

PUBLIC RIGHT OF WAY ORDINANCE AND EXCAVATIONS IN PUBLIC RIGHT OF WAYS

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And UTILITY LOCATION PERMIT

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UTILITY LOCATION PERMIT

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PUBLIC RIGHT OF WAY ORDINANCE AND EXCAVATION IN PUBLIC RIGHT OF WAYS

Section 1. Intent and Purpose

The purpose of this Ordinance is the regulation of the use of public Right of Ways in the interest of public safety and convenience, and the operation and protection of public works infrastructure. Excavation and restoration

standards are required to preserve the integrity, operational safety, and function of the public Right of Way. This Ordinance is pursuant to Maine State Statute 23 MRSA §3301-3454, Protection of Highways (as may be amended) and 35-A MRSA §2501-2520, Regulation of Facilities in the Public Way (or as may be amended).

Section 2. Administration

The Road Commissioner is the principal Town official responsible for the maintenance of the public Right of Ways, Right of Way Permits, and the ordinances related thereto. The Road Commissioner shall establish Rules & Regulations governing street excavations and implementing this ordinance.

Section 3. Definitions

The following words and phrases, when used in this ordinance, shall have the meanings respectively ascribed to them:

Dig Safe shall mean the “Underground Protection of Facilities Act,” commonly known as the Dig Safe law, found at 23 MRSA §3360-A or most recent revisions. Any excavation undertaken or authorized by this ordinance shall comply with all requirements of this law. In the State of Maine a One-Call system has been established for the obtaining locations of underground facilities prior to excavation. The utilities required to join the One-Call Dig Safe system include those who furnish electricity, gas, oil, cable TV, telephone, or telegraph services by underground lines. Utilities not required to join are water districts, sewer districts, municipal underground facilities, and utilities having fewer than five (5) full-time employees or fewer than 300 customers. The excavator is solely responsible to notify all possible utilities with underground facilities at least three (3) full business days prior to the start of any excavation, trenching, or boring work.

Emergency shall mean any even which may threaten public health or safety including, but not limited to, damage or leaking water or gas conduit systems; damaged, plugged, or leaking sewer or storm drain conduit systems; damaged underground electrical and communications facilities; or downed overhead pole structures.

Excavate shall mean to dig into or in any way remove or physically disturb or penetrate any part of a Right of Way.

Facility or Facilities shall mean any tangible asset in the Right of Way required to provide Utility Service.

Licensed excavator shall mean any person who has been issued a license by the Town to excavate in public places in the Town.

Newly constructed, reconstructed or rehabilitated streets or roads shall mean any Town road that has been newly constructed, reconstructed or rehabilitated within the past five (5) years.

Permittee shall mean a person who has obtained a permit as required by this ordinance.

Person shall mean any natural or corporate Person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

Plant. See “Utility plant.”

Pole placement shall mean an excavation associated solely with a single placement or replacement of a utility pole.

Public place shall mean any public street or road, way, place, alley, sidewalk, park, square, plaza, or any other similar public property owned or controlled by the Town and dedicated to public use.

Rehabilitation shall mean that activity of work on any street which provides structural improvement having a minimum service life of fifteen (15) years with minor maintenance, which includes pavement overlay of one and one-half (1 ½) inches minimum depth, and partial or full depth reconstruction.

Right of Way shall mean the area on, below, or above a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the Town has an interest, including other dedicated Right of Ways for travel purposes and utility easements of the Town. A Right of Way does not include the airwaves above a Right of Way with regard to cellular or other non-wire telecommunications or broadcast service.

Road Commissioner shall mean the person and/or his designee appointed by the Select Board to oversee and administer the public rights of way of the Town.

Rules & Regulations shall mean the Road Commissioner shall establish rules and regulations governing street excavations and implementing this ordinance.

Substructure shall mean any pipe, conduit, duct, tunnel, manhole, vault, buried cable, or wire, utility system appurtenance, or any other similar structures located below the surface of any public place.

Town shall mean Town of Pownal.

Utility shall mean a public utility, as defined in 35A M.R.S.A. §102 or most recent revisions and shall specifically include the non-regulated activities of such a utility.

Utility plant shall mean all pipes, wires, conduits and other equipment or hardware a utility has or intends to lay underground. The term “plant” shall have the same meaning as “utility plant.”

Section 4. Protective Measures and Routing of Traffic

4.1 Safe crossings. The permittee shall in general maintain safe crossings for two (2) lanes of traffic where possible and safe crossings for pedestrians at intervals of not more than two hundred (200) feet. If any excavation is made across any public street, road, alley or sidewalk, adequate crossings shall be maintained for vehicles and for pedestrians. If the street or road is not wide enough to hold the excavated material without using part of the adjacent shoulder, a passageway at least forty-eight inches (48”) in width shall be maintained along such shoulder line.

4.2 Barriers and warning devices. It shall be the duty of every permittee cutting or making an excavation in or upon any public place, to place and maintain barriers and warning devices necessary for safety of the general public. Traffic control near all excavations affecting vehicular, pedestrian and other traffic shall be subject to final review and approval of the Road Commissioner. Barriers, warning signs, lights, etc., shall conform to the latest edition of the “Manual on Uniform Traffic Control Devices” (MUTCD).

4.3 Normalizations of traffic conditions. The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions shall be maintained at all times as near normal as possible so as to minimize inconvenience to the occupants of the adjoining property and to the general public.

4.4 Closing of streets. When traffic conditions permit, the Road Commissioner, with the approval of the Select Board of the Town, may be written approval (or by verbal approval in the case of emergency), permit the closing of streets and alleys to all traffic for a period of time prescribed by him or her, if in his or her opinion it is necessary. The written approval of the Road Commissioner may require that the permittee give notification to various public agencies and to the general public. In such cases, such written

approval shall not be valid until such notice is given. In case of emergency work during non-business hours, the utility company having such emergency shall contact the **Town Dispatch Center at 865-4800** before closing a street or road to traffic.

- 4.5 Warning signs to channel traffic.** Warning signs shall be placed in accordance with the applicable section of the most current edition of the MUTCD in advance of the construction operation to alert traffic within a public street or road, and cones or other approved devices shall be placed to safely channel traffic. The Maine Department of Transportation and/or local police may make a final determination of how to most safely channel traffic.
- 4.6 Interference with arterial streets.** Construction activities (unless an emergency condition exists) shall not interfere with the normal flow of traffic on arterial streets or roads of the Town. A list of **arterial** streets shall be kept at the offices of the Road Commissioner and at the Town Offices.

Section 5. Relocation and Protection of Utilities

The permittee shall not interfere with any existing facility without the written consent of the Town and the owner of the facility. If it becomes necessary to relocate an existing facility, this shall be done by its owner. No facility owned by the Town shall be moved to accommodate the permittee unless the cost of such work is borne by the permittee. The cost of moving privately-owned facilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the facility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wire or other apparatus which may in any way be affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across the work. The permittee shall secure approval of method of support and protection from the owner of the facility. In case any of the pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure, the permittee shall promptly notify the owner thereof. All damaged facilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this section that the permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The Town shall not be made a party to any action because of this section. The permittee shall inform itself as to the existence and location of all underground facilities and protect the same against damage.

The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, water gates, underground vaults, valve housing structures, traffic signal cables and loops and all other vital equipment as designated by the Town and/or Dig-Safe.

Section 6. Abandonment of Structure

- 6.1** Whenever the use of a structure is abandoned or becomes an unusable facility, except the abandonment of service lines designed to serve single properties, the person or utility owning, using, controlling, or having an interest therein, shall within thirty (30) days after such abandonment, file with the Town a statement in writing giving in detail the location of the substructure so abandoned. If such abandoned substructure is in the way, or subsequently becomes in the way, of an installation of the Town or any other public body, the owner of such structure, after having been contacted by the excavator, shall establish if the substructure is abandoned and make the first cut or tap before allowing the substructure to be removed by the excavator.
- 6.2** When gas or other flammable service to buildings is discontinued, the existing service line for such service shall be terminated at a point outside the building.

Section 7. Protection of Public Property

- 7.1** The permittee shall not move, even temporarily, any trees or shrubs which exist in a public place without first obtaining the consent of the appropriate Town department or Town official having control of such property.
- 7.2** Any monument set for the purpose of locating or preserving the lines of any street, road, or property subdivision, or a precise survey reference point, a permanent survey bench mark or a Town line marker within the Town, shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the Select Board to do so. Permission to remove or disturb such monuments, reference points or benchmarks shall be granted only when no alternate route for the proposed substructure or conduit is available. If the Select Board is satisfied that no alternate route is available, permission shall be granted only upon condition, by an agreement in writing, that the person or utility applying for such permission shall pay all expenses incident to the proper replacement of this monument by the Town.
- 7.3** No person or utility shall remove, damage, haul away or cause misalignment of any curbing, including radius curb and catch basin, stones, for any reason whatsoever without first receiving written permission from the Town.
- 7.4** No person or utility shall remove, damage, haul away or otherwise disturb any manhole and/or catch basin castings, frames, and/or covers owned by the Town without first receiving written permission from the Town. Any manhole and/or catch basin castings, frames and/or covers missing, damaged, or disturbed shall be repaired and/or replaced by the Town, and the cost will be charged to the permittee.

Section 8. Prompt Completion of Work

- 8.1** After an excavation is commenced, the permittee shall carry out with diligence and expedition all excavation work covered by the permit and shall promptly complete such work and restore the street, road or sidewalk as specified in this ordinance and the Rules & Regulations enacted by the Road Commissioner. The permittee shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel.
- 8.2** All excavations shall be covered or backfilled at the end of each workday. "Covered" shall mean a steel plate placed over the entire trench plus two (2) feet around the edges. The steel plate shall be of such strength so as to hold all traffic. Barriers approved by the Road Commissioner must be installed if the excavation is to be placed.
- 8.3** All road trenches in existing paved roads must be repaved within 24 hours of opening. All driveway crossings must be paved or graveled and brought back to original grade within 48 hours of opening.

Section 9. Urgent Work

When traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the Town shall have the full power to order, at the time the permit is granted, that a crew and adequate facilities be employed by the permittee beyond normal working hours, including up to twenty-four (24) hours a day, to the end that such excavation work may be completed as soon as possible.

Section 10. Emergency Action

Nothing in this ordinance shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe which may be a threat to life or property, or for making emergency repairs, provided that the person making such excavation shall apply to the

Town for such a permit on the first working day after such work is commenced. Before any excavation work is started, the person or utility excavating must contact all utilities for on the spot locations.

Section 11. Noise, Dust and Debris

Each permittee shall conduct and carry out excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. To the fullest extent practicable, the permittee shall act to reduce noise, dust, and unsightly debris in the performance of the excavation work. Excavation work, including the use of any tool, appliance, or equipment, shall be performed between the hours of **7:00 a.m. and 7:00 p.m. only**, exclusive of emergency work. Time waiver requests may be submitted to the Road Commissioner or Select Board for work outside of this time period and will be subject to neighborhood concerns. **Excavation work shall not occur on Sundays, holidays or on major holiday weekends**, unless expressly authorized by the Road Commissioner or Select Board or as a result of emergency need.

Section 12. Excavations During Winter

12.1 No person or utility shall be granted a street opening permit or open any street, road, or sidewalk from the time of November 1st of each year to April 15th of the following year unless an emergency or special condition exists and permission is obtained in writing from the Town.

12.2 Any person or utility wishing to obtain a street or road opening permit during the off-season outside the aforementioned dates shall first explain fully in writing the emergency situation or special condition existing to the Town before a permit may be granted. If an emergency condition which could endanger life or property exists, excavation work shall not be delayed by this section; however, a written explanation shall be delivered to the Town as soon as possible and a street opening permit obtained for the opening made. A moratorium surcharge shall be added to the regular permit fee for any permit issued between the aforementioned dates for an excavation that is not due to an emergency situation.

12.3 For the purpose of this section, an emergency shall be defined as one of the following: damaged or leaking water or gas conduit systems; damaged, plugged or leaking sewer or storm drain conduit systems; damaged underground electrical and communications facilities; or downed overhead pole structures. All remaining excavations will be considered non-emergency situations and may only be authorized upon written documentation of special circumstances.

Special 13. Restoration of Streets, Road and Sidewalks

All street, road and sidewalk restorations, including temporary and permanent work within any street or road shall be performed by and at the permittee's sole expense and in accordance with the Town's codes or ordinances and according to the Rules and Regulations promulgated by the Road Commissioner pursuant to **Section 2 of this Ordinance**. All repairs and restoration work shall be completed by the permittee in a manner and to the extent deemed acceptable to the Road Commissioner.

Section 14. Warranty of Work

14.1 The permittee shall, for a period of one (1) year thereafter, be fully liable for all defects in materials and workmanship relating to such replacement or realignment and shall promptly repair or replace the same upon notice from the Road Commissioner and to the satisfaction thereof.

Pavement repairs guaranteed by each permittee shall meet all of the following conditions in order to remain in conformance with this Ordinance:

- (1) The entire area shall be free from delamination of the approved surface material.
- (2) No distortion of one-half inch (1/2") or greater shall exist over more than five percent (5%) of the total surface area of the repair.

(3) No cracks of one-quarter inch (1/4") or greater shall exist in the surface or edge of the repair totaling more than five percent (5%) of the repair perimeter.

(4) The hot-mixed asphalt within the trench shall not be completely flushed and bleeding.

14.2 Non-conformance with any of the above conditions shall constitute a breach of guarantee and subject the permittee to remedial actions as provided in the Rules and Regulations.

14.3 Severe [over one inch (1")] distortion conditions shall be considered street or road defect conditions and may be subject to all legal remedies available to the Town for breach of the permittee's Street/Road Opening Permit and shall necessitate that full repairs be completed within twenty-four (24) hours of notification by the Town.

Section 15. Liability of Town Insurance

15.1 This ordinance shall not be construed as imposing upon the Town or any official or employee any liability or responsibility for damages to any person injured by the performance of an excavation work for which a permit is required under this ordinance, nor shall the Town or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit, or the approval of any excavation work.

15.2 For purposes of this section, every licensed excavator shall maintain at all times comprehensive general liability and property damage insurance coverage in a suitable amount, not less than \$300,000, protecting himself, his agents and the Town from all such claims for damages or injuries and naming the Town as an additional insured. All such insurance shall include without being limited to endorsements for completed operations and special hazards/underground collapse, and shall be primary to any insurance or self-insurance of the Town. Evidence of such coverage shall be a condition precedent to the issuance of any license or permit hereunder and shall be submitted in a form satisfactory to the public works authority.

Section 16. Maintenance of Excavation Areas

16.1 If any part of any excavation, including the excavation, backfilling and repairs fails to conform with the standards of this chapter and the rules, the Town shall notify the permittee and require the appropriate corrective actions to be undertaken. Permittee shall take corrective action within twenty-four (24) hours after the issuance of notice if the failure could trigger tort liability or liability for a street defect, as defined in 23 M.R.S.A. §3651, et sequence or as may be amended. In all other instances, permittee shall have a reasonable time as provided in **Section 21** to undertake corrective action.

16.2 If the permittee fails to respond within the required time period, the Town shall cause the necessary repairs to be accomplished, and shall keep an account of the expense thereof, and in such case the permittee shall be billed an amount equal to one hundred (100) percent of the whole of the expense incurred by the Town. Bills rendered in accordance with this section shall be due and payable by the permittee immediately upon receipt. The Town shall issue no further or new permits to the permittee until full payment of the billed costs have been received.

16.3 If for any reason, the Town has to perform repair work to an excavation after the permittee's guarantee period has started, that guarantee period shall start over again upon completion of the repairs.

Section 17. Inspections

17.1 The Town shall make such inspections as are reasonably necessary in the enforcement of this ordinance and the Rules and Regulations.

- 17.2** In the event that any dispute exists as to the amount, nature, or scope of the work required under this ordinance or the Rules and Regulations, the decision and judgment of the responsible Town official will be final and binding unless appealed to or stayed by a court of competent jurisdiction.

Section 18. Testing Requirements

The Town may order a test (at its own expense) on any subsequent restoration of a street excavation in order to determine if the work has been or is being completed in accordance with Town specifications and regulations. If the test shows the street restoration phase or phases to be in material violation of this ordinance and the Rules and Regulations, the permittee shall pay the cost of the testing and all required subsequent tests to verify the proper restoration in accordance with this ordinance and the Rules and Regulations.

Section 19. Maintenance of Drawings

Every person or utility owning, using, controlling or having an interest in substructures under the surface of the public way or public property, used for the purpose of supplying or conveying gas, electricity, communications, impulses, water, stream, ammonia or oil in the Town, shall file with the Town a map or set of maps each drawn to a scale of not less than one (1") inch to forty (40') feet, showing in detail the plan, location, size and kind of installation, if known, of all new or renewed substructures. These maps shall be provided to the Town no later than sixty (60) days after the completion date of construction in digital file and in paper form acceptable to the Road Commissioner of Select Board.

Section 20. Fees and Charges

20.1 Each street or road opening permit may be assessed two (2) fees: an administrative charge and a permanent pavement or gravel restoration charge.

- (1) Administrative:** This fee shall reimburse the Town for the direct cost of labor and equipment necessary to administer this ordinance and the Rules and Regulations and the rehabilitation of Town streets and roads primarily due to excavations.
- (2) Permanent pavement restoration:** This fee shall cover the Town's cost of permanently restoring the disturbed pavement area and shall be based on the final measured size of each permitted street or road opening.
- (3) Permanent gravel road restoration:** This fee shall cover the Town's cost of permanently restoring the disturbed gravel area and shall be based on the final measured size of each permitted street or road opening.

20.2 All fees shall be enacted annually by order of the Select Board. The Road Commissioner shall endeavor to notify currently licensed excavators in advance of any fee revisions.

20.3 Upon permit application, the administrative charge, estimated permanent pavement or gravel road restoration charge, and moratorium/remaining life fees shall be paid to the Town Treasurer unless waived by the Road Commissioner as provided below. No permit shall be issued without appropriate payment of fees.

20.4 Waiver or fees:

- (1)** The prevent untimely delays to construction activities within the limits of Town and/or MDOT planned reconstruction areas, the Town shall waive street or road opening repair charges for utilities and individuals having work to do in such areas until the time reconstruction takes place.
- (2)** The Road Commissioner may waive all permit fees in streets, roads or sidewalk/driveway areas to contractors under contract to the Town of MDOT.
- (3)** To promote the use of tunneling, jacking, and boring technologies, permanent restoration and moratorium/remaining life fees will not be assessed to any excavation area achieved by these technologies which does not result in pavement damage.

- (4) The Select Board may authorize special waivers of permit fees if special conditions exist which can be supported by the Road Commissioner in writing.

Section 21. Violations

- 21.1** Any person or utility failing to comply with or violating any provision of this ordinance or the rules shall be served by the Road Commissioner with written notice stating the nature of the failure or violation and providing a reasonable time limit for the necessary corrective actions. Such person or utility shall, within the period of time stated in such notice, permanently cease or correct all failures or violations.
- 21.2** In order to ensure public safety, the Road Commissioner shall have the right to verbally notify and require immediate corrective actions of any person or utility whose failure to comply with this ordinance or the rules could cause a safety hazard.
- 21.3** Any person or utility who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this ordinance or the rules shall be guilty of a violation of this ordinance.
- 21.4** Any person or utility violating any of the provisions of this ordinance or the rules shall be liable to the Town for any expense, loss, or damage occasioned by the Town by reason of such violations. The Town may seek injunctive relief for the purposes of enforcing this ordinance or the rules.
- 21.5** (1) Any violation of this ordinance which is also a violation of 35 MRSA §2509 or 2511 or a violation of 23 MRSA §3353 or 3355 shall subject the permittee or party to a fine as provided in said statutes, as said statutes may be amended from time to time.
- (2) Any violation of this ordinance other than the violations of state law prescribed in the preceding paragraph shall subject the permittee or party up to five hundred (500) dollars fine per day as determined by the Select Board for each day that a violation continues.
- 21.6** Any permittee or party who continues to violate any section of this ordinance or the rules and fails to correct violations in a timely manner shall receive no further permits and will be invoiced for permanent repairs until such time as the Town is satisfied that the permittee or party shall have corrected all violations in compliance with the terms of this ordinance and the Rules and Regulations.
- 21.7** The Town reserves the right to notify a permittee's insurance and/or bond carrier of repeated violations.

Sections 22. Failure to Obtain a Permit

Any person or utility found to be conducting any excavation activity within the public right-of-way without having first obtained the required permit(s) shall immediately cease all activity (exclusive of actions required to stabilize the area) and be required to obtain a permit before work may be restarted. A surcharge of two hundred fifty dollars (\$250.00) shall be required in addition to all applicable permit fees.

Section 23. Appeals Process

- 23.1** Whenever a person shall deem herself or himself aggrieved by an order made by an order made by the Road Commissioner, the person may file an appeal to the Select Board within ten (10) days of the date of the order, and the person shall be afforded a hearing on the matter before the Select Board or a designee, and unless by their authority the aggrieved order is revoked, such order shall remain in force and be forthwith complied with by the person. A person who deems herself or himself aggrieved by an order made by a Selectman or the Select Board may file and appeal at the County Superior Court.
- 23.2** The interpretation of this ordinance is to be made by the Road Commissioner and Select Board. Appeal from any such interpretation may be taken to the Board of Appeals.

23.3 In cases where compliance with such order made by the Road Commissioner or Select Board would cause undue hardship, the Board of Appeals may extend the limit of such order, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of the rules, subject always to the rule that the Board of Appeals shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity or public infrastructure, and the operational safety and function of the public right-of-ways.

End of Ordinance