

ORDINANCE NO. XXX  
AN ORDINANCE TO CREATE ARTICLE V IN CHAPTER 243  
OF THE VILLAGE OF ELM GROVE MUNICIPAL CODE  
FOR THE VILLAGE RIGHT OF WAY AND PUBLIC PROPERTY

The Board of Trustees of the Village of Elm Grove, Waukesha County, Wisconsin,  
**DOES HEREBY ORDAIN AS FOLLOWS:**

**Article V:** Chapter 243 of the Village of Elm Grove Municipal Code entitled “Right of Way and Public Property,

**Section (1) Definitions.**

- (a) Ditch - a long narrow excavation dug in the earth for drainage and water storage.
- (b) Encroach/Encroachment - advance gradually beyond usual or acceptable limits.
- (c) Encumber/Encumbrance - a burden or impediment.
- (d) Hardscape - structures (such as fountains, benches, or gazebos) that are incorporated into a landscape
- (e) Indemnification - exemption from incurred penalties or liabilities.
- (f) Right of Way (ROW) - a legal right of passage over another person's ground.

**Section (2) General Rules.**

(g) 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 to remain on any public way adjoining the premises of which they are owner or occupant, with exceptions noted for mailboxes, temporary delivery for a jobsite, official Village signage, utilities, etc.

(h) In order to maintain consistent and unobstructed conveyance of storm water in roadside ditches, proper placement and maintenance of street signs, access for repair and maintenance to sanitary sewer structures, maintenance and/or construction of pedestrian pathways, maintenance and planting of urban forest trees, access for utility providers to place infrastructure and storage for removal of snow from the streets, the area designated as the ROW, owned by the Village, shall not have anything constructed, placed, planted, modified, etc., above or below ground, within the first twenty (20) feet of ROW from the road edge or top of slope of ditch into the adjacent lot.

(i) The Village of Elm Grove further prohibits the placement of any woody plants or vegetation which may be considered an obstruction or objects of any type within the remainder of the Village ROW without a ROW Indemnification Agreement.

37 **Section (3) Existing Items within the Right of Way.**

38 (j) Anything currently in place in the ROW without an Indemnification Agreement, prior to the  
39 enacting of this ordinance, with the exception of any items that have been or may be deemed a  
40 hazard by the Village, may require removal under the authority of the Public Works Director, or  
41 designee, if it conflicts with any public works maintenance projects, repairs or any reason which  
42 restricts the stated use of the ROW. Past or future inaction on the Village's behalf does not  
43 constitute consent and the Village of Elm Grove does reserve the right to remove said item(s) and  
44 pursue legal action as necessary. There will be reasonable notice of such removal unless deemed  
45 an emergency. There is no assumption of liability by the Village for structures or plantings placed  
46 in the ROW by a homeowner without the consent or approved ROW Indemnification Agreement  
47 from the Village of Elm Grove.

48 **Section (4) Indemnification Agreement.**

49 (k) An Indemnification Agreement is required for the placement by a property owner of  
50 any plantings, light poles, landscape hardscaping, or anything within the ROW outside of  
51 the twenty (20) foot setback from the road edge or beyond the top of slope of the ditch.

52 (l) An Indemnification Agreement Application must be completed and submitted to the  
53 Public Works Director who will review and make a recommendation to the Public  
54 Works/Utilities Committee for their review and action. The Village reserves the right to  
55 deny any request deemed unacceptable for any reason.

56 (m) A ROW Indemnification Agreement will only be allowable under certain  
57 circumstances, including but not limited to installation of underground sprinkler systems  
58 and electric dog fences inside of twenty (20) feet from road edge zone. The Village  
59 reserves the right to deny any request deemed unacceptable for any reason.

60 **Section (5) Excessive slopes.**

61 (n) Excessive slopes of drainage ditches is defined as any ditch which exceeds 2:1 slopes.  
62 Property owners who have concerns over the slope of a ditch which meet this criteria may  
63 request, in writing, a review of the ditch.

64 (o) The Village is not required to alter any ditch and there is no implication of consent for any  
65 further action.

66 (p) Any modifications the Village is able to perform will be done within the general work  
67 schedules and placed in order of other already pending projects.

68 (q) Only the most severe conditions will be entertained by the Public Works Committee for  
69 possible approval.

70 (r) Pavement, pathway or other public Works Projects that include regrading ditches for storm  
71 water conveyance, road reconstruction, etc. will address most of these issues at that time and  
72 any trees removed will be replaced by the Forestry Department as deemed necessary at some  
73 point in the future.

74 **Section (7) Maintenance.** Property owners adjacent to the ROW are required to maintain the

75 area as they would their private property, including but not limited to, mowing grass, leaf and  
76 debris clean up, sod damage repair (unless caused by a Village plow and reported in a timely  
77 manner) and any other maintenance required to prevent erosion or blockage of the conveyance  
78 of storm water or obstruction of signage or motorist sight obstructions.  
79

80 **Section (8) Inspection.** The Village of Elm Grove reserves the right to inspect any ROW  
81 or public property. Expenses of inspections shall be paid by the resident if any violations of  
82 municipal ordinances are found.

83 **Section (9) Violation and Penalties.**

84 (s) Conduct not in compliance with this Section is prohibited.

85 (t) Violation of the terms of this Section shall result in a written warning to the property  
86 owner, subject to the appeal to the Board of Trustees of the Village of Elm Grove. Failure  
87 to adhere to the terms may result in a municipal citation.

88 **Section (10) Compliance with laws.** All applicable laws, including applicable zoning  
89 requirements, must be followed. In the event of a conflict between this Article and other  
90 provisions of this Code or applicable zoning requirements or other laws, the more restrictive  
91 shall apply. If any section, sentence, clause, phrase or portion of this ordinance is for any reason  
92 held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be  
93 deemed a separate, distinct and independent provision, and such holding shall not affect the  
94 validity of the remainder of such ordinance.

95  
96 Adopted this \_\_\_\_ day of \_\_\_\_\_, 20XX by the Board of Trustees of the Village of  
97 Elm Grove, Waukesha County, Wisconsin:

98  
99 \_\_\_\_\_  
100 Neil H. Palmer  
101 Village President

102  
103  
104 ATTEST:  
105  
106 \_\_\_\_\_  
107 Michelle Luedtke  
108 Village of Elm Grove Clerk/Deputy Treasurer  
109 Waukesha County