



JANUARY 31, 2023 MEETING - TRUSTEE A. CRIPE

VILLAGE OF WINNETKA
LAKEFRONT REGULATION DISCUSSION

BACKGROUND

Staff and the Village attorney were asked to provide an overview of existing regulations, with a focus on our potentially exercising **concurrent jurisdiction with the Army Corp and IDNR** with regard to Lake Michigan structures (e.g., revetments, breakwaters, or other structures) or our adopting zoning specific to lakefront homes (i.e., singling them out from other residential zoning provisions). As our attorney has explained, the Village Code does not provide such *specific* regulations currently.

However, Winnetka's existing Code **does** broadly protect public health, safety and welfare, including by specifically regulating impermeable surfaces, fences, plants, structures and other things or conditions **on private or public property** or impacting **public places**. Our code requirements don't cease to operate at the lakefront. Our existing authority in this area should be carefully considered before we adopt new measures that might be incorrectly seen as undermining the authority we already have.

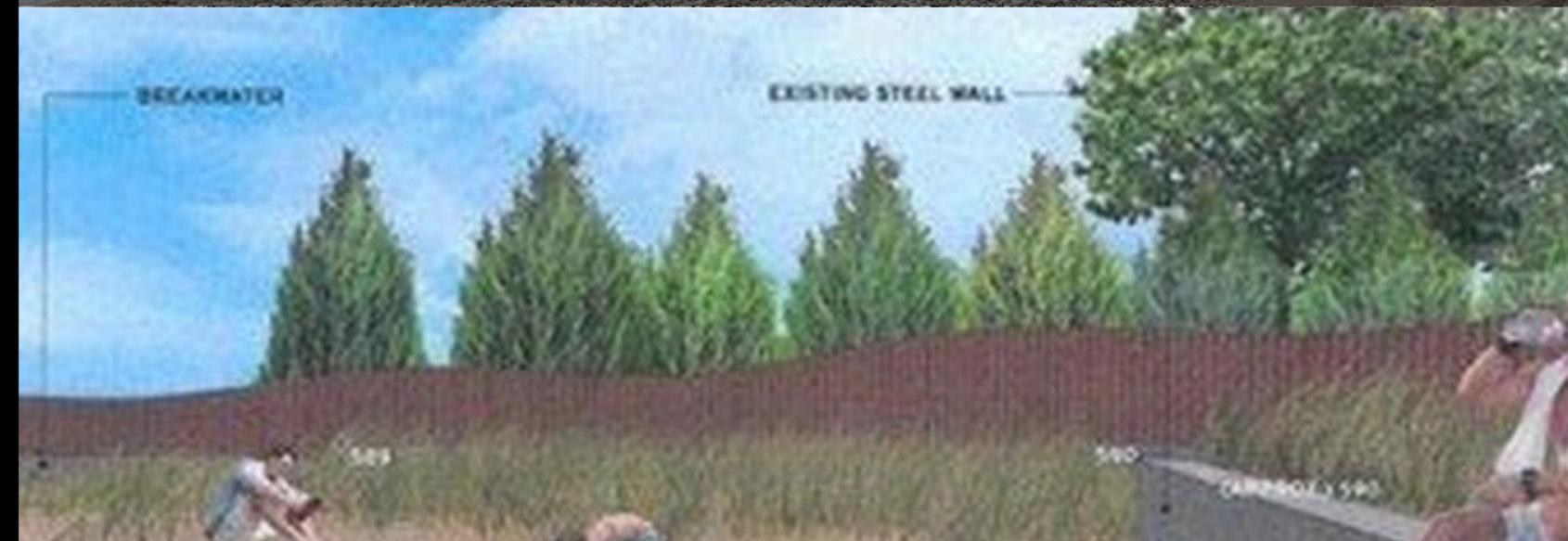
2 “Buckets” of Shoreline Projects:

- Shoreline protection or recreation projects that are limited to their intended purpose and are consistent with the status quo (e.g., top). We have been able to largely defer to IDNR and Army Corp on such projects to date, including through cooperation and engagement between neighbors.
- Projects that *might materially depart* from what is reasonably necessary to achieve their intended purpose, potentially creating public health, safety and welfare concerns. The image at right - which we have been informed is no longer under consideration - could be a potential example.

We have significant tools in our existing Code to enforce compliance when or if cooperation and engagement fail.



SHORELINE PROTECTION AND RECREATION PROJECT - DOES NOT BLOCK VIEW, ACCESS, EGRESS OR RESCUE NEAR PUBLIC BEACH



PUBLIC HEALTH, SAFETY & WELFARE ISSUE: OBSTRUCTS SIGHT LINE/VIEWS, ACCESS, EGRESS & RESCUE NEAR PUBLIC BEACH & ALONG LAKEFRONT/PUBLIC WAY.

Relevant Provisions of the Village Code:

Title 8 - *Health & Safety*

Title 9 - *Public Peace, Morals and Welfare*

Title 12 - *Streets, Sidewalks and Public Places*

Title 15 - *Buildings & Construction*

Title 15

Buildings & Construction

Shoreline Projects Fall Within the Village and Within the Existing Code

Section 15.04.020 Scope.



This title establishes the minimum requirements for construction activities in the Village, and for all other matters affecting or relating to buildings, structures and site work, including but not limited to electrical equipment, engineering, fire prevention and building safety, plumbing, drainage and sanitation systems, heating, ventilation and air conditioning systems, and compliance with the tree preservation, occupancy, zoning and property maintenance requirements as provided in this code. (Prior code § 23.02)

(MC-7-2011, Amended, 12/6/2011; MC-3-2005, Amended, 06/21/2005)

Section 15.04.030 Intent.



This title is intended to ensure public safety, health and welfare insofar as they are affected by the design, construction, alteration, addition, repair, removal, demolition, location, occupancy and maintenance of all buildings, structures and property within the Village.

(Prior code § 23.03)(MC-3-2005, Amended, 06/21/2005)

The Building Code Already Requires Permits for Fences, Walls and Impermeable Surfaces

Section 15.44.060 Fences.



A. Permit Required. No person shall install, erect, construct or replace any fence or wall within the Village without first obtaining a permit from the Director.

B. Application for Permit. Application for such permit shall be made on forms provided by the Director. The fee for such permit shall be set from time to time by resolution of the Village Council.

(MC-5-2019, Amended, 06/04/2019; prior Code, § 23.32)

Section 15.44.040 Impermeable surfaces.



A. Permit Required. No person shall construct any impermeable surface, as defined in Section [17.04.030](#) of this code, without first obtaining a permit from the Director.

B. Application for Permit. Application for such permit shall be made on forms provided by the Director. The fee for such permit shall be set from time to time by resolution of the Village Council.

(MS-5-2019, Amended, 06/04/2019; prior code § 23.30)

The Building Code Imposes a Maintenance Duty As to Existing Projects to Protect Public Health, Safety and Welfare

Section 15.44.140 Safe and sanitary conditions.



It shall be the duty of every owner or occupant of a structure to maintain it in good repair, structural soundness, and safe and sanitary conditions so as to not pose a threat to the public health, safety or welfare. It shall also be the duty of every owner or occupant of a swimming pool or spa as defined in Section [15.08.110](#) to maintain and operate it in such a manner as to be clean and sanitary at all times.

(MC-5-2019, Amended, 06/04/2019; prior code § 23.51)

Title 8

Health & Safety

Chapter 8.20 TREES, SHRUBS AND PLANTS

Sections:

[8.20.010](#) Trees, shrubs and plants on private premises.

[8.20.020](#) Diseased trees, shrubs and plants.

[8.20.030](#) Weeds.

[8.20.040](#) Dutch elm disease.

[8.20.050](#) Emerald Ash Borer.

[8.20.060](#) Regulations of fertilizer.

Section 8.20.010 Trees, shrubs and plants on private premises.



A. It is unlawful for any person to plant, place or maintain a willow tree on private premises within the Village within one hundred (100) feet of a public drain or sewer.

B. It is unlawful for any person to maintain any tree or limb of a tree which has become likely to fall on or across any street, parkway or other public place.

C. It is unlawful for any person to plant, place or maintain any tree or shrub such that it is located or grows in such a manner as to extend over or into any street, parkway or other public place or to obstruct the illumination from a public street lamp, or to obstruct, impede or interfere with the passage of persons or vehicles, or to obstruct the view of traffic at street intersections.

D. Unless otherwise specifically authorized in this code, it is unlawful for any person to remove, cut, break or otherwise injure or destroy, without the consent of the owner, any tree, shrub, vine or flower located upon the private premises of any person within the Village.

(Prior code § 10.03)

Section 8.20.020 Diseased trees, shrubs and plants.



If any tree, shrub, vine or flower located in the Village shall become infected with scale or other tree or plant disease which constitutes a menace to adjacent trees, shrubs, vines or flowers, the Director shall notify the owner of the land upon which such tree, shrub, vine or flower is located to spray or treat such tree, shrub, vine or flower in order to abate such disease or to have the diseased tree, shrub, vine or flower destroyed.

(Prior code § 10.04)

Title 9

Public Peace, Morals and Welfare

Section 9.16.010 Public nuisances prohibited.



No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within the Village or within the police jurisdiction of the Village.

(Prior code § 12.01)

Section 9.16.020 Public nuisances defined.



A. General. A public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to:

1. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public; or
2. In any way render the public insecure in life or in the use of property; or
3. Greatly offend the public morals or decency; or
4. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way.

B. Public Nuisances Affecting Health. The following acts, omissions, places, conditions and things are specifically declared to be public health nuisances, but shall not be construed to exclude other health nuisances coming within the definition of subsection A of this section:

1. All decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public;
2. Carcasses of animals not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death;
3. Accumulations of decayed animal or vegetable matter, trash, rubbish, rotting lumber, bedding, packing material, abandoned vehicles or machinery, scrap metal or any material in which flies, mosquitoes, disease-carrying insects, rats or other vermin may breed or which create a fire hazard;
4. All stagnant water in which mosquitoes, flies or other insects can multiply;
5. Garbage cans which are not fly-tight;
6. The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the Village limits in such quantities as to endanger the health of persons of ordinary sensibilities, or any act in violation of the Illinois Environmental Protection Act (415 ILCS 5/1, et seq.);
7. The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, industrial wastes or other substances; or any act in violation of the Illinois Environmental Protection Act;
8. Any use of property, substances or things within the Village emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, effluvia or stenches repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of persons within the Village;
9. All abandoned wells not securely covered or secured from public use;
10. Any barn, stable or shed used for keeping animals;

Title 12

*Streets, Sidewalks and Public
Places*

Section 12.04.100 Improvements--Permit.



No sewer, water pipe, oil pipe, conduit pipe, gas pipe, wire or cable for conveying electric current, nor any street or alley, pavement, sidewalk or other like improvement shall be placed, laid or maintained in, under or upon any proposed or existing public street, alley or other public place in the Village or in any proposed addition, subdivision or dedication of any lands within the boundaries of the Village, except improvements constructed under special assessment proceedings, unless a permit authorizing the same shall have been duly issued by the Director of Engineering.

(MC-5-2020 § 7, Amended 11/17/2020; prior code § 7.12)

Winnetka's existing Village Code already provides a process for addressing and eliminating nuisances.



Section 9.16.030 Abatement of public nuisances.



A. Inspection of Premises. Whenever complaint is made to the Village Manager that a public nuisance exists, or has existed, with the Village, the Village Manager or the Village Manager's representative shall promptly notify the Chief of Police, or some other Village official, who shall promptly inspect or cause to be inspected the premises and shall make a written report of the findings to the Manager. Whenever practicable, the inspecting officer shall cause photographs to be made of the premises and shall file the same in the office of the Village Clerk.

B. Summary Abatement.

1. Notice to Owner. If the inspecting officer shall determine that a public nuisance exists on private property and that there is great and immediate danger to the public health, safety, peace, morals or decency, the Village Manager may direct the Chief of Police, or a deputy sheriff, to serve a notice on the owner, or, if the owner cannot be found, on the occupant or person causing, permitting or maintaining such nuisance and to post a copy of the notice on the premises. Such notice shall direct the owner, occupant or person causing, permitting or maintaining such nuisance to abate or remove such nuisance within twenty-four (24) hours or such time as is reasonable, and shall state that unless such nuisance is so abated, the Village will cause the same to be abated and will charge the cost of abatement to the owner, occupant or person causing, permitting or maintaining the same, as the case may be.

2. Abatement by Village. If the nuisance exists on the public right-of-way or on public property, or if the nuisance is not abated within the time provided, or if the owner, occupant or person causing the nuisance cannot be found, the Director of Public Works, or some other Village official whom the Manager shall designate, shall cause the abatement or removal of such public nuisance.

3. Abatement of Nuisance Trees and Woods. To the extent [Chapter 8.20](#) of this code establishes procedures for the abatement of nuisances arising from the condition of elm trees, elm woods, ash trees, ash woods, or other plants, as provided in that chapter, the provisions of Chapter 8.20 shall supersede the procedures established by this subsection.

(MC-6-2007, Added ¶3, 05/01/07)

C. Abatement by Court Action. If the inspecting officer shall determine that a public nuisance exists on private premises but that the nature of such nuisance is not such as to threaten great and immediate danger to the public health, safety, peace, morals or decency, he or she shall file a written report of his or her findings with the Manager, who shall cause an action to abate such nuisance to be commenced in the name of the Village.

(Prior code § 12.03)

Section 9.16.040 Cost of abatement.



In addition to any other penalty imposed by this chapter for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by the Village shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance, and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as other special taxes.

(Prior code § 12.04)

Winnetka's existing Village Code already provides a process for implementing any additional rules or standards necessary to provide for public safety.

Section 12.04.140 Rules and regulations.



The Director of Public Works shall be authorized to promulgate such standards, rules and regulations for any work in, on or above any public street, sidewalk or dedicated right-of-way as he or she may determine to be necessary and appropriate to implement the provisions of this code and to provide for the public safety. Any person doing any work in, on or above any public street, sidewalk or dedicated right-of-way shall be responsible for bearing all costs of complying with the provisions of any standards, rules or regulations promulgated pursuant to this section.

(Prior code § 7.22)

We already have a **variance process** for any projects subject to the Watershed Management Ordinance (WMO) to the extent they fail to comply with our more rigorous Code provisions.

See, Village Code:

Title 15 (Buildings & Construction), Chapter 15.68 (Flood Hazard Protection Regulations)

No variances shall be granted to any development located in a regulatory floodway, as defined in Section [15.68.020](#) of this chapter.

However, when a development proposal is located outside of a regulatory floodway, and whenever the standards of this chapter place undue hardship on a specific development proposal, the applicant may apply to the Director or to the Metropolitan Water Reclamation District of Greater Chicago for a variance. Only the Metropolitan Water Reclamation District of Greater Chicago may grant variances from the requirements of the WMO. The Director shall review the applicant's request for a variance from Village standards that exceed the requirements of the WMO and shall submit his or her recommendation to the Village Council.

A. No variances shall be granted unless the applicant demonstrates that all of the following criteria have been met:

1. The development activity cannot be located outside the SFHA.
2. An exceptional hardship would result if the variance were not granted.
3. The relief requested is the minimum necessary.
4. There will be no additional threat to public health, safety or welfare.
5. There will be no additional threat to beneficial stream uses and functions, including aquatic habitat.
6. There will be no nuisance created.
7. There will be no additional public expense for flood protection, rescue or relief operations, policing, or repairs to roads, utilities, or other public facilities.
8. The activity is not in a regulatory floodway.
9. The applicant's circumstances are unique and do not represent a general problem.
10. The provisions of Sections [15.68.050\(E\)](#) and [15.68.070\(D\)](#) are met.

B. The Director shall notify an applicant in writing that a variance of the requirements of Section [15.68.080](#) of this chapter that would lessen the degree of protection to a building will do any of the following:

1. Result in increased premium rates for flood insurance up to amounts as high as \$25.00 for one hundred dollars \$100.00 of insurance coverage.
2. Increase the risks to life and property.
3. Require that the applicant proceed with knowledge of these risks and that he or she will acknowledge in writing that he or she assumes the risk and liability.

C. Variances requested in connection with restoration of a site or building listed on the National Register of Historical Places or documented as worthy of preservation by the Illinois Historic Preservation Agency may be granted using criteria more permissive than the requirements of subsections (A) and (B) of this section. (Prior code § 28.10)

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser---in fees, expenses, and waste of time.”

—ABRAHAM LINCOLN

