

TOWN OF MIDDLEBURY

Ordinance Regarding
Work in the Public Right-Of-Way

Pursuant to the authority granted under Section 103 and Section 104 (A), (B), and (C) of the Charter of the Town of Middlebury, the Select Board of the Town of Middlebury hereby enacts the following ordinance:

ARTICLE I

Purpose

In order to control construction activities in public rights-of-way a permitting process is established which will provide for the public safety, protect existing public facilities such as roads, drainageways and water and sewer mains, and assure that work done in the public rights-of-way conforms to Town standards.

ARTICLE II

Permit Required

1. It shall be unlawful for any person, firm, utility, or corporation to disturb the ground or pavement in any street, sidewalk, curb or greenbelt within the rights-of-way of the Town of Middlebury or State of Vermont without first obtaining a written permit therefore from the Director of Operations or designee.
2. It shall be unlawful for any person, firm, utility, or corporation to temporarily obstruct a street or sidewalk or public parking lot without first obtaining a written permit therefore from the Director of Operations or designee. "Obstruction" as used in this ordinance includes, but is not limited to, temporary obstacles and/or barriers which hinder free and safe passage of pedestrians and vehicles or which has the potential of causing injury or damage, if run over or into by pedestrian or vehicular traffic. Obstruction does not include activities otherwise covered under the Town of Middlebury Street Vending Ordinance.

ARTICLE III
Permit Application & Approval

1. An application for a permit to allow work in the public right-of-way shall be made on forms furnished by the Town.
2. Permits shall contain a commencement date and estimated date of completion. "Completion Date" as used in this ordinance means the date upon which the excavation or obstruction has been substantially repaired or removed. "Final Completion Date" shall mean the date upon which the repair of lawn, sidewalks or resurfacing is finished and accepted by the Director of Operations or designee. A permit shall expire for work not started or completed within the approved time period, and a new permit shall be required before beginning or completing the work. A permit extension, however, may be obtained from the Director of Operations prior to the expiration of a permit with no additional fees.
3. The Director of Operations or designee shall require a permit applicant to submit the following documents if determined to be applicable by the Director:
 - A. Where work is to be performed directly by a private homeowner or private business owner, a certificate of insurance for business general liability or homeowner liability policy shall be required. Where a private homeowner or private business owner has contracted with a third-party to perform the work, then the owner shall also furnish a copy of a written contract with the contractor relating to such work in the right-of-way.
 - B. A letter of credit in an amount sufficient to cover the permit fee(s) and the full cost to complete the project according to the terms and conditions of the permit and this ordinance for a period of one year beyond the Final Completion Date of the project where significant excavation will occur. Blanket letters of credit may be arranged with contractors and utilities who conduct a substantial amount of work in the right-of-way, subject to the approval of the Town Manager.
 - C. Where work is to be performed by a utility or contractor, a certificate of insurance naming the town as an additional insured and affording the following coverages shall accompany every permit application or be on file with the Public Works Department. The insurance required shall not be cancelled, materially changed or not renewed without thirty (30) days written notice to the Director of Operations. The applicant for a permit shall agree to indemnify and hold the Town harmless and/or free of liability arising out of work in the public right-of-way.
 - i. General Liability

Bodily Injury, per occurrence	\$1,000,000
Bodily Injury, annual aggregate	\$2,000,000
Property Damage	\$1,000,000

The insurance shall include coverage for collapse and underground (CU) hazard, explosions (X) coverage, and contractual liability at the discretion of the Director of Operations.

i. <u>Automobile Liability</u>	
Bodily Injury, per occurrence	\$1,000,000
Bodily Injury, annual aggregate	\$2,000,000
Property Damage	\$1,000,000

The insurance shall include coverage for owned, non-owned, and hired vehicles.

iii. <u>Workers' Compensation & Employer's Liability</u>	
Statutory Coverage	\$1,000,000 per occurrence

3. A satisfactory plan for the subject property and adjacent properties showing existing surface and sub-surface conditions including the placement of existing utilities, trees and vital structures such as fire hydrants, water gates, underground vaults, valve housing structures, and any other items as designated by the Director of Operations.
4. Generally, a permit shall cover only contiguous construction and work performed as a continuous operation, except as otherwise determined by the Director of Operations or designee. The Director of Operations or designee may require an applicant to submit separate permit applications depending on the scope of area and time period in which the work in the right-of-way is planned to be performed. Where the work in the right-of-way is planned to be performed in phases or segments separated in location and/or time, the Director of Operations or designee may require individual permit applications for such different phases or segments of work which the Director, in his or her discretion, may deem to be appropriate under the circumstances.
5. When a permit application seeks approval for work where project costs will be in excess of \$25,000, the Director of Operations may, in his or her discretion, require:
 - A. that the permit application, and/or the subsequent work to be performed pursuant to the permit, undergo review and consideration by an appropriate independent engineer qualified in the area(s) of work planned in the public right-of-way. Upon such determination, the Director of Operations shall so advise the permit applicant and request that the applicant agree, as a condition of the permit, to compensate the Town for the cost of engaging such engineering services.
 - B. A permit bond guaranteeing compliance with the terms and conditions of the permit and this ordinance in an amount to be determined by the Director of Operations, but in any event, not less than \$25,000, or 25% of the estimated project costs, whichever is the greater.

6. The Director of Operations or designee reserves the right to withhold issuance of permits when paving materials are unavailable.
7. Emergencies: Nothing in this article shall be construed to prevent emergency work in the right-of-way as may be necessary for the preservation of life or property - provided that the person, firm or corporation performing such work shall apply to the Director of Operations for a permit on the first working day after such work is commenced. Even in emergency situations, notice shall be given immediately by phone to the Public Works Department, Police Department, Fire Department and Ambulance Association and all provisions of this ordinance shall apply to such emergencies.

ARTICLE IV
Fees

1. Permit Fee: A permit fee shall be charged for all work in the public right-of-way permits. The fee is to be set by the Select Board and may be amended from time to time.
2. Other fees shall be required by the Town at the discretion of the Director of Operations or based on past practices of the permit applicant.
3. The permit fee shall be due and payable at the time the permit application is made.
4. The Select Board may waive the permit fee for new developments which are required to reconstruct or upgrade existing Town streets or water and sewer facilities.
5. The Director of Operations may deny a permit for an applicant with any past due balances owed to the Town.

ARTICLE V
Safety Measures

1. Every person, firm, utility, or corporation making an excavation or obstruction within the public right-of-way under a permit granted under this ordinance must at all times maintain a railing around the excavation or obstruction site for so long as the same shall be unsafe or inconvenient for travel. The permit holder shall in addition keep a suitable number of lights affixed to such railing or fence so as to provide adequate warning to approaching motorists or pedestrians of the excavation or obstruction. The permit holder shall be responsible for his or her own lost or stolen barriers.
2. No excavation shall be made or obstruction placed within the limits of the public right-of-way in such a manner as to interfere unnecessarily with the traveling public. The permit holder shall take appropriate measures to assure, while an excavation or obstruction remains and during the performance of excavation work and until said work is accepted by the Director of Operations or designee, that traffic conditions shall be maintained as near normal as possible at all times so as to minimize inconvenience to the occupants of adjoining properties and the general public.

3. The Director of Operations may require that the permit holder prepare a traffic control plan in detail appropriate to the complexity of the work. Said traffic-control plan may require the following:
 - A. Approval of the Chief of Police or designee;
 - B. Notification of the Fire Department and Ambulance Association;
 - C. Adequate warning, delineation and channelization by means of proper pavement markings, signing and use of other devices which are effective under varying conditions of light and weather to assure the motorist of positive guidance of and through the work area;
 - D. Flagging personnel to control vehicular and pedestrian traffic;
 - E. Identification, and if necessary, the removal of inappropriate markings to eliminate any misleading cues to motorists under all conditions of light and weather;
 - F. Identification of what provisions, if any, will be made for the safe operation of work vehicles, particularly on high speed, high volume streets.

Notwithstanding any requirements provided for under this Article, every permit holder shall comply with the standards set forth in the Manual of Uniform Traffic Control Devices as currently adopted by the State of Vermont and as amended from time to time.

ARTICLE VI Compliance, Quality Control, and Documentation of Completed Work

When a permit application seeks approval for work where project costs will be in excess of \$25,000, the Director of Operations may require, as a condition of the permit, the following:

1. That a permit holder provide funding to engage a Quality Control and Compliance Officer to be selected by the Town. Such Officer shall serve as a liaison between the permit holder and the Director of Operations and will ensure the permit holder's compliance with the conditions of the permit and the standards and specifications set forth in this ordinance.
2. That upon completion of work permitted in the public right-of-way, the permit holder shall, if requested by the Director of Operations, provide the Town with a copy of all as-built plans and record drawings indicating the actual scope of work performed, as well as the locations of all other buried utilities, Municipal infrastructure, and all foreseen and unforeseen objects encountered during the performance of work. The permit holder shall provide the copies of any as-built plans and record drawings to the Town within 90 days of request by the Director of Operations.

ARTICLE VII
Excavation Requirements

1. The permit holder shall be responsible for understanding and complying with 30 V.S.A. Chapter 86, "Underground Utility Prevention System", otherwise known as the "Digsafe" program, as adopted by the State of Vermont and as may be amended from time to time.
2. The permit holder shall not interfere with any existing public or private utilities. If it becomes necessary to relocate an existing utility line, the Town, through the Town Manager, reserves the authority to determine the new location. If the utility line does not belong to the Town, then the utility company must also be notified and will be responsible for overseeing the relocation. The Town will not be responsible for any expenses incurred for such relocation.
3. The permit holder shall inform itself as to the existence and location of all underground utilities, trees and tree roots, and protect the same against damage. In the event any 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 permit holder shall promptly notify the owner thereof and the Director of Operations. It is the intent of this section that the permit holder shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage. Such assumption of liability is a contractual obligation of the permit holder, and the permit holder shall save and hold harmless the Town from any action arising as a result of such damage.
4. All excavations shall be performed in compliance with the standards adopted by the Vermont Occupational Safety and Health Administration as such standards may be adopted, revised and amended. In addition, bracing and sheeting shall be utilized where necessary to preserve and protect adjacent structures and areas.

All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such a manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the Director of Operations or designee shall have the authority to require that the permit holder haul the excavated material to a storage site and then return it to the trench site at the time of backfilling. It shall be the permit holder's responsibility to secure the necessary permission and to make all necessary arrangements for all required storage and disposal sites.

ARTICLE VIII
Backfilling Requirements

1. The permit holder shall notify the Director of Operations, or designee of the time and date when the backfilling of the excavations will commence. Where no permit has been issued pursuant to

the requirements of this ordinance because of an emergency situation, the excavator shall nonetheless likewise notify the Director of Operations, or designee of the time and date of backfilling. Unless otherwise waived by the Director of Operations, a representative of the Town will be present to monitor the backfilling for the purposes of ascertaining whether the backfill material is proper and adequately compacted. In the event the Town representative determines that the permit holder is not using acceptable backfill materials or acceptable backfilling procedures, the official may order the suspension of all work at the site.

2. The Director of Operations or designee may require the permit holder to furnish a soil test by a recognized soil testing laboratory or registered professional engineer specializing in soil mechanics in order to determine whether the backfill for the excavation was adequately compacted. All expense of such tests shall be borne by the permit holder. In order for resurfacing to commence, such test must demonstrate that the backfill material meets the requirements for composition and compaction of not less than ninety-five percent (95%) density as recommended by the Director of Operations.
3. All backfilling shall be done in a manner that will permit the restoration of the surface to a reasonable approximation in appearance to that prior to excavation, and to a density condition not less than that existing prior to excavation.

ARTICLE IX Surface Restoration

1. For work in the unpaved portion of the public right-of-way, the permit holder shall establish grass by sodding or seeding at the discretion of the Director of Operations or designee. Where existing topsoil is deemed of insufficient quality, the Director of Operations or designee may require that new topsoil be used to replace the top four (4) inches of surface material.
2. All pavement surfaces shall be restored to a condition not less than that existing prior to excavation. However, sidewalk and curbing may be required to be replaced with concrete regardless of prior condition.
3. The permit holder shall, at the direction of the Director of Operations or designee, replace any existing trees, plantings or landscape features disrupted by work in the right-of-way with suitable replacement plantings or landscaping.
4. The permit holder shall remedy any defects due to faulty materials or workmanship and pay for any damage(s) resulting therefrom which shall appear within a period of one year from the final completion date of the project and in accordance with the terms of the permit.
5. Restoration of the public right-of-way following any activity provided for under this ordinance shall be completed by the permit holder within a time period established by the Director of Operations or designee and according to specifications adopted by the Town of Middlebury.

6. Work not completed to the satisfaction of the Director of Operations or designee within the time period established, or performed contrary to the orders of the Director of Operations or designee and, after due notice, fails to be corrected, shall require the permit holder to reimburse the Town for any expense incurred in correcting the work, including reasonable attorney's fees.

ARTICLE X
Disclaimer

1. The granting of a permit or the monitoring of operations conducted under any permit shall not make the Town, the Select Board, the Director of Operations or any designee responsible for construction means, methods, techniques, sequences, procedures or permit holder's failure to perform the work in accordance with the standards and specifications set forth in this ordinance, nor shall any approval granted by any Town official under this ordinance make any such official responsible for any personal injury, including death, or property damage occurring as a result of the permit holder's operations. Acceptance of this disclaimer shall be a condition of any permit issued under this ordinance.

ARTICLE XI
Penalties

1. Any person, firm, utility, or corporation violating any of the provisions of this ordinance shall be fined no less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each offense; and a separate offense shall be deemed committed for each week in which a violation occurs or continues.
2. A fixed fine of one hundred dollars (\$100) shall be charged for work in the right-of-way that commences prior to obtaining a permit.
3. Any permit issued under this ordinance may be suspended by the Director of Operations or his or her designee for violation of the permit or failure to observe Town ordinances and specifications. Any permit issued pursuant to this ordinance may be revoked for fraud, misrepresentation or other just cause after a hearing before the Select Board. Where necessary for the protection of public safety, the police department, by any of its officers, may order the suspension of work at an excavation, or the removal of an obstruction, and may order the work site secured. Such order or orders shall be effective only until the Director of Operations or designee has been notified of the activity and has had reasonable opportunity to visit the site to take action for the protection of the public, but in no event shall any order by the police department be effective for a period greater than twenty-four (24) hours.

Cost of restoration of work suspended or revoked under this section shall be paid by the permit holder.

ARTICLE XII
Appeal

1. A permit applicant or permittee shall have the right to appeal a determination of the Director of Operations and/or Town Manager in granting, denying, or setting the terms of a permit.
2. An appeal of a determination by the Director of Operations shall be submitted in writing to the Town Manager, along with a fee of \$60, within ten (10) days following the date of the Director's decision and shall set forth the factual and/or legal grounds in support of the appeal. The Town Manager may consider the appeal and issue a determination within ten (10) days of the receipt of the appeal, or the Town Manager may refer the matter to the Select Board which shall consider the appeal at its next regularly scheduled meeting or, in any event, not later than 45 days following the Board's receipt of the appeal.
3. A determination by the Town Manager may be appealed to the Select Board provided that a written notice of appeal is submitted to the Town Manager, along with a Public Hearing Notice Fee of \$60, within 10 days of the date of determination. The Selectboard shall consider the appeal at its next regularly scheduled meeting or, in any event, not later than 45 days following the Board's receipt of the appeal.

ADOPTED

Adopted: July 21, 1988
Effective: August 30, 1988
Amended: June 6, 1989
Effective: July 16, 1989
Amended: August 15, 1989
Effective: September 24, 1989
Amended: July 2, 1991
Effective: August 11, 1991
Amended: October 8, 2013
Amended: November 5, 2013
Effective: December 15, 2013