

09/13/2012

ORDINANCE NO. _____

AN ORDINANCE TO ADD CHAPTER 1028, ROAD RIGHT-OF-WAY OBSTRUCTIONS, TO PART TEN OF THE CODIFIED ORDINANCES OF THE VILLAGE OF FRANKLIN, OAKLAND COUNTY, MICHIGAN, TO PROHIBIT AND PROVIDE A PROCEDURE FOR REMOVAL OF MAN-MADE OBSTRUCTIONS PLACED IN THE PUBLIC ROAD RIGHTS-OF-WAY, REPEAL CONFLICTING ORDINANCES AND PRESCRIBE A PENALTY FOR VIOLATIONS.

THE VILLAGE OF FRANKLIN ORDAINS:

Section 1. Chapter 1028 of the Codified Ordinances of the Village of Franklin shall be added, as follows:

CHAPTER 1028
Road Right-of-Way Obstructions

1028.01 FINDINGS AND PURPOSE.

The Village Council finds that placement and installation of rocks and other man-made obstructions in the public road rights-of-way by the owners and occupants of abutting property creates potential safety hazards for motorists, bicyclists and pedestrians; impedes, hinders or interferes with the free and safe passage and parking of vehicles; and renders snow removal and roadway maintenance more difficult. The Village Council determines it in the best interests of the Village and its residents to prohibit these obstructions and hold property owners responsible for removal of the obstructions.

1028.02 DEFINITIONS.

For purposes of this Chapter, the following definitions shall apply:

- (a) "Man-Made Obstruction" means an object, structure, rock, planting, post, barrier, wall, fence, excavation, obstacle or other impediment that has been installed, erected, constructed, located or placed in the public right-of-way that creates a potential safety hazard for motorists, bicyclists or pedestrians using the road; or that impedes, hinders or interferes with the free and safe passage or parking of vehicles using the road; or that interferes with or impedes stormwater drainage or causes soil erosion; or that renders snow removal and roadway maintenance more difficult and is not an original feature of the land. "Man-Made Obstruction" does not include utility structures and installations located pursuant to permit or approval, nor does it include signs, traffic control devices, structures, or other installations located in the public road right-of-way by public authorities or their agents and contractors.
- (b) "Public Road Right-of-Way" means the area of land reserved by law, public ownership, easement, dedication or public use for the operation and maintenance of

a public road under the Village's road jurisdiction, including the traveled portion of the road, shoulders and the remaining area on both sides of the road extending to the outer boundaries of the right-of-way.

1028.03 MAN-MADE OBSTRUCTIONS PROHIBITED IN PUBLIC ROAD RIGHTS-OF-WAY.

No person shall place or cause to be placed a man-made obstruction within any public road right-of-way in the Village without a permit or approval from the Village. This prohibition includes, but is not limited to, the following:

- (a) Rocks, boulders or other man-made obstructions shall not exceed four (4) inches in total height, and shall not be located closer than three (3) feet from the edge of the road pavement;
- (b) Placement of fill or creation of a berm or wall;
- (c) Planting, cultivation or growing of plants, trees, bushes, gardens, landscaping or crops, except for grass, flowers and plants landscaped and maintained so that they do not create a potential safety hazard and do not reduce corner clearances or diminish visibility of or by road users;
- (d) Placing fences, posts, barriers, ditches, signs or advertising devices; or
- (e) Excavation or alteration of ditches, grade, contour, embankment or road drainage.

1028.04 MAILBOXES IN PUBLIC ROAD RIGHT-OF-WAY.

Mailboxes may be located within the public road right-of-way in accordance with U.S. Postal Service regulations provided the mailbox conforms to the following requirements:

- (a) Mailboxes shall be supported by a single post. The following materials and dimensions may be used for such support, and no other material or dimensions of support shall be used:
 - 1. A four-inch by four-inch wooden post;
 - 2. A 4 ½ inch diameter wooden post;
 - 3. A standard steel pipe with an inside diameter not to exceed two inches; or
 - 4. Perforated tubing not to exceed 2 ½ inches by 2 ½ inches.
- (b) Post-to-box attachment details shall be of sufficient strength to prevent the box from separating from the post if the installation is struck by a vehicle. Mailboxes that will not yield when hit are prohibited.

1028.05 VIOLATION.

Any person who places or causes to be placed any man-made obstruction in a public road right-of way in violation of this Chapter shall be deemed to have created a public nuisance and shall be responsible for a municipal civil infraction, subject to the penalties, sanctions and remedies set forth in Section 202.99 of the Codified Ordinances.

1028.06 REMOVAL OF MAN-MADE OBSTRUCTIONS.

- (a) A man-made obstruction in the public road right-of-way which the Village determines to be an immediate safety hazard may, without notice or liability for damages, be abated or removed by the Village.
- (b) A man-made obstruction in the public road right-of-way which the Village does not determine to be an immediate safety hazard may be abated or removed by the Village without liability for damages after: (i) written notice of violation is served on the person responsible for the obstruction notifying that person of the obstruction, the corrective action required, and that the Village may abate or remove the obstruction at the person's expense if the person does not do so within the time specified in the notice; and (ii) the person responsible for the obstruction fails to abate or remove the obstruction within the time specified in the notice.
- (c) Upon abatement or removal of a man-made obstruction by the Village, the Village may bill the Village's actual cost of abatement or removal, plus ten percent (10%) for administration, to the person responsible for the obstruction. The billed amount, if not paid within thirty (30) days, shall be added to the property tax roll and shall constitute a lien against the responsible person's property which shall be collected and enforced in the same manner as general property taxes. This cost recovery shall be in addition to any penalty or legal or equitable remedy the Village may seek or receive for the violation of this Chapter.

1028.07 APPEAL AND VARIANCE.

- (a) A person who receives a notice of violation pursuant to subsection 1028.06(b), above, may appeal the Village's determination of the violation, or the required corrective action, or may request a variance from the prohibition and requirements of this Chapter by filing, within fifteen (15) calendar days after service of the violation notice, a written appeal or request for variance with the Village Clerk stating the grounds for appeal or reasons supporting a request for variance.
- (b) Upon the filing of an appeal or request for variance, the Village Clerk shall schedule the appeal or variance request to be heard and considered at the next regular Village Council meeting. At the hearing, the Village Council may affirm, reverse or modify the determination of violation, the corrective action, or the amount of time to complete the corrective action, or the Village Council may grant a variance, or a variance with conditions, to the prohibition or requirements of this Chapter.
- (c) In evaluating a request for variance, the Village Council shall consider the nature and character of man-made obstruction, the hazards or difficulties that are created, and the use of the road.

1028.08 ABUTTING PROPERTY OWNER.

For purposes of this Chapter, the owner or occupant of the property abutting the public road right-of-way, according to the Village property tax roll, is presumed to be responsible for any man-made obstructions in the abutting public road right-of-way unless the evidence or circumstances indicate a different responsible party.

Section 2. Severability. This ordinance and each article, section, subsection, paragraph, subparagraph, part, provision, sentence, word and portion thereof are hereby declared to be severable, and if they or any of them are declared to be invalid or unenforceable for any reason by a court of competent jurisdiction, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

Section 3. Repeal, Effective Date, Adoption.

- (1) Repeal. All regulatory provisions contained in other Village ordinances which conflict with the provisions of this ordinance are hereby repealed.
- (2) Effective Date. This ordinance shall become effective on _____, 2012, twenty (20) days following its adoption, and shall be published prior to its effective date as mandated by charter and statute.
- (3) Adoption. This ordinance was adopted by the Village Council of the Village of Franklin at a meeting thereof held on _____, 2012.

James Kochensparger, President

Village of Franklin

CERTIFICATE

I, EILEEN PULKER, VILLAGE OF FRANKLIN CLERK, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND COMPLETE COPY OF AN ORDINANCE, THE ORIGINAL OF WHICH IS ON FILE IN MY OFFICE ADOPTED BY THE VILLAGE COUNCIL OF THE VILLAGE OF FRANKLIN AT A MEETING THEREOF HELD ON _____, 2012.