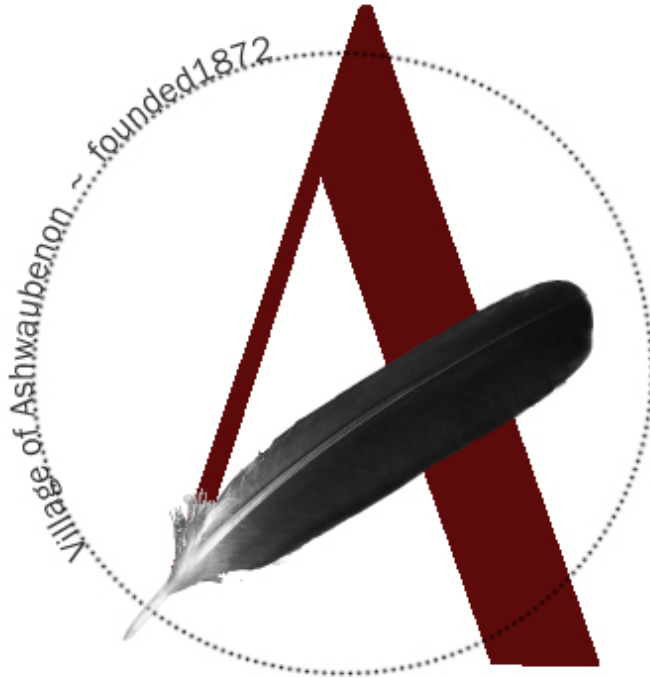


Village of Ashwaubenon

Municipal Code Book

Friday, March 24, 2017 3:04 PM



Printed for:
Chapter 19 - Streets, Sidewalks, And Other Public Places

Municipal Code Book

Chapter 19 - Streets, Sidewalks, And Other Public Places	4
Article 1 - In General	4
19-1-2 Special Assessment Procedures	4
Article 2 - Streets And Sidewalks	4
19-2-48 Establishment of Grades	4
19-2-49 Altering Grade Prohibited	4
19-2-50 Yard Grades; Erosion and Flooding Control	5
19-2-74 Right of Way	5
19-2-75 Definitions	6
19-2-76 Administration	8
19-2-77 Registration for Right-of-Way Occupancy	8
19-2-78 Registration Information	9
19-2-79 Registration Fee	10
19-2-80 Excavation Permit Requirement	10
19-2-81 Excavation Permit Application	10
19-2-82 Excavation Permit Fee	12
19-2-83 Right-of-Way Repair	13
19-2-84 Inspection	14
19-2-85 Fall Radius/Breakaway Requirements	14
19-2-86 Joint Applications	14
19-2-87 Supplementary Applications	14
19-2-88 Other Obligations	15
19-2-89 Revocations, Suspensions, Refusals to Issue or Extend Permits	15
19-2-90 Work Done Without a Permit	16
19-2-91 Supplementary Notification	17
19-2-92 Location of Facilities	17
19-2-93 Relocation of Facilities	18
19-2-94 Interference with Other Facilities during Municipal Construction	18
19-2-95 Indemnification	18
19-2-96 Abandoned Facilities	19
19-2-97 Reservation of Regulatory and Police Powers/Severability	19
19-2-98 Encroachment or Obstruction Prohibited	20
19-2-99 Exceptions	20
19-2-100 Protection of Building Materials Placed on Streets, Alleys or Sidewalks	20
19-2-129 Damaging Curbs	20
19-2-130 Curb Mailbox Regulations	21
19-2-157 Official Street Map	21
19-2-158 Official Street Map Amendments	22
19-2-159 Streets on Map Not Deemed Open	22
19-2-160 Appeals	22
Article 3 - Snow Removal	23

19-3-189 Duty of Owner or Occupant of Property Abutting a Public Sidewalk; Exception 23

19-3-190 Deposit of Snow or Ice on Street 23

19-3-191 Village Responsible for Snow/Debris Removal in School Areas 24

Chapter 19 - Streets, Sidewalks, And Other Public Places

Article 1 - In General

19-1-2 Special Assessment Procedures

- (A) 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 section.
- (B) 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 section, it 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 assessments 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.
- (C) The provisions of Wis. Stats. § 66.0703 shall apply to special assessments levied under this section 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. Stats. § 66.0703(4) shall contain a statement of the final cost of the work, service or improvement in lieu of an estimate of the cost.
- (D) 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. Stats. § 66.0703(7) and (8)(d).
- (E) Any special assessment levied under this section 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.
- (F) Any person against whose property a special assessment is levied under this section may appeal therefrom in the manner prescribed by Wis. Stats. § 66.0703(12), within 90 days of the date of the final determination of the village board.

(Code 2006, § 8.13; Ord. No. O9-1-03, 9-9-2003) State law reference— Special assessments, Wis. Stats. § 66.0703.

Article 2 - Streets And Sidewalks

19-2-48 Establishment of Grades

The grades of all streets, alleys and sidewalks shall be established and described by the Department of Public Works and shall be recorded in the office of the Village Clerk-Treasurer. No street, alley or sidewalk shall be worked until the grade thereof is established.

(Code 2006, § 8.02(1))

19-2-49 Altering Grade Prohibited

No person shall alter the grade of any street, alley, sidewalk or public ground, or any part thereof, unless authorized or instructed to do so by the Department of Public Works.

(Code 2006, § 8.02(2))

19-2-50 Yard Grades; Erosion and Flooding Control

In order to facilitate the orderly flow of groundwater and to prevent flooding of buildings and yards:

- (A) All subdividers shall provide landscaping and ground flow plans to the building inspector and have them approved before a subdivision will be accepted.
- (B) No building permit will be issued unless the owner provides a landscaping and water flow plan to the building inspector, unless the building permit will not affect groundwater flow.
- (C) No person shall landscape their property if it will affect groundwater flow without a permit from the building inspector.

(Code 2006, § 8.02(3); Ord. No. O10-3-92, 10-27-1992)

19-2-74 Right of Way

- (A) *Findings and Purpose.* In the exercise of its police powers, 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 and excavations taking place in the public Rights-of-Way to ensure that the Rights-of-Way remain available for public services and safe for public use. The taxpayers of the Village bear the financial burden for the upkeep of the rights-of-way and a primary cause for the early and excess deterioration the public Rights-of- Way is the frequent excavation by Person who place facilities therein.

The Village finds that there has been an increase in the use of the public Rights-of- Way and, as a result, increased costs to the taxpayers of the Village and that these costs are likely to continue into the foreseeable future.

The Village finds that excavation and occupancy of the public Rights-of-Way causes direct and indirect costs to be borne by the Village and its taxpayers, including but not limited to:

- (1) Administrative costs associated with public Right-of-Way projects, such as registration, permitting, inspection and supervision, supplies and materials.
- (2) Management costs associated with ongoing management activities necessitated by public Right-of-Way users.
- (3) Repair costs to the roadway associated with the actual excavation into the public Right-of-Way.
- (4) Degradation costs defined as depreciation caused to the roadway in terms of decreased useful life, due to excavations into the public Rights-of-Way.

- (5) In response to the foregoing facts, the Village hereby enacts this ordinance relating to administration of and 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 at some future time. It is intended to complement the regulatory roles of state and federal agencies.

The purpose of this ordinance is to provide the Village a legal framework within which to regulate and manage the public Rights-of-Way, and to provide for recovery of costs. This ordinance provides for the health, safety and welfare of the residents of the Village as they use the Rights-of-Way of the Village, as well as to ensure the structural integrity of the public Rights-of-Way.

Under this Chapter, all Persons who excavate, obstruct and/or occupy the public Rights-of-Way will reimburse the Village's administrative, ongoing management and degradation costs. Right-of-Way users will bear a fair share of the financial responsibility for the integrity of the public Rights-of-Way.

(Ord. No. 6-5-16, 6-28-2016)

19-2-75 Definitions

The following definitions apply in this article. Defined terms remain defined terms whether or not capitalized.

- (A) *Applicant* means any person requesting permission to excavate, obstruct and/or occupy a Right-of-Way.
- (B) *Degradation* means the accelerated depreciation of the 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,
- (C) *Department* means the Village's Director of Public Works or designee.
- (D) *Department Inspector* means any person authorized by the Department of Public Works to carry out inspections related to the provisions of this Chapter.
- (E) *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.
- (F) *Excavate* means to dig into or in any way remove or physically disturb or penetrate any part of a Right-of-Way.

- (G) *Facilities* means all equipment 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 and other structures and appurtenances.
- (H) *In*, when used in conjunction with "Right-of-Way," means over, above, in, within, on or under a Right-of-Way.
- (I) *Local Representative* means a local person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this Chapter.
- (J) *Obstruct* means to place any object in a Right-of-Way so as to hinder free and open passage over/ under on or in that or any part of the Right-of-Way.
- (K) *Occupy* means to dwell or reside above, on, in, or below the boundaries of the public Rights-of-Way.
- (L) *Permittee* means any person to whom a permit to excavate or occupy a right-of way has been granted by the Village under this Chapter.
- (M) *Person* means, municipality, corporation, company, including a "Company" as defined in Wis. Stat. § 182.017(1g)(b), association, firm, partnership, limited liability company, limited liability partnership and individuals and their lessors, transferees and receivers.
- (N) *PSCW* means the Public Service Commission of Wisconsin.
- (O) *Public Utility* has the meaning provided in Wis. Stat. §196.01(5).
- (P) *Registrant* means any Person who has registered with the Village (1) to have its facilities located in any Right-of-Way or (2) to use or seek to occupy or use the Right-of-Way or any facilities in the Right-of-Way.
- (Q) *Repair* means to perform construction work necessary to make the Right-of-Way useable for travel, according to department specifications, or to return facilities to an operable condition that is in as good or a better a condition as the facilities were before the work commenced.

- (R) *Repair Bond* means a performance bond, a letter of credit, or cash deposit posted to ensure the availability of sufficient funds to assure that Right-of-Way excavation repair work is completed in both a timely and quality manner, per Department specifications.
- (S) *Right-of-Way* means the surface and space above and below a public roadway, highway, street, bicycle lane, landscape terrace, shoulders, side slopes, and public sidewalk in which the Village has an interest, including other dedicated Rights-of-Way for travel purposes.
- (T) *Rights-of-Way User* means a person owning or controlling a facility in the public Right-of-Way, or seeking to own or control a facility in the public Right-of-Way.
- (U) *Service or Utility Service* includes services such as municipal sewer and water services and services provided by a Public Utility or a Company subject to Wis. Stat. § 182.017 and other similar services.
- (V) *Supplementary Application* means an application made to excavate or obstruct more of the Right-of-Way than allowed in, or to extend, a permit that has already been issued.
- (W) *Unusable Facilities* means facilities in the Right-of-Way which have remained unused for one year and for which the registrant is unable to provide proof that it has either a plan to begin using them within the next twenty-four (24) months or a potential purchaser or user of the facilities.
- (X) *Village* means the Village of Ashwaubenon, Wisconsin, a Wisconsin municipal corporation.

(Ord. No. 6-5-16, 6-28-2016)

19-2-76 Administration

The Department is responsible for the administration of the Rights-of-Way, and the permits and ordinances related thereto.

(Ord. No. 6-5-16, 6-28-2016)

19-2-77 Registration for Right-of-Way Occupancy

- (A) *Registration.* Each service, utility service or Right-of-Way user who occupies, uses, or seeks to occupy or use, the Right-of-Way or any facilities in the Right-of-Way, including by lease, sublease or assignment, or who has, or seeks to have, facilities located in any Right-of-Way shall register with the Department and pay the fee set forth in Section 19-2-79. Registration will consist of providing application information and paying a registration fee. Except that this section shall not apply to those persons exclusively utilizing facilities provided by another Right-of-Way user.
- (B) *Registration Prior to Work.* No person may construct, install, repair, remove, relocate, or perform any other work on, or use any facilities or any part thereof in any Right-of-Way without first being registered with the Department.
- (C) *Exceptions.* Nothing herein shall be construed to repeal or amend the provisions of a Village ordinance requiring persons to plant or maintain the tree lawn in the area of the Right-of-Way between their property and the street curb, construct sidewalks, install street signs or perform other similar activities. Persons performing such activities shall not be required to obtain any permits under this Chapter.

(Ord. No. 6-5-16, 6-28-2016)

19-2-78 Registration Information

- (A) *Information Required.* The information provided to the Department at the time of registration shall include, but not be limited to:
 - (1) Each registrant's name, Diggers Hotline registration certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers.
 - (2) 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 registration.
 - (3) All Right-of-Way users shall demonstrate to the satisfaction of the Village the financial capability to cover any liability that might arise out of their presence in the Right-of-Way. If the person is a corporation, a LLC or LLP, a copy of any certificate required to be filed under Wisconsin Statutes as recorded and certified to by the Secretary of State.

- (4) A copy of the person's certificate of authority from the PSCW or other applicable state or federal agency, where the person is lawfully required to have such certificate from said commission or other state or federal agency.
- (5) Execution of an indemnification agreement in a form prescribed by the Department, which is consistent with, and shall not exceed the obligations provided in, Section 19-2-95 herein.
- (B) *Notice of Changes.* The registrant shall keep all of the information listed above current at all times by providing to the Department information as to changes within fifteen (15) working days following the date on which the registrant has knowledge of any change.

(Ord. No. 6-5-16, 6-28-2016)

19-2-79 Registration Fee

- (A) *Annual Registration Fee.* Each registrant shall annually renew its registration or discontinue and properly abandon its facilities. The Department shall establish the Registration Fee in an amount sufficient to recover the costs incurred by the Village for processing registrants. This fee shall be computed as the average of labor costs, indirect costs, and other costs associated with registration.
- (B) *Fee Computation.* The Department may recalculate and establish a new Registration Fee each year.

(Ord. No. 6-5-16, 6-28-2016)

19-2-80 Excavation Permit Requirement

- (A) *Excavation Permit Required.* Except as otherwise provided in this Chapter or other Chapters of the Village Code, no person shall excavate any Right-of-Way or place facilities in a Right-of-Way without first having obtained an excavation permit from the Department.
- (B) *Permit Extension.* No person shall excavate the Right-of-Way or maintain an excavation in the Right-of-Way beyond the date or area specified in the permit unless such person makes a supplementary application for another excavation permit before the expiration of the initial permit, pursuant to Section 19-2-87, and a new permit or permit extension is granted.
- (C) *Permit Display.* A copy of any permit issued under this article shall be made available at all times by the Permittee at the indicated work site and shall be available for inspection by the Department upon request.

(Ord. No. 6-5-16, 6-28-2016)

19-2-81 Excavation Permit Application

- (A) Application for a permit shall be made to the Department. Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
- (1) Registration with the Department as required by this Chapter;
 - (2) Submission of a completed permit application form, including all of the following:
 - (a) If the proposed project involves the installation of a pole or tower in the Right-of-Way, the applicant must submit scaled drawings of the proposed pole or tower and all proposed attachments.
 - (b) The applicant shall identify in detail the location of the proposed project and any affected Right-of-Way, public utility easements, and the location of all existing and proposed facilities within the project area in addition to installation details, traffic control plans and other details requested by the Department;
 - (c) If the proposed project involves the installation of a pole or tower in the Right-of-Way, the applicant must submit evidence sufficient to demonstrate that the applicant is prohibited from using an existing pole or tower (either owned by the applicant or a third party) because such use is technically infeasible, economically prohibitive, or prohibited by law.
 - (d) If the proposed project involves the installation of a pole or tower in the Right-of-Way that is greater than 10 feet taller than existing poles or towers in nearby Right-of-Way, the applicant must submit evidence sufficient to demonstrate that:
 - (i) the greater height is required to accomplish the applicant's purposes; and
 - (ii) the applicant is prohibited from using existing poles or towers (either owned by applicant or a third party) to accomplish its purposes because such use is technically infeasible, economically prohibitive, or prohibited by law; and
 - (iii) the pole or tower, due to its height and size, poses no greater danger to the health, safety, and welfare of the public than existing poles in nearby Right-of-Way.
 - (3) Payment of all money due to the Village for:
 - (a) applicable permit fees and costs as set forth below;
 - (b) unpaid fees or costs due for prior excavations; or
 - (c) any loss, damage, or expense suffered by the Village because of applicant's prior excavations of the Rights-of-Way or any emergency actions taken by the Village.
 - (4) A statement on forms provided by the Department that the registrant will comply with all local, state and federal codes including but not limited to safety, building, traffic control codes and the Manual of Uniform Traffic Control Devices (MUTCD).

- (5) Furnish a certificate of liability insurance complaint with standards of the Department.
- (6) *Post a Repair Bond.* When an excavation permit is requested for purposes of installing additional facilities, and the posting of a repair bond for the additional facilities is insufficient, the posting of an additional or larger repair bond for the additional facilities may be required.
- (7) The Department shall not deny a registrant an excavation permit because of a dispute between the Village and the registrant, related to Section 19-2-81(A) (3)(b) and/or Section 19-2-81(A)(3)(c) if:
 - (a) the dispute has been adjudicated in favor of the registrant; or
 - (b) the dispute is the subject of an appeal filed by the registrant and no decision in the matter has at yet been rendered.

(Ord. No. 6-5-16, 6-28-2016)

19-2-82 Excavation Permit Fee

- (A) *Fee Calculation.* The Excavation Permit Fee shall be established by the Department in an amount sufficient to recover the costs incurred by the Village. This fee shall recover costs incurred by the Village for each of the following categories as provided herein:
 - (1) *Administrative.* The general formula for computing the administrative fee shall be the average per-permit costs for labor plus indirect and other costs.
 - (2) *Repair.* No repair fee shall be collected by the Village. However, the Permittee shall be required to repair the public Right-of-Way to Department specifications, subject to inspection and acceptance by the Department, as per Section 19-2-83, and to pay a degradation fee.
 - (3) *Degradation.* The general formula for computing the degradation fee shall be the cost per square yard for street, overlay and seal coat multiplied by the appropriate depreciation rate for that street multiplied by the area of the patch.

The area of the patch shall generally be square and calculated by adding two feet to each side of the anticipated street cut and then, at the option of the Department, extending to the full pavement lane width. Depreciation schedules shall be provided by type of street.

The total excavation permit fee shall be calculated as follows: Total Excavation Permit Fee = Administrative Cost + Degradation Fee.

- (B) *Village Exemption.* The Village and its contractors shall not pay administrative and degradation fees.
- (C) *Payment of Permit Fees.* No excavation permit shall be issued without payment of applicable fees, unless the applicant shall agree to pay such fees within thirty (30) days of billing therefor.
- (D) *Fee Computation.* The Department may recalculate and establish a new fee structure each year.

- (E) *Non-refundable.* Permit fees paid for a permit that the Department has revoked for a breach as stated in Section 19-2-89 are not refundable.

(Ord. No. 6-5-16, 6-28-2016)

19-2-83 Right-of-Way Repair

- (A) The work to be done under the excavation permit, and the repair of the Right-of-Way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the Permittee or when work was prohibited as unseasonable or unreasonable under Section 19-2-88.
- (B) 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 Department. The Department shall inspect the area of the work and accept the work when it determines that proper repair has been made, per specifications of the Department.
- (C) A Permittee may request to have the Village repair the Right-of-Way.
 - (1) *Village Repair.* If the Permittee requests to have the Village repair the Right-of-Way, the Village may accept or reject the request at its sole option. If the Village accepts, the Permittee shall be billed for the Village's costs, and shall pay the amount thereof within thirty (30) days of billing.
 - (2) *Permittee Repair.* If the Permittee chooses to repair the Right-of-Way, it shall, at the time of application for an excavation permit, post a repair bond in an amount determined by the Department to be sufficient to cover the cost of repairing the Right-of-Way to Department specifications. If, thirty-six (36) months after completion of the repair of the Right-of-Way, the Department determines that the Right-of-Way has been properly repaired, the surety on the repair bond shall be released.
- (D) *Standards.* The Permittee shall perform repairs according to the specifications of the Department and/or in accordance with the conditions specified in the permit. The Department shall have the authority to prescribe the manner and extent of the repair and may do so in written procedures of general application or on a case-by-case basis.
- (E) *Guarantees.* The Permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion, except for organic material, which shall be maintained for twelve (12) months. During either period, the Permittee shall, upon notification from the Department, correct all repair work to the extent necessary, using the method required by the Department. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the Department, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable or unreasonable under Section 19-88.
- (F) *Failure to Repair.* If the Permittee fails to repair the Right-of-Way in the manner and to the condition required by the Department, or fails to satisfactorily and timely complete all repair required by the Department, the Department at its option may do such work. In that event the Permittee shall pay to the Village, within thirty (30) days of billing, the cost of repairing the Right-of-Way. If the Permittee fails to pay as required, the Village may exercise its rights under the repair bond.

(Ord. No. 6-5-16, 6-28-2016)

19-2-84 Inspection

- (A) *Notice of Completion.* When the work under any permit issued hereunder is completed, the Permittee shall notify the Department.
- (B) *Site Inspection.* The Permittee shall make the work site available to the Department and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work.
- (C) *Authority of Department.* At the time of inspection, the Village may order the immediate cessation of any work that poses a threat to the life, health, safety, or well-being of the public. The Village may issue an order to the registrant for any work that does not conform to the applicable standards, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant shall present proof to the Department that the violation has been corrected. If such proof has not been presented within the required time, the Department may revoke the permit pursuant to Sec. 19-2-89.

(Ord. No. 6-5-16, 6-28-2016)

19-2-85 Fall Radius/Breakaway Requirements

- (A) Poles and other utility structures over 60 feet in height shall be located so that all residential, commercial, retail or other occupied buildings are outside the fall radius of the structure.
- (B) Rigid non-breakaway poles and other utility structures shall be located a minimum of 10' from roadway curbs or shoulders and behind existing or future sidewalks.

(Ord. No. 6-5-16, 6-28-2016)

19-2-86 Joint Applications

- (A) *Joint Application.* Registrants may jointly apply for permits to excavate the Right-of-Way at the same place and time.
- (B) *With Village Projects.* Registrants who join in a scheduled excavation performed by the Village, whether or not it is a joint application by two or more registrants or a single application, are not required to pay the degradation portion of the excavation permit fee.
- (C) *Shared Fees.* Registrants who apply for permits for the same excavation, which the Department does not perform, may share in the payment of the excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

(Ord. No. 6-5-16, 6-28-2016)

19-2-87 Supplementary Applications

- (A) **Limitations on Area.** An excavation permit is valid only for the area of the Right-of-Way specified in the permit. No Permittee may perform any work or excavate outside the area specified in the permit, except as provided herein. Any Permittee which determines that an area greater than that specified in the permit must be excavated must, before working in that greater area (1) make application for a permit extension and pay any additional fees required thereby and (2) be granted a new permit or permit extension.
- (B) **Limitation on Dates.** An excavation permit is valid only for the dates specified in the permit. No Permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a Permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs and receive the new permit or an extension of the old permit before working after the end date of the previous permit.
- (C) **Fees for Supplementary Applications.** A Permittee shall pay administration costs for any additional permits. A Permittee is not required to pay an additional degradation fee for the same excavation, if such fee has already been paid on the original permit.

(Ord. No. 6-5-16, 6-28-2016)

19-2-88 Other Obligations

- (A) **Compliance with Other Laws.** Obtaining a permit to excavate and/or occupy the Right-of-Way does not relieve a 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 does the work.
- (B) **Prohibited Work.** Except in an emergency, or with the approval of the Department, no Right-of-Way excavation may be done when seasonally prohibited or when conditions are unreasonable for such work.

(Ord. No. 6-5-16, 6-28-2016)

19-2-89 Revocations, Suspensions, Refusals to Issue or Extend Permits

- (A) **Grounds.** The Department 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:
 - (1) The applicant or Permittee is required by Sec. 19-2-77 to be registered and has not done so or the permit application is otherwise incomplete;
 - (2) The applicant or Permittee is seeking to perform work not included in its application required under Section 19-2-81; which work was reasonably foreseeable by the applicant or Permittee at the time said application was filed;
 - (3) Issuance of a permit for the requested date would or interfere with an exhibition, celebration, festival, or other event;

- (4) Misrepresentation of any fact by the applicant or Permittee;
 - (5) Failure of the applicant or Permittee to maintain required bonds and/or insurance;
 - (6) Failure of the applicant or Permittee to complete work in a timely manner;
 - (7) The proposed activity is contrary to the public health, safety or welfare;
 - (8) The extent to which space is available in the Right-of-Way for which the permit is sought;
 - (9) The competing demands for the particular space in the Right-of-Way;
 - (10) The availability of other locations in the Right-of-Way or in other Rights-of-Way for the facilities of the Permittee or applicant;
 - (11) If the Permittee or applicant proposes to install a new pole or tower in the Right-of-Way, the availability of other existing poles or towers owned by the Permittee or applicant or by a third party;
 - (12) The applicability of ordinances or other regulations of the Right-of-Way that affect location of facilities in the Right-of-Way;
 - (13) The condition and age of the Right-of-Way, and whether and when it is scheduled for total or partial reconstruction; or
 - (14) The applicant or Permittee is otherwise not in full compliance with the requirements of this Chapter or state or federal law.
- (B) *Discretionary Issuance.* Notwithstanding Subd. (A)(2), the Department 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 Public Utility service, or (c) to allow the Permittee or applicant to comply with state or federal law or Village ordinance or an order of a court or administrative agency.
- (C) *Appeals.* Any person aggrieved by a decision of the Department revoking, suspending, refusing to issue or refusing to extend a permit may file a request for review first with the Village Manager and then the Village Board. A request for review shall be filed within ten (10) days of the decision being appealed. Following a hearing, the Village Manager or Village Board may affirm, reverse or modify the decision of the Department.

(Ord. No. 6-5-16, 6-28-2016)

19-2-90 Work Done Without a Permit

- (A) *Emergency Situations.* Each registrant 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 registrant may proceed to take whatever actions are necessary to respond to the emergency. Within two business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith, and otherwise fully comply with the requirements of this chapter. If the Village becomes aware of an emergency regarding a registrant's facilities, the Department may attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. The Village may take whatever action it deems necessary to protect the public safety as a result of the emergency, the cost of which shall be borne by the registrant whose facilities occasioned the emergency.
- (B) *Non-Emergency Situations.* Except in an emergency, any person who, without first having obtained the necessary permit, excavates a Right-of-Way must subsequently register and apply for an excavation permit, and shall in addition to any penalties prescribed by ordinance, pay double the normal fee for said permit, pay double all the other fees required by this chapter or other chapters of the Village Code, deposit with the Department the fees necessary to correct any damage to the Right-of-Way and comply with all of the requirements of this Chapter. If a subsequent permit is denied or is not approved, the registrant shall discontinue and abandon its facilities.

(Ord. No. 6-5-16, 6-28-2016)

19-2-91 Supplementary Notification

If the excavation of the Right-of-Way begins later or ends sooner than the date given on the permit, the Permittee shall notify the Department of the accurate information as soon as this information is known.

(Ord. No. 6-5-16, 6-28-2016)

19-2-92 Location of Facilities

- (A) *Undergrounding.* Unless in conflict with state or federal law, except when existing aboveground facilities are used, the installation of new facilities and replacement of old existing facilities shall be done underground or contained within buildings or other structures in conformity with applicable codes.
- (B) *Corridors.* The Department may assign specific corridors within the Right-of-Way, or any particular segment thereof as may be necessary, for each type of facility that is or, pursuant to current technology, the Village expects will someday be located within the Right-of-Way. All excavation, obstruction, or other permits issued by the Village involving the installation or replacement of facilities shall designate the proper corridor for the facilities at issue consistent with the Department's assignment.

Any registrant who has facilities in the Right-of-Way in a position at variance with the corridors established by the Village shall, no later than at the time of the next reconstruction or excavation of the area where the facilities are located, move the facilities to the assigned position within the Right-of-Way, unless this requirement is waived by the Village for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

- (C) *Limitation of Space.* To protect health, safety, and welfare, or when necessary to protect the Right-of-Way and its current use, the Department may prohibit or limit the placement of new, replacement or additional facilities within the Right-of-Way if there is insufficient space to accommodate all of the requests of Persons to occupy and use the Right-of-Way. In making such decisions, the Department In making such decisions, the Village shall strive to the extent possible to accommodate all existing and potential users of the Right-of-Way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular utility service, the condition of the Right-of-Way, the time of year with respect to essential utilities, the protection of existing facilities in the Right-of-Way, and future Village plans for public improvements and development projects which have been determined to be in the public interest.

(Ord. No. 6-5-16, 6-28-2016)

19-2-93 Relocation of Facilities

Except as prohibited by State or Federal law, a Registrant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the Right-of-Way whenever the Department requests such removal and relocation, and shall restore the Right-of-Way to the same condition it was in prior to said removal or relocation. The Department may make such request to prevent interference by the Company's facilities with (i) a present or future Village use of the Right-of-Way, (ii) a public improvement undertaken by the Village, (iii) an economic development project in which the Village has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way.

Notwithstanding the foregoing, a person shall not be required to remove or relocate its facilities from any Right-of-Way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the person therefor.

(Ord. No. 6-5-16, 6-28-2016)

19-2-94 Interference with Other Facilities during Municipal Construction

When the Village performs work in the Right-of-Way and finds it necessary to maintain, support, shore, or move a registrant's facilities, the Village shall notify the local representative. The registrant shall meet with the Village's representative within 24-hours and coordinate the protection, maintenance, supporting, and/or shoring of the registrant's facilities. The registrant shall accomplish the needed work within 72-hours, unless the Village agrees to a longer period. In the event that the registrant does not proceed to maintain, support, shore, or move its facilities, the Village may arrange to do the work and bill the registrant, said bill to be paid within thirty (30) days. Add alternate delay damage charges.

(Ord. No. 6-5-16, 6-28-2016)

19-2-95 Indemnification

By registering with the Village, or by accepting a permit under this Chapter, a registrant or Permittee, as the case may be, agrees to indemnify, defend, and hold harmless the Village, its officers, boards, committees, commissions, elected officials, employees and agents (collectively, "Indemnified Parties"), from and against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon an Indemnified Party for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the permittee's acts or omissions

in the exercise of its rights under this permit, whether caused by or contributed to by the Village or its agents or employees.

(Ord. No. 6-5-16, 6-28-2016)

19-2-96 Abandoned Facilities

- (A) *Discontinued Operations.* A registrant who has determined to discontinue its operations in the Village must either:
- (1) Provide information satisfactory to the Department that the registrant's obligations for its facilities under this Chapter have been lawfully assumed by another registrant; or
 - (2) Submit to the Department a proposal and instruments for dedication of its facilities to the Village. If a registrant proceeds under this clause, the Village may, at its option:
 - (a) accept the dedication for all or a portion of the facilities; or
 - (b) require the registrant, at its own expense, to remove the facilities in the Right-of-Way at ground or above ground level; or
 - (3) require the registrant 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 registrant who has unusable and abandoned facilities in any Right-of-Way shall remove it from that Right-of-Way within two years, unless the Department waives this requirement.

- (B) *Abandoned Facilities.* Facilities of a registrant who fails to comply with this section, and which, for two (2) years, remains unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a 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 registrant, or the registrant's successor in interest.
- (C) *Public Utilities.* This section shall not apply to a Public Utility that is required to follow the provisions of Wis. Stat. § 196.81.

(Ord. No. 6-5-16, 6-28-2016)

19-2-97 Reservation of Regulatory and Police Powers/Severability

The Village, by the granting of a permit to excavate, obstruct and/or occupy the Right-of-Way, or by registering a person under this Chapter does not surrender or to any extent lose, waive, impair, or the lawful powers and rights, which it has now or maybe 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, obstruct and/or occupy the Right-of-Way or of registration under this Chapter agrees that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the Village, shall be in full force and effect and subject to the exercise thereof by the Village at any time. A Permittee or registrant is deemed to acknowledge

that its rights are subject to the regulatory and police powers of the Village to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general law, and ordinances enacted by the Village pursuant to such powers.

Severability. If any section, subsection, sentence, clause, phrase, or portion of this article 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.

(Ord. No. 6-5-16, 6-28-2016)

19-2-98 Encroachment or Obstruction Prohibited

No person shall encroach upon or obstruct or encumber any street, alley, sidewalk, public grounds or land dedicated to public use, or any part thereof, or permit such encroachment or encumbrance to be placed or remain on any public way adjoining the premises of which he is the owner or occupant, except as provided in section 19-99.

(Code 2006, § 8.04(1))

19-2-99 Exceptions

The prohibitions of section 19-2-98 shall not apply to the following:

- (A) Signs and clocks attached to buildings which project not more than six feet from the face of such building and which do not extend at any point lower than ten feet above the sidewalk, street or alley.
- (B) Awnings which do not extend at any point lower than seven feet above the sidewalk, street or alley.
- (C) Public utility encroachments authorized by the village.
- (D) Goods, wares, merchandise or fixtures being loaded or unloaded which do not extend more than three feet on a sidewalk, provided such goods, wares, etc., do not remain thereon for more than three hours.

(Code 2006, § 8.04(2))

19-2-100 Protection of Building Materials Placed on Streets, Alleys or Sidewalks

The Director of Public Works may require building materials, when placed upon the street, alley or sidewalk upon conditions prescribed by the director, to be protected by barricades or appropriate lights.

(Code 2006, § 8.04(3))

19-2-129 Damaging Curbs

- (A) No person shall run a vehicle over a curb in the village, unless that curb shall have been properly blocked or planked to ensure no damage to the curb.

- (B) The term "properly blocked" means adequately covered behind the curb with crushed stone to a sufficient depth to protect the back of the curb and a four-by-four planking in front of the curb. All tires crossing the curb shall be supported in this manner. This requirement may be waived by the building inspector for good cause.

(Code 2006, § 9.23; Ord. No. O12-4-92, 12-15-1992)

19-2-130 Curb Mailbox Regulations

- (A) Residents and businesses within the village shall comply with the regulations set forth by the United States Postal Service, in which standards are regulated for installation of mailboxes for the purpose of local mail delivery. All mail and paper boxes required to be located adjacent to the curb line of streets shall be constructed as follows:
 - (1) *Mounting a Mailbox on a Rural Road.* The bottom of the mailbox is between 42 and 48 inches from the surface of the road. A height of 47 inches is the preferred height; and it should be set back far enough not to be hit.
 - (2) *Mounting a Mailbox on a Street with a Curb.* The bottom of the mailbox is 42 to 48 inches from the street. A height of 47 inches is the preferred height; and it should be set back enough that the door is flush with the back of the curb.
 - (3) Place address numbers on the mailbox to be visible to the route carrier.
- (B) The village is not responsible for any damage caused to local mailboxes which are not compliant to United States Postal Service standards.
- (C) The village is not responsible for damage caused to motor route newspaper receptacles/boxes that are mounted to mailboxes and obstruct the recommended clearance under a mailbox or otherwise interfere with public works operations.

(Ord. No. O5-1-13, § 1, 5-28-2013)

19-2-157 Official Street Map

- (A) To conserve and promote the public health, safety, convenience and general welfare, there is established an official map for the village, such map being incorporated herein and made a part hereof as though fully set forth.
- (B) The map shall be known as the "Official Street Map of Ashwaubenon."
- (C) The official street map shall be final and conclusive with respect to location and width of streets, highways and parkways and the location and extent of parks and playgrounds shown thereon.
- (D) The official street map shall be as described in the various ordinances adopted from time to time and not the map prepared for the convenience of persons who wish to use a visual depiction of the ordinances.

- (E) A visual depiction of the official street map shall be kept in the offices of the building inspector and village engineer. No copy of such map purporting to be an official street map shall be so construed, unless the following certification appears on the face thereof, and all such maps bearing such certification shall be deemed official:

"It is hereby certified that this map is a true and correct portrayal of the location and width of all streets, highways and parkways and the extent of parks and playgrounds shown thereon as of _____.

Signed: _____
Village Director of Public Works"

- (F) The village clerk-treasurer shall file with the register of deeds for the county a certificate showing that the village has established such official map.

(Code 2006, § 8.10(1); Ord. No. O3-1-92, 3-24-1992)

19-2-158 Official Street Map Amendments

- (A) *Authority.* The village board may change or add to the official street map so as to establish the exterior lines of planned new streets, highways, parkways, parks or playgrounds or to widen, narrow, extend or close existing streets, highways, parkways, parks or playgrounds.
- (B) *Compliance with State Law.* The applicable state law shall be followed for each such change.
- (C) *Amendments on File.* Amendments are on file in the office of the Village Clerk-Treasurer.

(Code 2006, § 8.10(2); Ord. No. O3-1-92, 3-24-1992)

19-2-159 Streets on Map Not Deemed Open

The placing of any street, highway, parkway, park or playground line upon the official street map shall not constitute the opening or establishment of any street, highway, parkway, park or playground or the taking or acceptance of any land for such purposes. Further and additional acts of the village board are required.

(Code 2006, § 8.10(3); Ord. No. O3-1-92, 3-24-1992)

19-2-160 Appeals

- (A) *Board of Appeals* means the zoning and planning board of appeals.
- (B) *Grounds for Appeal.* Any person adversely affected by failure of the building inspector to issue a building, fill or earth excavation permit because of this chapter may appeal to the board of appeals on any one of the following grounds:

- (1) If the land within any mapped street, highway or parkway as set forth on the official map is not yielding a fair return, the board of appeals may grant a permit for a building, fill or earth excavation in such street, highway or parkway which will, as little as practicable, increase the cost of opening such street, highway or parkway or tend to cause a change in the official map. The board of appeals may impose reasonable requirements as a condition of granting such permit, which requirements shall be designed to promote the health, convenience, safety or general welfare of the village. The board of appeals shall refuse a permit where the applicant will not be substantially damaged by placing his building, fill or earth excavation outside the mapped street, highway or parkway.
- (2) Where the enforcement of this chapter as to accessways to proposed structures would entail practical difficulty or unnecessary hardship or 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 building inspector to the board of appeals. The 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 laid out.
- (C) *Notice of Hearing.* Before taking any action authorized in this division, the board of appeals shall hold a hearing at which parties in interest and others will have an opportunity to be heard. At least 15 days' notice of the time and place of such a hearing shall be published in the official newspaper of the village.
- (D) *Appeal to Court.* Any decision of the board of appeals rendered under this division shall be subject to review of certiorari issued by a court of record in the same manner and under the same provisions as are contained in chapter 17, pertaining to planning and zoning.

(Code 2006, § 8.10(4); Ord. No. O3-1-92, 3-24-1992) State law reference— Board of appeals, Wis. Stats. § 62.23(e).

Article 3 - Snow Removal

19-3-189 Duty of Owner or Occupant of Property Abutting a Public Sidewalk; Exception

The owner/occupancy of any property that abuts a public sidewalk shall be responsible for the removal of snow, ice and debris from said sidewalk. The only exception shall be properties on school-designated pedestrian sidewalk routes. Sidewalks shall be clear of snow, ice or debris within 24 hours of a snowfall. If such snow, ice or debris is not removed within 24 hours, the director of public works or designee may, without notice, remove such snow, ice or debris and that cost shall be levied as a special tax on the abutting property pursuant to Wis. Stat. § 66.0907. A citation may also be issued for repeated violation of this provision.

(Code 2006, § 8.06(1); Ord. No. O1-3-00, 1-25-2000; Ord. No. O1-2-05, 2-25-2005; Ord. No. O6-2-10, § 1, 6-8-2010; Ord. No. O5-2-13, § 1, 5-28-2013)

19-3-190 Deposit of Snow or Ice on Street

No person shall remove any snow or ice from his premises, residence, parking lot, parking area, service station or business property onto any public right-of-way or property. Snow removed from public sidewalks shall not be stored in any manner which will obstruct or limit vehicular or pedestrian vision, movement or access.

(Code 2006, § 8.06(2); Ord. No. O1-3-00, 1-25-2000; Ord. No. O11-3-05, § 8.06, 11-22-2005)

19-3-191 Village Responsible for Snow/Debris Removal in School Areas

School-designated pedestrian sidewalk routes where the village will remove snow/ice/debris are identified as follows:

TABLE 19-3-191

Babcock	West Side	Commanche to West Marhill
Ponderosa	North Side	Babcock to Timber
Ridge	West Side	Valley View to Sandra
Ridge	East Side	Cormier to Anderson
Marvelle	South Side	Ridge to True
True	West Side	Marvelle to Cormier
Anderson	North Side	Ridge to Oneida
Willard	North Side	Ridge to 390 feet West of Oneida
Willard	South Side	Ridge to Oneida
Morris	South Side	Elmview to Oneida
Oneida	West Side	Stadium Drive to Anderson
Broadway	East Side	230 feet North of Cormier to Morris
Broadway	West Side	Cormier to 150 feet North of Cottage Grove
San Luis	East Side	Cormier to Willard
San Luis	West Side	Cormier to Willard
Cormier	North Side	Shady to Broadway
Cormier	South Side	Bel Aire to San Luis
Orlando	North Side	105 feet in front of Brown County Library

(Code 2006, § 8.06(3); Ord. No. O1-3-00, 1-25-2000; Ord. No. O10-1-01, 10-9-2001)