

Village of Menomonee Falls Ordinance No. 617-O-15

**AN ORDINANCE AMENDING CHAPTER 42 AND CHAPTER 90 OF THE
MUNICIPAL CODE OF THE VILLAGE OF MENOMONEE FALLS RELATING
TO SIDEWALK MAINTENANCE, REPAIR AND REPLACEMENT
REGULATIONS AND FEES**

WHEREAS, Wisconsin Statute §66.0907 authorizes the Village to provide for sidewalks on either or both sides of a street, to construct and repair them, and to regulate their use; and

WHEREAS, pursuant to Wisconsin Statute §66.0907(6), the Village Board may provide that sidewalks shall be kept in repair by and at the expense of the Village or may direct that a certain proportion of the cost of construction, reconstruction or repair be paid by the Village and the balance by abutting property owners; and

WHEREAS, pursuant to Wisconsin Statute §66.0907, the Village is authorized to make all needful rules and regulations by ordinance for carrying the provisions of the statute into effect; and

WHEREAS, a policy regarding sidewalk repair and replacement will promote and improve pedestrian safety within the Village of Menomonee Falls; and

WHEREAS, based upon the above, the Village of Menomonee Falls created the Policy for the Repair and Replacement of Defective Sidewalks in the Village of Menomonee Falls by adopting Section 1 of Village of Menomonee Falls Ordinance No. 40-0-99; and

WHEREAS, the Village of Menomonee Falls amended the Policy for the Repair and Replacement of Defective Sidewalks in the Village of Menomonee Falls with Sections 1, 2, 3 and 4 of Village Ordinance No. 54-0-99; and

WHEREAS, Village of Menomonee Falls further amended the Policy for the Repair and Replacement of Defective Sidewalks in the Village of Menomonee Falls with Village Ordinance No. 57-0-99; and

WHEREAS, Village of Menomonee Falls further amended the Policy for the Repair and Replacement of Defective Sidewalks in the Village of Menomonee Falls with Village Ordinance No. 393-0-08 which also had the effect of codifying the policy as Division 2 of Article II [Curb, Driveway or Sidewalk Construction or Repair] of Chapter 90 [Streets, Sidewalks and Other Public Places] of the Municipal Code; and

WHEREAS, the Village Board has determined that it is time to revise The Policy for the Repair and Replacement of Defective Sidewalks in the Village of Menomonee Falls; and

WHEREAS, it is deemed to be in the best interest of the Village of Menomonee Falls that the Municipal Code of the Village of Menomonee Falls be further modified and amended in the manner hereinafter more particularly set forth;

NOW, THEREFORE, the Village Board of the Village of Menomonee Falls do ordain as follows:

Section 1. Subsection (c) [Sidewalk repair and replacement permit fees] of Section 42-90 [Streets, sidewalks and other public places] of Article I [In General] of Chapter 42 [Fees] of the Municipal Code is hereby repealed; and Subsection (c) [Sidewalk construction and replacement permit fee] of Section 42-90 is hereby created to read as follows:

Sec. 42-90. - Streets, sidewalks and other public places.

...

(c) *Sidewalk construction and replacement permit fee.* The permit fee required under section 90-69 of this Code shall be \$50.00 for each parcel of land that requires sidewalk replacement.

Section 2. Division 2 [Sidewalk Maintenance, Repair and Replacement] of Article II [Curb, Driveway or Sidewalk Construction or Repair] of Chapter 90 [Streets, Sidewalks and Other Public Places] of the Municipal Code is hereby repealed and recreated to read as follows:

DIVISION 2. - SIDEWALK MAINTENANCE, REPAIR AND REPLACEMENT

Sec. 90-66. - Inspection and evaluation of existing sidewalks.

- (a) The Village completed an initial evaluation of the condition of all existing sidewalks in the Village to identify defects in 1998. The evaluation process will continue in an ongoing basis.
- (b) The Village intends to implement an ongoing program for the repair and/or replacement of defective sidewalks.
- (c) The Village, at its sole discretion, shall determine which sidewalks are defective, and whether these sidewalks will be repaired or replaced.
- (d) The Village will be responsible for the cost to repair and/or replace defective public sidewalks within the public right-of-way. Carriage walks and private walks located within the public right-of-way shall be the responsibility of the abutting property owner. The abutting property owner may request that the Village replace a defective carriage walk or private walk in the public right-of-way as an Additional Work Request, subject to Section 90-74.
- (e) The Village staff shall identify or list the types of defects which, in the professional judgment of the staff, affect the sidewalk in such a manner as to require the replacement and/or repair of that sidewalk. The Director of Public Works shall keep

a written list of these defects on file.

- (f) All public sidewalk slabs located partially or fully within public right of ways which exhibit defects of the type identified on the list entitled "Sidewalk Slab Defects Requiring Repair or Replacement" on file with the Director of Public Works, are to be considered for repair or replacement.
- (g) Sidewalk repair or replacement shall be made in order to eliminate trip hazards as the first priority and to improve drainage defects.

Sec. 90-67. - Snow and ice removal.

- (a) *Responsibility of owner, occupant or other person in charge.* The owner, occupant or person in charge of each and every building or structure or unoccupied lot in the Village fronting or abutting any street shall clean or cause to be cleaned the sidewalk in front of or adjoining each such home, building or unoccupied lot, as the case may be, of snow or ice to the width of such sidewalk within 24 hours after cessation of each snowfall event, and shall cause the sidewalk to be kept clear from ice and snow, provided that when the ice has formed on any sidewalk so that it cannot be immediately removed, the persons referred to in this subsection shall keep the sidewalk sprinkled with salt or sand.
- (b) *Removal by Village.* If snow or ice is not removed or sprinkled with salt or sand, etc., as required in subsection (a) of this Section, the Village Manager or designee shall cause the same to be done and the cost entered on the next tax roll as a special charge against the benefited property pursuant to Wis. Stats. § 66.0627.
- (c) *Obstructing public ways.* No person in the course of removing snow or ice from any private property shall cause or permit such snow or ice to be placed or left on any public way.
- (d) *Penalty.* In addition to any special charge or assessment which may be imposed under subsection (b) of this Section, any person who violates subsection (a) of this Section shall be subject to a penalty as provided in Section 1-7 of this Code.

Sec. 90-68. - Defective sidewalk adjacent to trees.

(a) *Removal of Tree Roots.* Where tree roots have caused the sidewalk defect, the visible tree roots shall be completely removed from underneath the defective public sidewalk and up to six inches (6") beyond the front and back edge of sidewalk by means of grinding or sawing to provide for proper grade and alignment of the new sidewalk.

(b) *Trees located in the public right of way.* In locations where the Director of Public Works determines that sawing or grinding of the tree roots will jeopardize the health and/or integrity of a tree located in the public right-of-way, or if the tree is determined to be compromised or in poor health, the tree will be scheduled for removal by the Village. All costs for removal of trees located within the public right-of-way will be paid for by the Village. The Village is not obligated to replace trees within the public right-of-way that are removed under this Section or are removed for any other reason or

cause.

(c) *Trees not located in the public right-of-way.* In locations where the Director of Public Works determines that sawing or grinding of the tree roots will jeopardize the health and/or integrity of a tree that is not located in the public right-of-way, such tree is hereby specifically declared to be a public health nuisance, and the Director of Public Works shall order that such tree be removed. All costs for removal of such trees not located within the public right-of-way will be the responsibility of the owner of the property on which the tree is located. The Village will not be responsible for damage to, or removal of, trees located beyond the limits of the public right-of-way.

Sec. 90-69. - Construction or Repair of Public Sidewalk.

The Village may permit construction or repairs to public sidewalk slabs by the abutting property owner or by a property owner's private contractor through a permit issued by the Village. The Village, at its sole discretion, shall determine where and how the construction or repair of public sidewalk will be allowed. A permit will be required for all authorized construction or repair of public sidewalk and the applicant shall pay the permit fee under Village Ordinance Section 42-90(c).

Sec. 90-70. - Guarantee for sidewalk replaced by abutting property owner.

An abutting property owner who obtains a permit under Section 90-69 of this Chapter shall provide a guarantee to the Village of the work performed which shall be a minimum of 12 months in accordance with the permit issued under Section 90-69. If acceptable to the Village Manager or the Manager's designee, and if in a form approved by the Village Attorney, the property owner may provide to the Village a guarantee from the property owner's contractor as the guarantee required under this Section.

Sec. 90-71. - Obstructions within the public right-of-way.

- (a) Private encroachments into the public right-of-way which may have been damaged during the sidewalk repair or replacement operations will not be repaired or replaced by the Village.
- (b) By way of illustration, these types of encroachments include but are not limited to the following:
 - (1) Retaining walls, brick, lannon stone, fences, railroad ties, etc.
 - (2) Natural landscaping such as trees or shrubs planted by the owner or by the previous owner.

Sec. 90-72. - Responsibility for costs incurred to repair or replace sidewalks.

- (a) *Costs for which the Village is responsible.*
 - (1) The Village has included the Sidewalk Repair and Replacement Program under its Capital Improvement Program. The Village is responsible for the cost to repair and/or replace defective public sidewalks, as determined under Section 90-66 of this Chapter and in

accordance with the Sidewalk Repair and Replacement Program.

- (2) The Village is responsible for the cost to repair or replace defective handicap ramps located in the public right-of-way.

(b) (b) *Costs for which the abutting property owner is responsible.*

- (1) *Additional Work Request.* An abutting property owner may make a request to the Village to perform the following additional work when the Village is replacing defective public sidewalk in the area under the Sidewalk Repair and Replacement Program.

- a. The abutting property owner may request that the Village replace a portion of concrete public sidewalk located within the right-of-way that is non-defective in accordance with Village criteria.

- b. A property owner abutting defective public sidewalk that the Village is replacing under the Sidewalk Repair and Replacement Program may request that the Village replace defective carriage walks and private walks located within or immediately adjacent to the public right-of-way.

- (2) Property owner is responsible for costs incurred for work performed pursuant to an Additional Work Request. Payment of the Additional Work Request shall be according to Sec 90-74 of this Chapter.

Sec. 90-73. - Driveway approaches.

(a) *Driveway approach* as used in this Section shall mean that section of driveway between the sidewalk and the curb and gutter.

(b) *Responsibility for repair or replacement of a driveway approach or a public sidewalk section of a driveway.*

- (1) Except as provided in paragraph (2) below, repair or replacement of the driveway approach is the responsibility of the abutting property owner.

- (2) Where there is public sidewalk along the frontage of a property, the sidewalk section through a driveway shall be considered sidewalk and shall be the responsibility of the Village per Section 90-66. If there is no public sidewalk along the frontage of the property then the sidewalk section through the driveway shall be considered part of the driveway approach and shall be the responsibility of the abutting property owner.

(c) *Repair or replacement of driveway approach as an Additional Work Request.*

- (1) A property owner responsible for the repair or replacement of the

driveway approach may request that the Village replace the driveway approach as part of the Sidewalk Repair and Replacement Program when the Village is replacing defective public sidewalk in the area under the program. The property owner will be required to sign a "Waiver of Special Assessment" form (Wis. Stats. § 66.0703) along with an "Additional Work Request" form prior to the commencement of this work.

- (2) The abutting property owner will be responsible for the costs incurred by the Village for work performed as an Additional Work Request.

(d) *Procedures for the repair and/or replacement of defective sidewalk though driveway approaches.*

- (1) That portion of sidewalk which crosses the driveway approach will be inspected for defects of the type identified on the list entitled "Sidewalk Slab Defects Requiring Repair or Replacement" on file with the Director of Public Works. Any identified defects in the sidewalk portion of the driveway approach shall be repaired or replaced in accordance with Section 90-66 of this policy.

- (2) Should qualifying defects be identified in the sidewalk section crossing the driveway approach, an inspection of the driveway approach will be made to determine whether or not the driveway approach needs replacement.

- a. If the driveway approach has defects of the type on the list entitled "Sidewalk Slab Defects Requiring Repair or Replacement" on file with the Director of Public Works, the Engineer's representative will attempt to contact the abutting property owner to determine whether or not the abutting property owner desires to have the driveway approach removed and replaced as part of an Additional Work Request.

1. In the event the property owner requests an Additional Work Request for the driveway approach, the concrete curb and gutter will also be inspected to determine whether or not it should be removed and replaced at the same time as the Driveway Approach. The cost of the curb and gutter is the responsibility of the Village.

If an abutting property owner does not want the driveway approach replaced as part of an Additional Work Request and there is a drop from the sidewalk to the driveway approach greater than or equal to the Village criteria; the Village will place an asphalt wedge on the driveway approach along the sidewalk in the area that does not meet the Village criteria. If the driveway approach is higher than the sidewalk and is greater than or equal to the Village criteria; the Village

will grind the driveway approach to match the sidewalk.

- b. If the driveway approach does not contain defects of the type on the list entitled "Sidewalk Slab Defects Requiring Repair or Replacement" on file with the Director of Public Works, no further action will be taken.
- (3) Should the sidewalk section crossing the driveway approach not contain defects of the type on the list entitled "Sidewalk Slab Defects Requiring Repair or Replacement" on file with the Director of Public Works, no further action will be taken.

Sec. 90-74. –Additional Work Requests under the Village Sidewalk Repair and Replacement Program.

(a) *Additional Work Request.* An abutting property owner may make a request to the Village to perform the following additional work when the Village is replacing defective public sidewalk in the area under the Sidewalk Repair and Replacement Program:

- (1) The abutting property owner may request that the Village replace a portion of a concrete public sidewalk located within the right-of-way that is non-defective in accordance with Village criteria.
- (2) A property owner abutting defective public sidewalk that the Village is replacing under the Sidewalk Repair and Replacement Program may request that the Village replace defective carriage walks and private walks located within or immediately adjacent to the public right-of-way.
- (3) A property owner responsible for the repair or replacement of the driveway approach may request that the Village replace the driveway approach as part of the Sidewalk Repair and Replacement Program.

(b) A property owner shall make an Additional Work Request on forms supplied by the Village. A property owner making an Additional Work Request shall sign a "Waiver of Special Assessment" form (Wis. Stats. § 66.0703) and file the Waiver form with the Additional Work Request prior to the commencement of this work.

(c) The Village, at its sole discretion, will determine whether to approve the Additional Work Request. If approved by the Village, a property owner making an Additional Work Request will be responsible for 100 percent of the cost of the work performed by the Village under the Additional Work Request. This cost shall be determined by the Village, and includes, but is not limited to the following:

- (1) All costs incurred by the Village for removal, demolition, disposal, construction, and restoration related to the Additional Work Request.
- (2) Engineering, inspection, and administrative costs incurred by the

Village for the Additional Work Request. However, the property owner's responsibility for these costs shall not exceed a maximum of 15 percent of the contract cost for the Additional Work Request incurred by the Village.

- (3) The quantity of non-defective sidewalk, carriage walk, private walk or driveway approach replaced under an Additional Work Request shall be measured in square feet.
- (d) Payment for the work performed as part of the Additional Work Request.
 - (1) The Director of Public Works shall keep an accurate account of the cost of the work performed by the Village under each Additional Work Request by each lot or parcel of land whether the work is done by contract or otherwise.
 - (2) The Village will bill the property owner for the cost of the work performed under the Additional Work Request as determined by the Director of Public Works. If the Village does not receive payment within thirty days of the date the Village sends the bill, the cost of the work performed under the Additional Work Request as determined by the Director of Public Works will be charged against the property as a special tax and will be collected in full like other taxes for the current year.

Section 3. Except as specifically modified and amended by this ordinance, the Municipal Code of the Village of Menomonee Falls shall remain in force and effect exactly as originally adopted and previously amended. All ordinances or parts of ordinances inconsistent with or in contravention of the provisions of this ordinance are hereby repealed.

Section 4. This ordinance shall take effect and be in full force from and after its passage and publication.

Section 5. SEVERABILITY. If a court of competent jurisdiction adjudges any section, clause, provision or portion of this ordinance unconstitutional or invalid, the remainder of this ordinance shall not be affected thereby.

Adopted by the Board of Trustees of the Village of Menomonee Falls on the 2nd day of March, 2015.

By: _____
Randall R. Newman, Village President

Date Published: 03/12/2015

Attest: _____
Janice Moyer, Village Clerk