

# ORDINANCE NO. 440

## STREET AND SIDEWALK EXCAVATIONS AND TREE PLANTING AND BOULEVARD CARE ORDINANCE

The West Salem Village Board of Trustees do hereby ordain as follows:

Section 1: Sections 5.05, 5.05(A) and 5.05(B) are hereby deleted and re-created to read as follows:

5.05 Street, Boulevard, and Sidewalk Excavations.

(A) Permit Required: No person or entity or their agents or employees or contractors, shall make or cause to be made any opening or excavation in any public street, public alley, public way, public ditch, public ground, public sidewalk, or Village-owned easement within the Village without a permit therefor from the Village Administrator with approval of the Public Works Director. Permits shall be valid for a period of thirty (30) days from the date of approval, except as provided for under Section 5.05(C) for pavement replacement.

(B) Fees. The fees for a Street Opening Permit and a Boulevard Permit shall be as set forth in Appendix "A" Fee Schedule and shall be paid to the Village Administrator who shall issue a receipt therefor. If the opening or excavating of any public way is made prior to the receipt of an approved Street Opening Permit or Boulevard Opening Permit from the Village, the application and review fee shall be two (2) times the permit amount as set forth in Appendix "A" Fee Schedule.

(C) Bond. Before a permit for excavating or opening any street may be issued, the applicant must execute and deposit with the Village Administrator an Indemnity Bond approved by the Village Administrator or a Cash Bond as set forth in Appendix "A" Fee Schedule, either conditioned that the applicant will fill up and place in good and safe

condition all excavations and openings made in the street, and will replace and restore the pavement over any openings made as near as can be to the state and condition in which it was found, and keep and maintain the same in such condition, normal wear and tear excepted, to the satisfaction of the Village Administrator and Public Works Director for a period of one (1) year. Such bond shall guarantee that if the Village shall elect to make the street repair, the person opening the street will pay all costs of making such repair and of maintaining the same for one (1) year. Such bond shall be further conditioned that applicant will observe the provisions of all State laws, ordinances, rules and regulations governing the issuance of permits under this Section. Such bonds may be filed individually for each excavation project or shall be a two (2) year bond covering all excavation work done by the principal covering both the initial year when excavation is first made and the following year. References in this paragraph to "keeping and maintaining" and "repairing and maintaining" the street for a one (1) year period of time refers to one (1) year after final completion of the repair. All repairs shall be completed by the arrival of the first November 15<sup>th</sup> following the initial excavation.

(D) Regulations Governing Street, Public Way, and Sidewalk Openings.

(1) Frozen Ground. No opening in the streets or sidewalks for any purpose shall be permitted when the ground is frozen, except where necessary as determined by the Public Works Director.

(2) Paving Removal. In opening any street or other public way, all paving or ballasting materials shall be removed with the least possible loss of or injury to surfacing material and together with the excavated material from trenches shall be placed so as to cause the least practicable inconvenience to the public and permit the free flow of water along gutters.

(3) Public Protection. Every person shall enclose with sufficient barriers each opening made in the streets or public ways of the Village. All machinery and equipment shall be locked or otherwise effectively safeguarded from unauthorized use when not being used by the permittee, agents, or employees. Warning lights shall be kept burning from sunset to sunrise, at least one (1) warning light shall be placed at each end of the opening in the street or way and other lights sufficient in number and properly

spaced to give adequate warning. Except by special permission from the Public Works Director, no trench shall be excavated more than Two Hundred Fifty (250') feet in advance of pipe laying nor left unfilled more than five hundred (500') feet where pipe has been laid. All necessary precautions shall be taken to guard the public effectively from accidents or damage to persons or property through the period of the work. Each person making such opening shall be liable for all damages, including reasonable attorney's fees and costs incurred by the Village in defending any action brought against it for damages, as well as cost of any appeal, that may result from the neglect by such person or such person's employees of any necessary precaution against injury or damage to persons, vehicles, or property of any kind.

(4) Surface Replacement. In opening any street, public way, or sidewalk, the paving materials, sand, gravel and earth or other material moved or penetrated and all surface monuments or hubs must be removed and replaced as nearly as possible in the original condition or position and the same relations to the remainder as before. Any excavated material, which in the opinion of the Public Works Director is not suitable for refilling, shall be replaced with approved backfill material. All rubbish shall be immediately removed, leaving the street, public way, or sidewalk in perfect repair, the same to be so maintained for a period of one (1) year. In refilling the opening, the earth must be puddled or laid in layers not more than six (6") inches in depth and each layer tamped or flushed to prevent after-settling. When the side of the trench will not stand perpendicular, sheathing and braces must be used to prevent caving. No timber, bracing, lagging, sheathing, or other lumber shall be left in any trench. All excavations shall be subject to testing by the Village. Backfilled material not achieving the above compaction requirements shall be removed and recompactd by the permittee. The cost of any retesting shall be paid by the permittee. The Village may elect to have the Village make the pavement repair for any street, public way, or sidewalk opening, in which case the cost of making such repair and of maintaining for one (1) year shall be charged to the person making the street openings.

(5) Curbs. Whenever possible, curbs will be

left intact, and in no case shall such curb be removed without approval of the Public Works Director.

(6) Notice. It shall be the duty of the permittee to notify the Public Works Director and all public and private individuals, firms, and corporations affected by the work to be done at least one (1) business day before such work is to commence. The Public Works Director shall also be notified at least four (4) hours prior to backfilling and/or restoring the surface. The fire department and the police department must be notified before any street is entirely blocked and when it is opened.

(E) Insurance. Prior to commencement of street excavation work, a permittee must furnish the Village Administrator satisfactory written evidence that permittee has in force and will maintain during the life of the permit and the period of excavation public liability insurance of not less than \$1,000,000.00 for one person, \$2,000,000.00 for one accident and property damage insurance of not less than \$1,000,000.00.

(F) Emergency Excavations Authorized. In the event of an emergency, any person owning or controlling any sewer, water main, conduit or utility in or under any street and his agents or employees may take immediate proper emergency measures to remedy dangerous conditions for the protection of property, life, health, or safety without obtaining a street opening permit or boulevard permit; provided that such person shall apply for a Street Opening Permit or Boulevard Opening Permit not later than the end of the next succeeding business day and shall not make any permanent repairs without first obtaining a Street Opening Permit or Boulevard Opening Permit hereunder. The Public Works Director may require additional street surfacing removal and replacement for streets less than five (5) years old.

(G) Village Work Excluded. The provisions of this Section shall not apply to excavation work under the direction of the Village by Village employees or contractors performing work under contract with the Village necessitating openings or excavations in Village streets, which openings or excavations shall be regulated by the contract between the Village and the contractor.

Section 2: Sections 5.06, 5.07, 5.08, 5.09, 5.10, 5.11, 5.12 and 5.13 are hereby renumbered to 5.07, 5.08, 5.09, 5.10, 5.11, 5.12, 5.13, and 5.14, respectively.

Section 3: Section 5.06 is hereby created to read as follows:

5.06 Driveway Construction and Repair. For the safety of the general public, the Village of West Salem shall determine the location, size, construction, and number of access points to Village-owned public roadways within the Village limits. Design, layout, and construction of private driveways which will be adjacent to a county trunk highway or on a roadway which is within two hundred (200') feet of an intersection of a county trunk highway must obtain approval from the La Crosse County Highway Department before obtaining a permit from the Village of West Salem. It is the Village's intent to provide safe access to properties abutting public roadways suitable for the property to be developed to its highest and best use, provided that access is not deficient or dangerous to the general public. Application for "blind" driveways, wherein the only purpose is to restrict street parking, shall be denied.

(A) Permit Required. A permit is required to construct, reconstruct, alter, or enlarge a driveway. No person shall construct or maintain a driveway across any sidewalk or curbing without first obtaining a Boulevard Opening Permit from the Public Works Director. A Boulevard Opening Permit shall be made at least forty-eight (48) hours in advance of intended installation. Bond and insurance requirements may apply.

(B) Application. Application for such permit shall be made to the Village Administrator for referral to the Public Works Director on a form provided by the Village Administrator and shall be accompanied by a drawing accurately depicting the portion of the proposed private driveway to be constructed, reconstructed, altered, or enlarged lying within the dedicated portion of the public street, the dimensions therefor, and a statement of the materials proposed to be used. The applicant shall pay a fee as set forth in Appendix "A" Fee Schedule. If the

proposed private driveway is a part of construction for a building or other structure for which a building permit has been applied for, no additional fee is required. In no case shall any driveway be installed prior to securing a building permit if the driveway is to service such building or buildings. Upon receipt of the application and the fee, if required, the Public Works Director shall review and approve such application if the proposed driveway complies with the terms and conditions of this and any other applicable Village Ordinance.

(C) All applications for permits shall be made on a form prescribed by the Public Works Director and be accompanied by a sketch showing the exact location of:

- (1) Driveway and approaches;
- (2) Property lines;
- (3) Right-of-way lines;
- (4) Intersecting roads, streets, or roadways within two hundred (200') feet;
- (5) Width of right-of-way;
- (6) Width and type of road surface;
- (7) Distance from right-of-way line to other structures on the site;
- (8) Type of surface and width of driveways;
- (9) Proposed turning radii; and
- (10) Other pertinent information as may be required.

(D) Application Provisions. All Boulevard Opening Permit applications shall contain the applicant's statement that:

(1) The applicant represents all parties in interest, and that such proposed driveway is for the bona fide purpose of securing access to his or her property and not for the purpose of parking or servicing vehicles, advertising, storage, or merchandising of goods within the dedicated portion of the Village right-of-way, or for any other purpose.

(2) The Village, notwithstanding the construction of such driveway, reserves the right to make any changes, additions, repairs, or relocations, widening and maintaining the street without compensating the owner of such private driveway for the damage or destruction of such private roadway.

(3) The permittee, his or her successors or assigns, agrees to indemnify and hold harmless the Village of West Salem, its officials, officers,

agents, or employees, against any claim or any cause of action for personal injury or property damage sustained by reason of the exercise of such permit.

(4) The Village of West Salem does not assume any responsibility for the removal or clearance of snow, ice, or sleet or the opening of any windrows of such material upon such portion of such driveway within the dedicated portion of the Village street, public way, or right-of-way.

(E) Driveway Location, Design, and Construction Requirements. The location, design, and construction of driveways shall be in accordance with the following:

(1) General Design. Private driveways shall be of such width and so located that all of such driveways and their appurtenances are within the limits of the frontage abutting the street of the property served. All driveways must be located within the extended property lines unless accompanied by a special agreement from the abutting property owner, with extension of said property lines to be on a ninety (90°) degree angle from the street line. If the curb line along two adjoining properties does not form a straight line along for the full curb length of both lots, the ninety (90°) degree angle rule for extended property lines, in all likelihood, will not work. In such a situation, the Public Works Director sua sponte or on the request of either property owner shall establish such an extended property line covering the boulevard area between the lot line and the curb line between the property owners on an equitable basis which shall be established in writing by the Public Works Director and placed in the Village's files and provided to both property owners. This equitable determination of the extended property line covering the boulevard area between the lot line and the curb line between the property owners shall take into account the rules for determining riparian rights as found in the Wisconsin Administrative Code Natural Resources Section 326.07 and apply them in an analogous way to the extent practicable such that neither lot owner may place a drive or other boulevard improvement so close to the lot line considering the angle of the curb so as to unreasonably obstruct the adjoining owners use and enjoyment of his or her lot. Driveways shall not provide direct ingress or egress to or from any street intersection area and shall not

encroach upon or occupy areas of the street right-of-way required for effective traffic control or for street signs or signals. A driveway shall be so located and constructed that vehicles approaching or using it shall have adequate sight distance along the street. Driveway approaches shall be at least ten (10') feet apart, except by special permission from the Public Works Director, and driveways shall in all cases be placed wherever possible as not to interfere with utilities in place.

(2) Number. The number of driveways to serve an individual property fronting on a street shall be one (1), except where deemed necessary and feasible by the Public Works Director for reasonable and adequate service to the property, considering the safety, convenience, and utility of the street.

(3) Island Boulevard Area. The island boulevard area in the street right-of-way between successive driveways or adjoining a driveway and between the highway shoulder and right-of-way shall constitute a restricted area and may be filled in and graded only as provided in Section 5.10.

(4) Drainage. The surface of the driveway connecting with the street cross sections shall slope downward and away from the highway shoulder a sufficient distance to preclude ordinary surface water drainage flowing onto the street roadbed. No driveway apron shall extend out into the street further than the face of the curb, and under no circumstances shall such driveway apron extend into the gutter area. All driveway entrances and approaches shall be so constructed that they shall not interfere with the drainage of streets, side ditches, or roadside areas or with any existing structure on the right-of-way.

(5) Reconstruction of Sidewalks and Curb and Gutter. When the construction of a driveway requires the removal of a curb or gutter, the new connections shall be of equivalent acceptable material and curb returns shall be provided or restored in a neat, workmanlike manner. The driveway surface shall be connected with the highway pavement and the sidewalk, if any, in a neat, workmanlike manner. The driveway construction shall include the replacement of such sidewalk areas which are inadequate or which are or may be damaged by means of vehicle travel across the sidewalk. All driveway entrances and approaches which are constructed across sidewalks shall be paved in

accordance with the requirements for sidewalk construction in Section 5.04 of this Code insofar as such requirements are applicable, including thickness requirements. Standard thickness of residential driveway approaches will be six (6") inches thick.

(6) Relocation of Utilities. Any costs of relocating utilities shall be the responsibility of the property owner with approval of the Public Works Director necessary before any utility may be relocated and the driveway installed.

(7) Variances. Any of the above requirements may be varied by the Public Works Director in such instances where the peculiar nature of the property or the design of the street may make the rigid adherence to the above requirements impossible or impractical.

(F) Special Requirements for Business and Industrial Driveways. The following regulations are applicable to driveways serving business or industrial establishments:

(1) Width of Driveway. The maximum permitted width of a business or industrial driveway approach shall be thirty-five (35') feet at the curb line, except as increased by permissible radii. In instances where the unique nature of the business or industrial activity or the physical characteristics of the land would require a driveway of greater width than herein specified, the Public Works Director may permit a driveway of additional width.

(2) Angular Placement of Driveway. The angle between the centerline of the driveway and curb line shall not be less than forty-five (45') feet.

(3) Island Areas. Where the public sidewalk is adjacent to the curb, an island of a minimum length of six (6') feet measured along the curb line shall be placed between each entrance to a Village street. The curb shall be left intact for the length of this island. Where the public sidewalk is remote from the curb, an island of a minimum length of ten (10') feet measured along the right-of-way line shall be maintained along each entrance to the Village street. All flares shall be tangent to the curb line. A curb length of not less than three (3') feet shall be left undisturbed adjacent to each property line to serve as an island area in the event an adjoining property owner applies for a driveway permit to serve its property.

(G) Special Requirements for Residential Driveways.

The following regulations are applicable to driveways serving residential property:

(1) Width. Unless special permission is first received from the Public Works Director, a residential single-type driveway shall be no greater than twenty-four (24') feet wide at the outer or street edge of the sidewalk. Residential double-type driveways shall be no greater than twenty-four (24') feet wide at the curb line and eighteen (18') feet wide at the outer or street edge of the sidewalk.

(2) Angular Placements. The centerline of the driveway may be parallel to the property line of the lot where access is required or at right angles to the curb line.

(H) Prohibited Driveways.

(1) No person, firm, or corporation shall place, construct, locate in, or cause to be placed, constructed, or located in, any obstruction or structure within the limits of any public road, highway, or street in the Village of West Salem except as permitted by this Section. As used herein, the word "structure" includes private driveways, a portion of which extends into any public road, highway, or street, and which is in non-conformance with this Chapter.

(2) No driveway shall be closer than thirty-five (35') feet to the extended street line at an intersection. At street intersections, a driveway shall not provide direct ingress or egress to or from the street intersection area and shall not occupy areas of the roadway deemed necessary by the Village for effective traffic control or for highway signs or signals.

(3) The grade of that portion of any private driveway or pedestrian path located within the limits of any public road, highway, or street shall be such as shall meet the grade of the existing public roadway at its edge and not cause an obstruction to the maintenance or clearing of such public roadway.

(4) No driveway apron shall extend out into the street further than the facing of the curb and under no circumstances shall such driveway apron extend into the gutter area. All driveway entrances and approaches shall be constructed as not to interfere with the drainage of streets, side ditches, or

roadside areas, or with any existing structure on the right-of-way.

(5) No portion of any curb, parapet, or retaining wall, rising above the grade of the driveway, erected by the owner of the premises involved shall extend beyond the culvert spanning the water course located in such public way.

(I) Inspection. Within forty-eight (48) hours after completion of the work, the owner of the abutting lands shall notify the Public Works Director of such completion. The Public Works Director shall inspect such work within a reasonable time to ensure it conforms to this Section. If work does not conform, the owner promptly shall correct the work, or cause such work to be corrected. If work is not corrected, permittee shall be subject to the penalties provided in this Section.

Section 4: Section 5.10(H) is hereby deleted and re-created as follows:

5.10(H) Boulevard Changes Prohibited. No person shall change the condition of any boulevard area within the Village in a residential area without written approval in the form of a Boulevard Permit from the Public Works Director, unless changing the surface to grass. Prohibited changes include, but are not limited to, installation of fencing, paving over boulevard areas with concrete, asphalt, recycled asphalt, brick pavers, gravel, aggregate, rocks, or the removal of grass or sod, and/or damage to or removal of boulevard trees. All that part of the boulevard in a residential area not covered by a Village required sidewalk shall be kept free and clear of all noxious weeds and shall not, after the enactment of this ordinance be paved, surfaced, or covered with any material which shall prevent the growth and maintenance of a lawn. The Public Works Director may grant a written variance against these prohibitions where the width or some other condition of the boulevard is such that grass is not practicable. Future planting of evergreens in a public way is prohibited. All existing evergreens within a public way must be removed. All existing and future shrubbery within a public way must be removed unless it complies with 5.10(I). Placement of a new sidewalk perpendicular to the street and connecting to the street as well as driveway curb cuts and driveway aprons must have permit approval from the Public Works Director.

Section 5: This Ordinance shall become effective and in full force and effect from and after its passage and publication as required by law.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

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Dennis Manthei, Village President

VILLAGE SEAL

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Teresa L. Schnitzler  
Village Administrator/Clerk-Treasurer

ADOPTED: \_\_\_\_\_

PUBLISHED: \_\_\_\_\_