-way, public transit facility or parkway or tend to cause a change of the Official Map. Before taking any action authorized in this subsection, the Village Board of Appeals shall hold a hearing at which parties in interest and others shall have an opportunity to be heard. At least 15 days before the hearing, notice of the time and place of the hearing shall be published as a class 1 notice, under Ch. 985, Wis. Stats. Any such decision shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decisions of a board of appeals upon zoning regulations. The Village Board of Appeals may impose reasonable requirements as a condition of granting the permit to promote the health, convenience, safety or general welfare of the community. The Village Board of Appeals shall refuse a permit where the applicant will not be substantially affected by not constructing the addition or by placing the building outside the mapped street, highway, waterway, railroad right-of-way, public transit facility or parkway.

(b) Building Permits and Access Requirements.

- (1) No permit for the erection of any building shall be issued unless a street, highway or parkway giving access to such proposed structure has been duly placed on the Official Map.
- (2) *Appeals.* Where the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and where the circumstances of the case do not require the structure to be related to existing or proposed streets, highways or parkways, the applicant for such a permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the Village Board of Appeals which has the power to grant variances or exceptions in zoning regulations, and the same provisions are applied to appeals of this section as are provided in cases of appeals on zoning regulations. Before taking any action authorized in this subsection, the Village Board of Appeals shall hold a hearing at which parties in interest and others shall have an opportunity to be heard. At least 15 days before the hearing, notice of the time and place of the hearing shall be published as a class 1 notice, under Ch. 985, Wis. Stats. The Village Board of Appeals may, in passing on such appeal, make any reasonable exception, and issue the permit subject to conditions that will protect any future street, highway or parkway layout. Any such decision shall be subject to review by certiorari issued by a court of record in the same manner and pursuant to the same provisions as in appeals from the decision of the Village Board of Appeals upon zoning regulations.

Sec. 38-264. Municipal improvements.

No public sewer, water, or other municipal street utility or improvement shall be constructed in any street, highway, or parkway within the jurisdictional area of this Ordinance until such street, highway, or parkway is duly placed on the Official Map.

Sec. 38-265. Certified copy of map.

There shall be a certified copy of the Official Map described above. The certified copy shall be kept in the office of the Village Administrator/Clerk and shall be available for inspection by

any interested person during regular office hours. The certified copy shall bear on its face a certification that it is a true copy of the Official Map described in and accompanying this Ordinance and shall show the date of adoption of this Ordinance and shall be signed by the Village President and countersigned by the Village Administrator/Clerk. Thereafter, no change or addition to such Official Map shall become effective until adopted as provided above and until it shall have been indicated by the appropriate convention on the certified copy of the Official Map and a certificate placed thereon or attached thereto bearing the number and date of adoption of the amending ordinance. The certificate shall be signed by the Village President and countersigned by the Village Administrator/Clerk.

Sec. 38-266. Ordinance and amendments to be recorded with Register of Deeds.

The Village Administrator/Clerk shall be responsible immediately upon adoption of the Official Map or any amendment thereto to record with the Register of Deeds of the County of Racine, Wisconsin a certified copy of the ordinance indicating that the Official Map, or Amended Official Map, can be viewed in the office of the Village Administrator/Clerk.

Sec. 38-267. Enforcement.

It shall be the duty of the Village Building Inspector, Zoning Administrator, Village Administrator/Clerk or designee of any of the above to enforce the provisions of this Ordinance.

Sec. 38-268. Penalties.

- (a) Any Person, Firm, or Corporation who fails to comply with the provisions of this Ordinance shall, upon conviction thereof, forfeit not more than Two Hundred Dollars (\$200.00) and not less than Fifty Dollars (\$50.00) and cost of prosecution for each violation, and in default of payment of such forfeiture and costs shall be imprisoned in the County jail until payment thereof but not exceeding 30 days. Each day a violation exists shall constitute a separate offense.
- (b) No Damages shall be allowed for the taking by any governmental agency, for street, highway, drainageway, or parkway purposes, any building erected in violation of this Ordinance.

Sec. 38-269. Severability.

If any section or part of this Ordinance is adjudged unconstitutional or invalid by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby. All other ordinances or parts of ordinances of the Village inconsistent with this Ordinance to the extent of the inconsistency only are hereby repealed.

Sec. 38-270. Effective date.

This ordinance shall become effective upon adoption and publication as provided by law.