

Chapter 184

RIGHT-OF-WAYS

§184-1. General.

Sec. 1-1. Intent And Purpose.

The purpose of this Chapter 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.

Sec. 1-2. Administration.

The Director of Public Works is the principal Town official responsible for the administration of the right-of-ways, right-of-way permits, and the right-of-ways related thereto. The Town of Topsham shall establish codes governing street excavations and implementing this chapter. The Director may delegate any or all of the duties hereunder.

Sec. 1-3. Definitions.

The following words and phrases, when used in this chapter, 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 chapter 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 water districts, sewer districts, municipal underground facilities, and utilities having fewer than five (5) full-time employees or fewer than three hundred (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.

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 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 chapter.

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 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 (1½) 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.

Topsham Code shall mean the Town of Topsham shall establish rules & regulations governing street excavations and implementing this right-of-way. 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 Topsham and/or its Public Works Authority.

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

Sec. 1-4. Protective Measures And Routing Of Traffic.

(a) **Safe crossings.** The permittee shall in general maintain safe crossings for two (2) lanes of vehicle 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, alley or sidewalk, adequate crossings shall be maintained for vehicles and for pedestrians. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, a

passageway at least forty-eight inches (48") in width shall be maintained along such sidewalk line.

(b) **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 or the Police Chief. Barriers, warning signs, lights, etc., shall conform to the latest edition of the "Manual on Uniform Traffic Control Devices" (MUTCD).

(c) **Normalization of traffic conditions.** The permittee shall take action appropriate to assure that during the performance of the excavation work, traffic conditions as near normal as possible shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property/properties and to the general public.

(d) **Closing of streets.** When traffic conditions permit, the Public Works Director or the Police Chief of the Town, may by 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 Director 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 725-4337** before closing a street to traffic.

(e) **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, after his or her review of the proposed traffic control measures for the project.

(f) **Flaggers.** Any work being done in Town right-of-ways that involves disruption of traffic shall have flaggers to direct the flow of traffic. The Town reserves the right to have the Director or the Police Chief require that the Police perform the flagging of traffic in areas of need on main routes in Town. The cost of said flagging is borne to the contractor or utility performing the work,

Sec. 1-5. 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 with approval from the Director. The cost of moving privately owned facilities shall be similarly borne by the permittee unless the permittee makes other arrangements with the owner of the facility. The permittee shall support and protect by timbers or otherwise 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 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.

All utility relocations shall be in accordance with the Maine Department of Transportation Utility Accommodation Policy. Any field changes made to relocated utility shall have authorization from the Public Works Director to complete work. The Director may take up to three (3) working days to approve such field changes. The surrounding utilities have two (2) working days following decision by the Public Works Director to file an appeal to the Town Manager for review.

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.

Sec. 1-6. Abandonment Of Structure.

(a) 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.

(b) 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.

Sec. 1-7. Protection Of Public Property.

(a) 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.

(b) 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 bench mark 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.

(c) 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.

(d) 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.

Sec. 1-8. 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 right-of-way and the Topsham Codes enacted by The Town of Topsham 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 (2) feet around the edges. The steel shall be of strength to hold pedestrian vehicular traffic. Barriers approved by the Director must be installed if the excavation is to be plated. All road trenches must be temporary paved within twenty-four (24) hours of backfilling. All driveway crossings must be paved within forty-eight (48) hours of opening.

Sec. 1-9. 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.

Sec. 1-10. Emergency Action.

Nothing in this right-of-way code 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.

Sec. 1-11. 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 public works authority 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 Public Works authority or as a result of emergency need.

Sec. 1-12. Obstructions in the Right-of-way.

No person shall place monuments, boundary stones, trees, lamppost, debris, basketball goals and other things within the limits of the public ways of the Town so as to constitute an obstruction as determined by the Public Works Director. The Board of Selectmen shall have the authority to order the removal of any such object. The Board of Selectmen may authorize, through the petition process, the placing of objects deemed necessary by utility companies within the limits of public ways in the Town. (Refer to Section 184-2-1)

Sec. 1-13. Excavations During Winter.

(a) No person or utility shall be granted a street opening permit or open any street or sidewalk from the time of November 15th 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.

(b) 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 Public Works Director 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.

(c) 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.

Sec. 1-14. 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 right-of-ways and according to the Town Code promulgated by said authority pursuant to Section 1.1-2 of this Chapter. All repairs and restoration work shall be completed by the permittee in a manner and to the extent deemed acceptable to the Director.

Sec. 1-15. 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.

(a) Pavement repairs guaranteed by each permittee shall meet all of the following conditions in order to remain in conformance with this right-of-way.

- (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 edges 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.
 - (5) Pavement of roadway or street width is divided into four (4) quarter points. Pavement restoration will be based on these points. Excavations that disturb or produce voids under or pass over the first quarter point will require removal of pavement over that void. Therefore, restoration will be required to the next quarter point. At any time the excavated area moves into the third quarter point and entire width of roadway shall be repaved.
 - (6) There shall never be a paved patch less than ten (10) linear feet in length. If there is a patch within ten (10) linear feet of said excavation pavement between areas shall be removed and paved as one unit.
 - (7) All areas of pavement restoration that abutts other paved areas shall have a shelf joint of not less than one (1) foot in width. All joints shall be tacked for bond.
 - (8) Pavement thickness will be determined by the Public Works Director.
 - (9) Any sidewalk excavation will be restored with pavement of the entire width of sidewalk for a minimum of ten (10) linear feet in length.
- (b) 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 Town Code.
- (c) Severe [over one inch (1")] distortion conditions shall be considered Tort liability and street defect conditions and shall necessitate that full repairs be completed within twenty-four (24) hours of notification by the Town.

Sec. 1-16. Liability Of Town Insurance.

This right-of-way 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 right-of-way, 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 right-of-way 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 shall maintain at all times comprehensive general liability and property damage insurance coverage in a suitable amount, not less than \$1,000,000 protecting herself/himself, her/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.

Sec. 1-17. Maintenance Of Excavation Areas.

(a) If any part of any excavation, including the excavation, back filling and repairs fails to conform with the standards of this Chapter and the Town Codes, 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 MRSA § 3651, et seq. In all other instances, permittee shall have a reasonable time as provided in. § 1-21 to undertake corrective action.

(b) 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 (150) 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.

(c) 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.

Sec. 1-18. Inspections.

(a) The Town shall make such inspections as are reasonably necessary in the enforcement of this Town Code.

(b) The Public Works authority may order such actions, as it deems necessary to ensure that this right-of-way and the Town Code implementing it are not violated.

(c) In the event that any dispute exists as to the amount, nature, or scope of the work required under this right-of-way or the Town Code, 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.

Sec. 1-19. Testing Requirements.

The Town may order a test 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. The permittee shall pay the cost of the testing and all required subsequent tests to verify the proper restoration in accordance with this Right-of-way and the Town Code.

Sec. 1-20. 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, water, steam, 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 fifty (50') 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 paper and in digital file form acceptable to the Public Works authority.

Sec. 1-21. Fees And Charges.

- (a) Each street opening permit may be assessed One (1) fee; One (1) twenty-dollar (\$20) fee per excavation.
- (b) All fees shall be enacted by order of the Town Selectmen.
- (c) Upon permit application, *a fee shall be paid to the Tax Collector* unless waived by the Public Works authority as provided below. No permit shall be issued without appropriate payment of fees. Utility applicants in good standing shall be granted the option of being invoiced by the Town for these fees.
- (d) Waiver of fees:
 - (1) The Director may waive all permit fees in streets or sidewalk/driveway areas to contractors under contract to the Town or MDOT.
- (2) 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.
- (3) The Town Manager may authorize special; waivers of permit fees if special conditions exist which can be supported by the Director in writing.

Sec. 1-22. Violations.

- (a) Any person or utility failing to comply with or violating any provision of this right-of-way code or the rules shall be served by the public works authority or the police department 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.
- (b) In order to ensure public safety, the public works authority shall have the right to verbally notify and with written notification require immediate corrective actions of any person or utility whose failure to comply with this right-of-way or the rules could cause a safety hazard.
- (c) Any person or utility who shall continue any failure or violation beyond the time limit required for compliance or received notice of failure or violation given pursuant to this Code or the rules shall be guilty of a violation of this right-of-way.
- (d) Any person or utility violating any of the provisions of this Code or the rules shall be liable to the Town for any expense, loss, or damage occasioned by the Town by reason of such violation. The Town, by action of the Board of Selectmen, may seek injunctive relief for the purposes of enforcing this Town Code without exhausting the administrative remedies set forth in this Code.
- (e)
 - (1) Any violation of this Code which is also a violation of 35-A 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 Code other than the violations of state law prescribed in the preceding paragraph shall subject the permittee or party to a \$50 fine per day for each day that a violation continues.

(f) Any permittee or party who continues to violate any section of this Code 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 Town Code.

(g) The Town reserves the right to notify a permittee's insurance and/or bond carrier of repeated violations.

(h) All roadway trenches must be temporarily paved within twenty-four (24) hours of back filling and driveway trenches within forty-eight (48) hours. All trenches not paved within this period of time will be in violation of this Town Code.

Sec. 1-23. 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) shall be required in addition to all applicable permit fees.

Sec. 1-24. Appeals Process.

- (a) Whenever a person is aggrieved by an order made by the public works authority, the person may file an appeal to the Town Manager within ten (10) days of the date of the order, and the person shall be afforded a hearing on the matter before the Town Manager or a designee, and unless by their authority the order is revoked, such order shall remain in force and be forthwith complied with by the person.
- (b) In cases of applicability or interpretation of the Town Code by the public works authority, the Town Manager may confirm, amend or revoke such order made by the public works authority.
- (c) In cases where compliance with such order made by the public works authority would cause undue hardship, the Town Manager may extend the time limit of such order, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of the Code, subject always to the Code that the Town Manager shall give due consideration to the purposes of the Code in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.
- (d) If an appeal to the Town Manager does not resolve the issue, any person aggrieved may appeal the decision to the Superior Court, as provided by the Maine Rules of Civil Procedure.