

TITLE 1 GENERAL PROVISIONS

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1.1 ARTICLE 1 – GENERAL PROVISIONS

1.1.1 Title; Effective Date; Citation

These ordinances shall be known as the “Municipal Code of the Village of Fall Creek, Wisconsin” and shall take effect from and after passage and publication as required by the Wisconsin Statutes. All references shall be cited by section number (Example: Section 10.1.1)

1.1.2 Definitions and Rules of Construction

In the construction of this Code, the following definitions and rules of construction shall be observed unless such construction would be inconsistent with the manifest intent of the ordinances:

Acts of agent. When a provision requires an act to be done which may by law as well be done by an agent as by the principal, such requirement shall be construed to include all such acts when done by an authorized agent.

Board, village board. Whenever the terms “board” and “village board” are used without qualification, they shall read as if the words “Village of Fall Creek, Wisconsin” followed such terms.

Code. Whenever the term “Code” is used without further qualifications, it shall mean the “Municipal Code of the Village of Fall Creek, Wisconsin,” as designated in Section 1.1.1.

County. The term “county” shall mean the County of Eau Claire, Wisconsin.

May. The term “may” shall be construed as being permissive.

Month. The term “month” shall mean a calendar month.

Oath. The term “oath” includes as affirmation in all cases whereby law an affirmation may be substituted for an oath. If any oath or affirmation is required to be taken, such oath or affirmation shall be taken before and administered before the Clerk. If an oath is administered, it shall end with the words “so help me God.”

Officers and employees generally. Whenever any officer or employee is referred to by title, such as “Administrator” or “Weed Commissioner,” such reference shall be construed as if followed by the words “of the Village of Fall Creek, Wisconsin.”

Owner. The term “owner,” as applied to a building or land shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.

Person. The term “person” extends and applies to natural persons, firms, corporations, associations, partnerships, or other bodies politic, and all entities of any kind capable of being sued unless plainly inapplicable.

Personal Property. The term “personal property” includes every species of property except real property.

Preceding, following. The terms “preceding” and “following” mean next before and next after, respectively.

Property. The term “property” shall include real, personal, and mixed property.

Real Property. The term “real property” shall include lands, tenements, and hereditaments.

Reasonable time or notice. In all cases when an enactment shall require any act to be done in a reasonable time or a reasonable notice is to be given to any person, such reasonable time or notice shall be deemed to mean such time only as may be necessary for the prompt execution of such duty or compliance with such notice.

Regulations, code. Whenever in this Code reference is made to and “regulations” or “code” of any government or board, bureau, commission or agency, such terms shall mean the regulations in effect on the effective date of this Code unless the context clearly provides otherwise.

Shall. The term “shall” will be construed as being mandatory.

Signature. If the signature of any person is required by law it shall always be the writing of such person or, if the person is unable to write, the person’s mark or the person’s name written by some other person at the person’s request and in the person’s presence.

Singular and plural; male and female. Every word in this Code and in any ordinance importing the masculine gender may stand and be applied to females as well as males, and every word importing the singular number only may extend and be applied to several persons or things as well as to one person or thing; but these rules of construction shall not be applied to any provisions which shall contain any express language excluding such construction or when the subject matter or context of such provisions may be repugnant thereto.

State. The term “state” shall mean the State of Wisconsin.

Street. The term “street” shall include any highway, street, avenue, boulevard, road, alley, lane or viaduct in the village dedicated or devoted to public use.

Tenant, occupant. The terms “tenant” and “occupant,” applied to a building or land, shall include any person holding a written or oral lease of or who occupies the whole or part of such building or land, either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Time Computation.

- A. The time within which an act is to be done or a proceeding had or taken shall be computed by excluding the first day and including the last. When any such time is expressed in hours, the whole of Sunday and of any legal holiday, from 12:00 midnight to 12:00 midnight, shall be excluded.
- B. If the last day within which an act is to be done or a proceeding had or taken falls on a Sunday or legal holiday, the act may be done, or the proceeding had or taken on the next secular day.
- C. When the last day within which a proceeding is to be had or taken or an act done, which consists of any payment to or the service upon or the filing with any officer, agent,

agency, department or division of the state or any county, city, village, town, school district or other subdivision of the state, of any money, return, statement, notice or other document falls on a Saturday and the duly established official office hours of such officer, agent, agency, department or division to which such payment is to be made or with which such return, statement, report, notice or other document is required to be filed do not include any office hours on such Saturday, the proceeding may be had or taken or such act may be done on the next succeeding day that is not a Sunday or a legal holiday.

- D. The term "legal holiday," as used in this definition, means any statewide legal holiday provided in Wis. Stats. § 895.20. When an act is permitted to be done by the use of the postal service and the last day within the time prescribed by law for performing such act falls on a legal public holiday under federal law, or other holiday designated by the president such that the postal service does not receive registered mail or make regular deliveries on that day, the day shall be considered a legal holiday for purposes of this definition.

Village. The term "village" shall mean the Village of Fall Creek, Wisconsin.

Wis. Stats, or statute. Wisconsin statutes. The term "Wisconsin statutes," wherever used in this Code, shall mean the Wisconsin statutes as currently in effect and as they may be amended.

Written; in writing. The term "written" or "in writing" shall be construed to include any representation of words, letters, or figures, whether by printing or otherwise.

Year. The term "year" shall mean a calendar year.

1.1.3 Titles, Chapters, Sections

- A. **Reference to this Code.** All references to titles, sections, subsections or paragraphs refer to this Code unless otherwise indicated.
- B. **Conflicting provisions.** If the provisions of the different chapters of this Code conflict with or contravene each other, the provisions of each chapter shall prevail to all matters and questions arising out of the subject matter of such chapter.

1.1.4 Catch Lines of Sections

The catch lines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of the sections; nor, unless expressly so provided, shall they be so deemed when any such sections, including the catch lines, are amended or reenacted.

1.1.5 Code Book to be Kept up to Date

It shall be the duty of the Village Clerk, or someone authorized and directed by the Clerk, to keep up-to-date the certified copy of the book containing the Code required to be filed in the Clerk's office for use by the public. All changes in said Code and all ordinances adopted subsequent to the effective date of this codification which shall be adopted specifically as part of the Code shall, when finally adopted, be included therein by reference until such changes or

new ordinances are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

1.1.6 Altering and Tampering with Code

It shall be unlawful for anyone to improperly change or amend, by additions or deletions, any part or portion of the Code or to alter or tamper with such Code in any manner whatsoever which will cause the law of the Village of Fall Creek to be misrepresented thereby. Anyone violating this section, or any part of this ordinance shall be subject, upon conviction, to a fine, as outlined in the Village schedule.

1.1.7 References and Editor's Notes

References and editor's notes following certain sections are inserted as an aid and guide to the reader and are not controlling nor meant to have any legal effect.

1.1.8 History Notes

The history notes appearing in parentheses after sections of this Code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section.

1.1.9 Supplementation of Code

When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, non-substantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- A. Organize the ordinance material into appropriate subdivisions;
- B. Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in catchlines, headings and titles;
- C. Assign appropriate number to sections and other subdivisions to inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
- D. Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "section _____ through _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
- E. Make other non-substantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

1.1.10 Provisions Considered as Continuation of Existing Ordinances

The provisions appearing in this Code so far as they are the same as those of the Code of the Village of Fall Creek and of ordinances existing at the time of adoption of this Code shall be considered as a continuation of such ordinances and not new enactments, and the

effectiveness of such provisions shall date from the date of adoptions of the prior legislation.

1.1.11 Code Does Not Affect Prior Offenses, Penalties, Rights

Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code.

1.1.12 Repeal of Ordinances

All ordinances or parts of ordinances of a general and permanent nature adopted and in force on the date of the adoption of this ordinance and not contained in the Code are hereby repealed as of the effective date of this Adoption Ordinance, except as hereinafter provided.

1.1.13 Ordinances Not Repealed

The adoption of this Code and the repeal of ordinances provided for in § 1.1.12 of this ordinance shall not affect the following ordinances, rights, and obligations, which are hereby expressly saved from repeal.

- A. Any right or liability established, accrued, or incurred under any legislative provision prior to the effective date of this ordinance or any action or proceeding brought for the enforcement of such right or liability.
- B. The release of persons, firms, or corporations from liability.
- C. Any offense or act committed or done before the effective date of this ordinance in violation of any legislative provision or any penalty, punishment or forfeiture which may result therefrom.
- D. Any prosecution, indictment, action, suit or other proceeding pending, or any judgment rendered prior to the effective date of this ordinance brought pursuant to any legislative provision.
- E. Any ordinance appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond or other instruments or evidence of the village's indebtedness.
- F. Any franchise, license, right, easement or privilege heretofore granted or conferred.
- G. The creation of any contract with the Village of Fall Creek and the letting of contracts without bids.
- H. Ordinances authorizing the purchase, sale, lease or transfer of property or any lawful contract or obligation.
- I. The levy or imposition of taxes, assessments, or charges.
- J. Budget ordinances, resolutions, and actions.
- K. The annexation or dedication of property or approval of preliminary or final subdivision plats.
- L. Ordinances providing for local improvements or assessing taxes or special assessments,

therefore.

- M. Any ordinance providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, lighting, acceptance or vacation of any right of way, easement, street, road, highway, sidewalk, park or other public place or any portion thereof.
- N. Construction of any public works.
- O. Water, sewer and garbage rates, rules and regulations and sewer and water main construction.
- P. All currently effective ordinances pertaining to the rate and manner of payment of salaries and compensation of officers and employees.
- Q. Any legislation relating to or establishing a pension plan or pension fund for municipal employees.
- R. Any legislation establishing personnel policies.
- S. Charter ordinances.

All such ordinances are recognized as continuing in full force and effect to the same extent as if set out at length in this section. All ordinances are on file in the Clerk/Treasurer's office.

1.1.14 Repeal of Repealed Acts

No act or part of any act repealed by subsequent act of the board shall be deemed to be revived by the repeal of such repealed act, nor shall any ordinance or part of any ordinance heretofore repealed be considered re-ordained or reenacted by virtue of the provision of section 1.1.9.

1.1.15 Clerk/Treasurer to File Documents Incorporated by Reference

Whenever in this Code any standard, code, rule, regulation or other written or printed matter, other than the Wisconsin Statutes or other sections of this Code, are adopted by reference, they shall be deemed incorporated in this Code as if fully set forth in this Code. The Clerk/Treasurer is directed and required to file, deposit, and keep in the office a copy of the code, standard, rule, regulation or other written or printed matter, as adopted. Materials so filed, deposited, and kept shall be public records open for examination, with proper care, by any person during the clerk/treasurer's office hours, subject to such orders or regulations the Clerk/Treasurer may prescribe for their preservation.

1.1.16 Adoption of State Statutes

Whenever in the Code state statutes are adopted by reference, such adoption shall include all amendments to such statutes.

1.1.17 Severability of Provisions

If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or

phrase. The village board declares that it would have passed this Code, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

1.1.18 Advisory Referendum

- A. Purpose. The purpose of this ordinance is to establish specific guidelines and procedures for an advisory referendum in the Village of Fall Creek and authorize such measures for matters of substantial public interest and discussion while respecting the principles of representative democracy and the decision-making responsibilities of the village board and other municipal officials provided by state law.
- B. Limitations. Except where an advisory referendum procedure is otherwise established by law, an advisory referendum shall be conducted only in accordance with the procedures provided by this section. This section authorizes only an advisory referendum and no authority for a binding referendum is intended by it or to be construed from it.
- C. Legislative matter determination. Prior to submission of any question for advisory referendum pursuant to this section, the question to be submitted shall be submitted to and reviewed by the village attorney to determine whether the question involves an administrative or legislative matter. The attorney shall submit a report to the village board. The village board shall determine whether the question involves an administrative or legislative matter. If the question is found to be legislative, it shall be submitted to the voters upon compliance with the requirements of this section. If the question is found to be administrative, the question shall not be submitted to the voters.
- D. By vote of village board. An advisory referendum may be held upon a two-thirds (2/3rds) vote of all members of the village board approving such referendum on a legislative matter subject to determination by the village board.
- E. By petition or elector committee. An advisory referendum may be held upon the filing of a notice of intent to circulate an advisory referendum petition signed by a committee of not less than 10 registered voters of the village with the village clerk prior to a legislative decision of the village board on the matter to be submitted for advisory referendum and the filing of a proposed advisory referendum question on the legislative decision with a verified petition signed by a number of registered voters of the village equal to at least 33% of the votes in the village cast for governor at the last general election within 30 calendar days of the filing of the notice of intent to circulate petition. Submission of the notice of intent to circulate petition for an advisory referendum shall proscribe a final legislative decision on the proposed advisory question by the board until: 1) the proposed advisory question is found to be an administrative not legislative matter; or 2) the allotted time for filing a verified petition has elapsed without a petition being filed; or 3) a petition is filed within the allotted time but is found to be insufficient; or 4) a sufficient petition is filed and the advisory question has been submitted to the voters. The petition to be circulated may contain more than one paper, but each separately circulated paper shall contain at its head or attached thereto the names and addresses of the persons submitting the notice of intent to circulate petition and the exact text of the proposed

advisory referendum question. Each signer of the notice of intent to circulate a petition and the petition shall sign their name and give their address. Each separate page of the petition shall have appended to it a certificate by the circulator, verified by oath, that each signature appended thereto was made in their presence and that the circulator believes it to be the genuine signature of the person whose name it purports to be. Any person whose name appears on a petition may withdraw their name by a written statement filed with the Village Clerk before the clerk reports to the village board on the sufficiency of the petition. Within 10 days, the Village Clerk shall examine the petition for its sufficiency and issue a report to the village board. If the petition is found sufficient, the village board shall submit the advisory referendum question to the voters at a special election, if authorized by the board, or at the next general election. If the petition is not sufficient, the advisory referendum question shall not be submitted to the voters.

1.1.19 General Penalty

- A. Forfeiture. Unless another penalty is expressly provided in this Code or in any ordinance of the village, any person who shall violate any of the provisions of this Code shall, upon conviction of such violation, be subject to a forfeiture, which shall be as follows:
 - (1) First offense. Any person who shall violate any provision of this Code subject to a penalty shall, upon conviction thereof, forfeit not less than \$25 nor more than \$500, together with the costs of prosecution, and, in default of payment of such forfeiture and costs of prosecution, shall be imprisoned in the county jail until said forfeiture and costs are paid, but not exceeding 90 days.
 - (2) Second offense. Any person who shall violate any provision of this Code subject to a penalty who shall previously have been convicted of a violation of the same chapter or article of the Code shall, upon conviction thereof, forfeit not less than \$50 nor more than \$1,000 together with the costs of prosecution, and, in default of payment of such forfeiture and costs, of prosecution shall be imprisoned in the county jail until said forfeiture and costs of prosecution are paid, but not to exceed six months.
 - (3) Continuing violations. The village may charge each day as a separate offense for continuing violations.
- B. Execution against defendant's property.
 - (1) Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of a court for violation of this Code or ordinance of the village, the court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue an execution against the property of the defendant for such forfeiture and costs.
 - (2) The imposition of a forfeiture does not prevent revocation or suspension of a license permit or franchise.
- C. Violations, injunctions, abatement and removal. It shall be unlawful to violate any of the provisions of this Code or order of the board or any Committee or Commission designated by the board. In case of any violation appropriate legal action or proceedings may be

commenced to enjoin a violation of this ordinance or seek abatement or removal. In addition, those actions commenced on behalf of the village may seek a forfeiture or penalty as outlined in this section.

1.1.20 Costs to be Included in Forfeiture

- A. Pursuant to the authority of W.S.A. s. 66.119, the Village of Fall Creek hereby elects to use the citation method of enforcement of ordinances other than those for which a statutory counterpart exists.
- B. The citation shall contain the following:
 - (1) The name and address of the alleged violator.
 - (2) Factual allegations describing the alleged violation.
 - (3) The time and place of the offense.
 - (4) The section of the ordinance violated.
 - (5) A designation of the offense in such a manner as can readily be understood by a person making a reasonable effort to do so.
 - (6) The time at which the alleged violator may appear in court.
 - (7) A statement which in essence informs the alleged violator that:
 - (a) A cash deposit based on the schedule established by this section may be made, which shall be delivered or mailed to the Clerk of Courts prior to the time of the scheduled court appearance.
 - (b) If a cash deposit is made, no appearance in court is necessary unless subsequently summoned.
 - (c) If a cash deposit is made and the alleged violator does not appear in court, the nonappearance will be deemed a plea of no contest for which a forfeiture not to exceed the amount of the deposit is submitted, or, if the court does not accept the plea of no contest, a summons will be issued ordering the alleged violator to appear in court to answer the complaint.
 - (d) If no cash deposit is made and the alleged violator does not appear in court at the time specified, an action may be commenced to collect the forfeiture up to the maximum permitted by law.
 - (e) If the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute, punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the alleged violator, the court may summon the alleged violator into court to determine if restitution shall be ordered under W.S.A. s. 800.093.
 - (8) A direction that if the alleged violator elects to make a cash deposit, the statement which accompanies the citation shall be signed to indicate that the statement

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required under Subsection B(7) above has been read. Such statement shall be sent or brought with the cash deposit.

(9) Such other information as the village deems necessary.

C. Schedule of Deposits.

(1) The Schedule of Deposits is established for use with citations issued under this section. The Schedule of Deposits is included at the end of this chapter.

(2) Deposits shall be made in cash, money order or certified check to the Clerk of Courts, Eau Claire, Wisconsin, 54703, who shall provide a receipt, therefore.

D. Enforcement officers.

(1) Any law enforcement officer may issue citations for enforcement of any ordinances authorized under this section.

(2) The following officials of the Village of Fall Creek are hereby authorized to issue citations for enforcement of those chapters specified. Such officials may delegate this authority to their subordinates upon approval by the Village Board.

(a) Public Works Director, Chapters: 227 Streets and Sidewalks, 238 Trees, 256 Weed Yards& lawns

E. The provisions of W.S.A. s. 66.119(3), relating to a violator's options and procedure on default, are hereby adopted and incorporated herein by reference.

F. Adoption of this section in no way precludes the adoption of any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or any other matter. The issuance of a citation under this section in no way precludes the proceeding under any other law or ordinance relating to the same or any other matter.