

CHAPTER 604

**RIGHT OF WAY ORDINANCE**

Town of Yarmouth, Maine

Street Opening Ordinance repealed and replaced with Right of Way Ordinance

10/15/1998

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# RIGHT OF WAY ORDINANCE

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# RIGHT OF WAY ORDINANCE

## ARTICLE I

### A. 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.

### B. ADMINISTRATION

The Public Works Director is the principal Town official responsible for the administration of the Right of Ways, Right of Way Permits, and the ordinances related thereto. The Director of the Public Works Authority shall establish Rules, Regulations & Requirements governing street excavations and implementing this ordinance. The Director may delegate any or all of the duties hereunder.

### C. 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. 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 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 Municipalities or public utility with fewer than five (5) full-time employees or less than 300 customers or a person that owns underground facilities on its own property for commercial or residential services. 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.

**Director** shall mean Public Works Director and/or designee as assigned by issuing authority.

**Emergency** shall mean any event which may threaten public health or safety, including, but not limited to, 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.

**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.

**Newly constructed, reconstructed, or rehabilitated streets** shall mean any street, apron or sidewalk 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.

**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, way, place, alley, sidewalk, park, square, plaza, or any other similar public property owned or controlled by the Town and dedicated to public use, and any dedicated-but-unaccepted street or way.

**Rehabilitation** shall mean that activity of work on any street, apron or sidewalk 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 inches (1-1/2") 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.

**Regulations & Requirements** shall mean the Director of the Public Works Authority shall establish Rules, Regulations & Requirements governing street excavations and implementing this ordinance. The Director may delegate any or all of the duties hereunder.

**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 Yarmouth and/or its Public Works Authority.

**Utility** shall mean a public utility, as defined in 35-A M.R.S.A. § 102 as it may be hereinafter amended and shall specifically include the non-regulated activities of such a utility.

#### **D. PROTECTIVE MEASURES AND ROUTING OF TRAFFIC**

1. **Safe crossings.** The Permittee shall in general maintain safe crossings for two (2) lanes of vehicle traffic where possible and safe crossings for pedestrians and bicyclist. If any excavation is made across any public street, alley or sidewalk, adequate well signed, delineated crossings and detours shall be maintained for vehicles, pedestrians, and bicyclist. All work zones, crossings and detours must comply with the most current edition of the "Manual on Uniform Traffic Control Devices (MUTCD) standards.
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 Director. Barriers, warning signs, lights, etc., shall conform to the current edition of the (MUTCD).
3. **Normalization of traffic conditions.** The Permittee shall take appropriate actions to assure that during the performance of the excavation work, traffic conditions are as near normal as possible and shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public.
4. **Closing of streets.** When traffic conditions permit, the Director or representative of the Public Works Authority with the approval of the police department of the Town, may by written approval (or by verbal approval in the case of emergency), permit the closing of streets, alleys, and sidewalks 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 Director or representative of the Public Works Authority may require that the Permittee give notification to various public agencies, to the general public and provide a written detour/closure plan that addresses pedestrians, bicyclist and vehicles. 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 207-846-3333 before closing a street to traffic.
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, and cones or other approved devices shall be placed to safely channel

traffic, in accordance with the instructions of the Director or representative of the Public Works Authority, after their review of the proposed traffic control measures for the project.

6. **Special police protection for interference with school walks route map.** The Permittee shall hereby be informed that the Town has or may have a "school walk route map", and that the Director or representative of the Public Works Authority will require special police protection or additional signage & protocols at locations where the Permittee, by their work, interferes with these designated school walk routes or crossing locations. Copies of school walk route maps for various locations in the Town may be procured from the Director or representative of the Public Works Authority.
7. **Interference with arterial streets.** Construction activities (unless an emergency condition exists) shall not interfere with the normal flow of traffic on arterial streets of the Town. A list of arterial streets shall be kept at the offices of the Public Works Authority.

#### **E. 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 all pipes, conduits, poles, wires or other apparatus which may be in any way 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 reported immediately to the facility owner and to the Public Utility Commission (PUC) by way of the Underground Utility Damage Prevention Form. PUC must be notified within ten (10) days. 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.

#### **F. ABANDONMENT OF STRUCTURE**

1. Whenever the use of a substructure 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 substructure, 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.
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.

#### **G. PROTECTION OF PUBLIC PROPERTY**

1. The Permittee shall not remove, 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.
2. Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point, or a permanent survey benchmark within the Town, shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the Town 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 Town 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.
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.
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.

#### **H. PROMPT COMPLETION OF WORK**

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 or sidewalk as specified in this ordinance and the Rules, Regulations & Requirements enacted by the Public Works Authority. The Permittee shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel.

All excavations shall be covered or backfilled at the end of each workday. Covered shall mean steel plated over the entire trench plus two feet (2') around the edges. The steel shall be of strength to hold pedestrian or vehicle traffic, as required by the trench location. Barriers approved by the Director or representative of the Public Works Authority must be installed if the excavation is to be plated. No trench or excavation shall be left open overnight.

All road trenches must be paved within forty-eight (48) hours of opening and all driveway crossings must be paved within seventy-two (72) hours of opening, unless otherwise approved by the Director or representative of the Public Works Authority.

#### **I. 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.

#### **J. 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.

#### **K. 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 Public Works Authority for work outside of this time period and will be subject to neighborhood concerns. **Excavation work shall not occur on Saturdays, Sundays, holidays or on major holiday weekends**, unless expressly authorized by the Public Works Director or representative of the Public Works Authority or as a result of emergency need.

#### **L. EXCAVATIONS DURING WINTER**

1. No person or utility shall be granted a Right of Way / Utility Location (ULP) permit or open any street or sidewalk from the time of November 15<sup>th</sup> of each year to May 1<sup>st</sup> of the following year unless an emergency or special condition exist, and permission is obtained in writing from the Public Works Authority.
2. Any person or utility wishing to obtain a street opening permit between these 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 condition.
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.

#### **M. RESTORATION OF STREETS AND SIDEWALKS**

All street and sidewalk restorations, including temporary and permanent work within any street shall be performed by and at the Permittee's sole expense and in accordance with the Town's code of ordinances and according to the Rules, Regulations & Requirements promulgated by said authority pursuant to Article I and II of this code. All repairs and restoration work shall be completed by the Permittee in a manner and to the extent deemed acceptable to the Public Works Director or representative of the Public Works Authority.

## **N. WARRANTY OF WORK**

The Permittee shall, for a period of two (2) years 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 of the Public Works Authority and to the satisfaction thereof.

## **O. REQUIRED RESTORATION WORK**

1. At the end of the first frost cycle, Permittee is responsible for milling out the trench one and one quarter inch (1-1/4") deep, full width, including twelve inches (12") beyond all seams, then repave.
2. Permittee is responsible for all defects associated with the utility trench, including but not limited to:
  1. Paving, gravel shoulders, curb or concrete work required by permit;
  2. Trench settlement;
  3. Vegetation – grass restoration required by permit.
3. Pavement repairs guaranteed by each Permittee shall meet all of the following conditions in order to remain in conformance with this ordinance:
  - a. The entire area shall be free from delamination of the approved surface material;
  - b. 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;
  - c. No cracks of one-quarter inch (1/4") or greater shall exist in the surface or edges of the repair totaling more than five percent (5%) of the repair perimeter.
4. 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, Regulations & Requirements.
5. Severe (over one inch (1")) distortion conditions shall be considered Tort liability and street defect conditions, and may necessitate that full repairs be completed within twenty-four (24) hours of notification by the Town.

## **P. LIABILITY OF TOWN INSURANCE**

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. In the case of a dedicated-but-unaccepted street or way, this ordinance shall not be construed as authorizing any action which is inconsistent with any private rights in said street or way, nor shall the issuance of any permit hereunder be construed as an acceptance of said street or way by the Town for highway or any other purposes.

For purposes of this section, every excavator working in the public Right of Way shall maintain at all times comprehensive general liability and property damage insurance coverage in a suitable amount, not less than one million dollars (\$1,000,000.00), 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 hereunder and shall be submitted in a form satisfactory to the Public Works Authority.

## **Q. MAINTENANCE OF EXCAVATION AREAS**

1. If any part of any excavation, including the excavation, backfilling and repairs fails to conform with the standards of this ordinance and the Rules, Regulations & Requirements, 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 seq. In all other instances, Permittee shall have a reasonable time as provided in Article, Section H and Section I of this ordinance to undertake corrective action.
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 fifty percent (150%) 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.
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.

## **R. INSPECTIONS**

1. The Town shall make such inspections as are reasonably necessary in the enforcement of this ordinance and the Rules, Regulations & Requirements.
2. The Public Works Authority may order such actions as it deems necessary to ensure that this ordinance and the Rules, Regulations & Requirements implementing it are not violated.
3. In the event that any dispute exists as to the amount, nature, or scope of the work required under this ordinance or the Rules, Regulations & Requirements, the decision and judgment of the Public Works Director or representative of the Public Works Authority will be final and binding unless appealed to or stayed by a court of competent jurisdiction.

## **S. TESTING REQUIREMENTS**

The Town may order a test (at its own initial 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, Regulations & Requirements, 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, Regulations & Requirements.

## **T. 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, or water in the Town, shall file with the Town a map or set of maps each drawn to a scale of not less than one inch(1") to fifty feet(50'), 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 paper and in digital file form acceptable to the Public Works Authority. Additionally, the person or utility shall provide appropriate GPS and .shp or .dwg electronic data files of the as-built infrastructure acceptable to the Director and Town Engineer. The requirement to provide electronic files may be waived at the sole discretion of the Director and Town Engineer.

## **U. FEES AND CHARGES**

**Refer to Article X, Section A of Chapter 401 "Fees & Permits".**

1. Each Right of Way / Utility Location Permit will be assessed one of three (3) fees: Minor Right of Way permit fee, Major Right of Way permit fee or a Utility Location permit fee.

- a. **Minor Right of Way Fee.** A flat fee will be charged for all projects that do not require on-site Town inspection and tracking.
  - b. **Major Right of Way Permit Fee.** A flat fee will be charged for all projects that require basic inspection and oversight from the Town. Services covered are: administrative review, tracking, permit issuance, restoration inspection & final pavement restoration inspection.
  - c. **Utility Location Permit Fee – Time & Materials.** For distribution lines / main extensions / large projects – permit applications will be reviewed and issued on a time and materials basis for staff involved. This includes, but is not limited to, administrative review, meeting coordination, field location meetings and permit issuance.
2. All fees are set by Town Council. The Public Works Authority shall endeavor to notify currently licensed excavators in advance of any fee revisions.
  3. Upon permit application, fees shall be paid to the street openings clerk unless waived by the Public Works Authority as provided below. Permittee's must also submit with the permit application a Certificate of Liability Insurance ("COI") for the excavating contractor, listing the Town as additional insured in terms of general liability. No permit shall be issued without appropriate payment of fees and COI. Utility Permittees in good standing shall be granted the option of being invoiced by the Town for these fees.
  4. Waiver of Fees:
    - a. To prevent untimely delays to construction activities within the limits of Town and/or MDOT planned reconstruction areas, the Town shall waive street opening repair charges for utilities and individuals having work to do in such areas until the time reconstruction takes place.
    - b. The Director or representative of the Public Works Authority may waive all permit fees in streets or sidewalk/driveway areas to contractors under contract to the Town or MDOT.
    - c. The Town Manager may authorize special waivers of permit fees if special conditions exist which can be supported by the Director in writing.

## V. VIOLATIONS

1. Any person or utility failing to comply with or violating any provision of this ordinance or the Rules, Regulations & Requirements shall be served by the Public Works Authority 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.

2. In order to ensure public safety, the Public Works Authority 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, Regulations & Requirements could cause a safety hazard.
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, Regulations & Requirements shall be guilty of a violation of this ordinance.
4. Any person or utility violating any of the provisions of this ordinance or the Rules, Regulations & Requirements shall be liable to the Town for any expense, loss, or damage occasioned by the Town by reason of such violation. The Town may seek injunctive relief for the purposes of enforcing this ordinance or the Rules, Regulations & Requirements.
5. Any violation of this ordinance which is also a violation of 35-A M.R.S.A. § 2509 or § 2511 or a violation of 23 M.R.S.A. § 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.
  - a. Any violation of this ordinance other than the violations of state law prescribed in the preceding paragraph shall subject the Permittee or party to a fine for each day that a violation continues. See Article 10, Section B of Chapter 401 "Fees and Permits".
6. Any Permittee or party who continues to violate any section of this ordinance or the Rules, Regulations & Requirements 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, Regulations & Requirements.
7. The Town reserves the right to notify a Permittee's insurance and/or bond carrier of repeated violations.
8. All roadway trenches must be paved within forty-eight (48) hours of excavation and driveway trenches within seventy-two (72) hours unless otherwise approved by the Public Works Director or representative of the Public Works Authority. All trenches not paved within this period of time will be in violation of this ordinance.

## **W. 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 penalty fee shall be required in addition to all applicable permit fees. See Article 10, Section B of Chapter 401 "Fees & Permits"

## **X. APPEALS PROCESS**

1. Whenever a person shall deem themselves aggrieved by an order made by the Public Works Authority, the person may file an appeal to the General Board of Appeals within thirty (30) days of the date of the order, and the person shall be afforded a hearing on the matter before the General Board of Appeals, and unless by their authority the aggrieved order is revoked, such order shall remain in force and be forthwith complied with by the person.
2. In cases of applicability or interpretation of the Rules, Regulations & Requirements, the General Board of Appeals may revoke such order made by the Public Works Authority.
3. The General Board of Appeals has the authority to extend the time limit of any order, or grant exceptions to, waive requirements of, or grant a variance from the specific provisions of the Rules, Regulations & Requirements, only upon giving due consideration to the purposes of the Rules, Regulations & Requirements in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public Right-of-Way.



## ARTICLE II

### UTILITY LOCATION PERMIT

#### A. DEFINITIONS

**Application:** A written statement, requesting a location permit from the licensing authority, describing the work proposed by the Permittee.

**General Location (or Permit Area):** That portion of the highway or Right-of-Way to be occupied or crossed by the proposed installation.

**Specific Location Plan:** A plan or sketch showing the location within the highway or the principal units of the proposed installation.

#### B. APPLICATION

The application must provide:

1. Description of the general location;
2. Description of the proposed installation;
3. Minimum depth below ground or height above ground.

Note: Right-of-Way Permits and Utility Location Permits use the same application form.

One copy of the application shall be submitted to the **Town of Yarmouth, 200 Main Street, Yarmouth, ME 04096.**

Any number of general locations and proposed installations may be included in one application. However, each general location and the applicable proposed installation shall be stated separately.

#### C. FEES & CHARGES

See Article X, Section A of Chapter 401 "Fees & Permits"

#### D. PLANS

Unless otherwise noted general location maps (provided by the Utility Section), shall be submitted with the application. One (1) copy showing each or all general locations and specific location plans, One (1) copy for each specific location.

An as-built survey of the Utility post construction to a maximum scale of fifty feet (50') = one inch (1") on a twenty-four by thirty-six inch (24" x 36") bond must be provided. An as-built electronic file in .shp or .dwg format, formatted to plot to twenty-four inch by thirty-six inch (24" x 36"), as well as a .pdf file, shall be submitted.

## **E. GENERAL LOCATION**

The purpose of the general location (or permit area) description is to fix the location along the highway, to identify the highway system and to determine the licensing authority. The location shall be established by reference to a town line, readily identified intersection, major stream crossing, railroad crossing, or bridge number.

A general location map is required and shall be tied to the highway system. The map may be a photocopy of a portion of an accurate area map or sketch traced from such a map.

## **F. SPECIFIC LOCATION PLAN**

The specific location plan or sketch shall show the location of the principal units of the installation. Longitudinal distances between control points, bends, manholes, poles, etc. shall be given. Offset distances from the highway centerline, edge of pavement, curb or other well-defined applicable reference shall be given. Offsets shall be to the centerline of underground installations. Offsets shall be in feet and inches to the near side of poles, hydrants, etc, which are less than ten feet (10) from the face of curb or outer edge of shoulder. The safety minimum offset for the location is acceptable for all poles, which will be at, or beyond that offset. Edge of traveled way or assumed Right of Way lines, and other pertinent highway features shall be indicated.

Utilities shall be horizontally separated by at least six feet (6') along the infrastructure's axis and shall cross perpendicular as closely as possible. Where crossing each utility shall have at least one foot (1') of vertical separation. These standards may be adjusted or waived at the sole discretion of the Director and Town Engineer.

A separate specific location plan shall be submitted for each proposed installation. No more than two highways should be shown on one sheet.

## **G. SUPPORTING DATA**

The application should contain or be accompanied by a statement indicating:

1. Utility Owner;
2. Any proposed joint use or ownership of the facility;
3. Any existing facility or permit of the Permittee at this location;
4. Any existing facility of others with which the proposed installations may conflict;
5. Person available to review proposed locations at the site. NAME, ADDRESS, PHONE NUMBER, & E-MAIL ADDRESS.

**After Completion.** An as-built survey of the Utility post construction to a maximum scale of fifty feet (50') = one inch (1") on a twenty-four by thirty-six inch (24" x 36") bond must be provided. An as-built electronic file in .shp or .dwg format, formatted to plot to twenty-four inch by thirty-six inch (24" x 36"), as well as a .pdf file.

#### **H. BRIDGES**

If the installation is to be made on or close to a bridge, the application must be accompanied by plans showing the location, method of construction, clearances and other data pertinent to the safety and use of the bridge. For detailed requirements and more information of installations adjacent and/or attachments to bridges, please contact Bridge Maintenance, Maine Department of Transportation, in the Augusta office.

#### **I. APPLICATION**

The Application shall be of sufficient detail to permit review. Site visits may be required to field fit the utility.

#### **J. PERMITS**

As far as practicable, the utility's description and specific location plan will be made a part of the permit.

#### **K. WORK NOT REQUIRING A UTILITY LOCATION PERMIT**

A utility location permit is not required for the following work listed below, however are still subject to Right-of-Way Permit requirements.

1. Replacements, repairs or reconstruction in place.\*
2. Additions provided for in the original permit.
3. Improvements provided for in the original permit.
4. Services.
5. Hydrants, transformer, street lights, valves, switches, etc. and associated equipment.
6. The Permittee is advised to read the law for conditions under which a Location Permit is not required.

\*If the existing installation appears to impair the highway improvement or to interfere with the free and safe flow of traffic, and if anything more than a minor replacement or reconstruction is planned the utility should move its plant to a location which is in compliance with the current standards.

## **ARTICLE III**

### **RIGHT OF WAY PERMIT**

#### **A. REQUIRED**

No person or utility shall place any items, make any excavation, modify, or fill any excavation excluding previously permitted locations in any public place or Right of Way without first obtaining a permit to do so from the Town except as otherwise provided in this ordinance. Any excavation within the Town's streets, sidewalks, esplanades or other public Right of Way shall only be permitted in accordance with this code or the Rules, Regulations & Requirements. The granting of such a permit shall cover all required activities to conform to this ordinance and the Rules, Regulations & Requirements.

#### **B. APPLICATION**

1. No Right of Way shall be issued unless a written application on a form provided by the Town for the issuance of a Right of Way permit is submitted to the Town. The written application shall contain such information as reasonably required by the Public Works Authority and identified in the Rules, Regulations & Requirements. The permit shall expire the end of the construction season it was issued in.
2. In order to obtain a permit, the Permittee must be current on all of its financial obligations to the Town.
3. All Permittees and utilities must be in good standing as defined in the Town municipal standards or in accordance with the Rules, Regulations & Requirements in order to apply for any permits.

Note: Right of Way permits, and Utility Location Permits use the same application.

#### **C. GENERAL CONDITIONS**

Permits shall be granted only if the Permittee has properly notified all necessary utilities, contacted "Dig - Safe", and obtained an authorization number to proceed. Any conflicts with utilities shall be the sole responsibility of the Permittee and shall be resolved to the utilities' satisfaction.

#### **D. ANNUAL WORK PROGRAM TO BE SUBMITTED BY UTILITIES**

Each year on or before **March 31st**, each utility shall submit to the Public Works Authority its planned work program for the ensuing year, which shall not include emergencies defined in house service lines.

#### **E. DURATION**

Excavation work must be completed within the same construction season as the issued permit, tentatively May 1<sup>st</sup> through November 15<sup>th</sup> or as approved by the

Public Works Director or designated staff. If the work is not completed within the approved construction season, such permit shall become null and void. Permits can be extended up to a maximum of one (1) year at the sole discretion of the Public Works Director or representative of the Public Works Authority.

**F. FEES AND CHARGES**

Fees and charges shall be adopted by the Town Council. See Article X, Section A of Chapter 401 "Fees and Permits".

## **ARTICLE IV**

### **ENTRANCE (DRIVEWAY) PERMIT**

#### **A. PURPOSE**

This Article provides for the review of any entrance onto a public way for compliance with sound construction and design practices to ensure that traffic safety, drainage and public improvements are not adversely affected. A permit is not required for paving, sealing, or repairs within the boundaries of the existing driveway.

#### **B. PERMIT REQUIRED**

1. No driveway, entrance or approach or other improvement within the limits of the Right of Way for any public road may be constructed, altered or relocated except in accordance with an Entrance Permit issued by the Town upon application.
2. The Town Council may establish the fee for such permit. See Article X, Section A, Chapter 401 "Fees and Permits".
3. The entrance permit shall be valid for a period of twelve (12) months from the date of original issue.
4. No entrance, approach or other improvement constructed on the Right of Way shall be relocated or its dimensions altered without an Entrance Permit from the Town.
5. The Owner is responsible for future maintenance of the entrance within the limits of the Right of Way and shall maintain the entrance in accordance with the approved permit.

#### **C. TOWN HELD HARMLESS**

The Permittee shall hold harmless the Town and its duly authorized agents and employees against any action for personal injury or property damage sustained by reason of the exercise of an Entrance Permit.

#### **D. APPROVAL CRITERIA**

1. **General:** Entrances shall be designed and constructed to provide safe access to the public way. Permittees shall comply with the "requirements listed, which have been modeled after Chapter 299 – Highway Driveway & Entrance Rules Part A (Maine MDOT) and the Access Management Handbook for Local Officials" as developed by The Maine Department of Transportation.
2. **Permittee:** The Permittee for a permit shall be the owner of the property being served. Any driveway or approach constructed by the Owner shall be for the

bonafide purpose of securing access to the Owner's property and not for the purpose of parking or servicing vehicles on the road Right of Way.

**3. Sight Distance Criteria:**

- a. All entrances shall be so located such that vehicles approaching or using the entrance will be able to obtain adequate sight distance in both directions along the public way or to maneuver safely and without interference with traffic.
- b. Measurements to determine sight distance shall be made in the proposed entrance at a point ten feet (10') from the edge of shoulder line with the height of three and one-half feet (3.5') above the pavement. The sight distance shall be computed from this point measuring along the roadway to a point where an approaching height of object four and one quarter feet (4.25') is first seen.
- c. Sight Distance Technical Standards. The minimum allowable sight distances for all accesses onto all Town Ways are listed in Table 1. The Town may require up to fifty percent (50%) greater sight distances when at least thirty percent (30%) of the traffic using the entrance will be larger vehicles.

| <b>Highway Speed<br/>(MPH)</b> | <b>Minimum Sight Distance<br/>(in feet)</b> |
|--------------------------------|---|
| 25                             | 200   |
| 30                             | 250   |
| 35                             | 305   |
| 40                             | 360   |
| 45                             | 425   |
| 50                             | 495   |
| 55                             | 570   |

#### 4. **Geometry:**

- a. The entrance shall be designed such that the grade within the Right of Way does not exceed eight percent (8%).
- b. Driveway width within the Town Right of Way must be between twelve feet (12') and twenty-five feet (25'), unless a special exception is granted by the Public Works Director or representative of the Public Works Authority. The width of the driveway is the distance across the driveway, excluding radii, measured parallel to the roadway.
- c. For uncurbed public ways the entrance shall in general slope away from the road surface at a rate of not less than one quarter inch (1/4") per foot, nor more than one inch (1") per foot for a distance of not less than the prevailing width of the existing shoulder, but in no case less than four feet (4) from the edge of pavement.
- d. The entrance should intersect the traveled way at a horizontal angle of ninety (90) degrees but in no case shall the horizontal angle be less than seventy-five (75) degrees.
- e. No part of the entrance shall extend beyond the property lot frontage for the lot being served.
- f. **Corner Clearance.** Driveway entrances shall be at least fifty feet (50') back from an unsignalized intersection and at least one hundred and twenty-five (125') back from a signalized intersection, measured from the point of tangency.
- g. Where a public sidewalk crosses a driveway apron an accessible route for sidewalk travel shall be constructed across the full width of the drive apron. The accessible route shall match the width of the existing sidewalk on both sides but be no less than five feet (5') wide and shall have a maximum cross slope of two percent (2%).

#### 5. **Drainage:**

- a. Existing roadside drainage in gutter or ditch lines shall not be altered or impeded by the Permittee. The Permittee must provide at his/her expense suitable and approved drainage structures at all entrances as required by the Town.
- b. Surface drainage shall be provided so that all surface water on the areas adjacent to the road shall be carried away from the roadway.



- c. Where a drainage culvert is required to maintain roadside drainage the Town must approve the pipe diameter/length and type pipe material prior to installation. In any case, the pipe size shall be at least fifteen inches (15") in diameter, unless otherwise approved by the Public Works Director or representative of the Public Works Authority.

**6. Construction:**

- a. The Owner is responsible for all construction and restoration of disturbed areas for the entrance within the limits of the Right of Way.
- b. The entire portion of any entrance within the limits of the Right of Way shall be constructed with a minimum fifteen inch (15") well-grade gravel base course (MDOT Type D).
- c. If the entrance grade within the Right of Way exceeds five percent (5%) slope then the entrance shall have a paved surface within the limits of the Right of Way.

**7. Curb and Sidewalk:**

- a. When sidewalk or curb exists at the proposed entrance the Permittee shall remove and replace such materials at the Permittee's expense. Fifteen inches (15") of Type D gravel must extend under the sidewalk. Any granite curb to be removed by the Permittee will remain the property of the Town.
- b. Where curb exists, curb tip-downs approved by the Town, shall be provided at each side of a new entrance.
- c. Where sidewalk is removed to accommodate a new entrance a new walk surface of equal type construction is to be provided. The sidewalk area at all entrances is to meet handicap accessibility requirements and conform to the American with Disabilities Act guidelines. In general sidewalks shall meet the following:
  - i. The maximum sidewalk longitudinal transition slope is not to exceed one foot (1') vertical to twelve feet (12') horizontal;
  - ii. The maximum sidewalk cross-slope is not to exceed two percent (2%).
  - iii. No abrupt changes in grade are permitted and the maximum curb reveal crossing a walkway is one-half inch (1/2") or less.