

## **SECTION 8 – STREET AND SIDEWALK EXCAVATION ORDINANCE**

### **Section 1: Permit Required**

It shall be unlawful for any person, firm or corporation to tunnel under or to make any excavation in any street, alley, sidewalk or other public place in the Town without having first obtained a permit as herein required; or without complying with the provisions of this Ordinance; or in violation of or variance from the terms of any such permit.

### **Section 2: Applications**

Applications for such permits, accompanied by an application fee as set by the Board of Selectmen's fee schedule, shall be obtained from the Town Clerk and shall describe the location of the intended excavation or tunnel; the size thereof; the purpose therefore; the person, firm or corporation doing the actual excavating work and the name of the person, firm or corporation for whom or which the work is being done; and shall contain an agreement that the applicant will comply with all ordinances, rules, regulations, statutes and other laws relating to the work to be done.

The permit application shall be presented to the Public Services Director or his designee for approval no less than 48 hours prior to the proposed excavation, except in emergency situations as hereinafter provided. Notation of approval by the Public Services Director or his designee on the body of the application shall be a prerequisite to its submission to the Board of Selectmen or Town Manager. The Board of Selectmen or Town Manager shall review all excavation applications presented and approve excavation permits pursuant to this Ordinance for all proposed projects satisfying the requirements of the Ordinance, subject to such additional conditions as this Ordinance allows and as the Selectmen or Town Manager deem necessary, desirable or appropriate. After said permit application is approved by the Public Services Director and the Board of Selectmen or Town Manager, the permit shall be issued by the Town Clerk.

### **Section 3: Bond**

No such permit shall be issued unless and until the applicant has filed with the Town Clerk a performance bond in accordance with the following schedule (Fees as set by the Board of Selectmen):

- a) \$1,000 for crosscut openings;
- b) \$5,000 for parallel openings not exceeding five hundred (500) feet in length; or
- c) \$10 per foot for parallel openings in excess of five hundred (500) feet in length.

Such bond shall have as surety a corporation licensed to do business in the State of Maine as a surety company, and shall extend for a term of at least two years after completion of the

project. An equivalent amount of cash or certified funds payable to the Town may be deposited for the same purpose in lieu of the surety bond by this section.

The Selectmen may, in their absolute discretion, require surety in an amount greater than those set forth in the preceding schedule or for a term in excess of two years in projects where they determine that the project, because of its nature, magnitude, or for any other reason, warrants such additional security.

Notwithstanding any of the above requirements the Board of Selectmen is hereby given the authority to allow utility companies, in lieu of posting any other surety or performance bond required by this section, to instead post an annual bond of \$15,000 for the purposes set forth in this section.

Applicants other than utility companies may post an aggregate bond once a year to secure a designated number of cuts during that year. The terms of that bond and per-cut amount shall be as provided herein for single-cut bonds. Any portion of such an aggregate bond not used within the calendar year of the year it was posted may not, without approval of the Board of Selectmen, be carried over to the following year. (12-12-86; 06-21-2011)

#### **Section 4: Insurance**

No such permit shall be issued unless and until a certificate or other proof is filed showing that the applicant carries public liability insurance with coverage limits deemed by the Selectmen to be sufficient to provide adequate protection to the Town, its citizens and the general public.

#### **Section 5: Manner of Excavating**

It shall be unlawful to make such excavation or tunnel in any way contrary to or at variance with the terms of the permit therefore. Proper bracing shall be maintained to prevent the collapse of adjoining ground; and in excavations the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface.

No injury shall be done to any pipes, cables or conduits in the making of such excavations or tunnels; and notice shall be given to the persons maintaining any such pipes, cables or conduits or to the municipal department or officer charged with the care thereof, which are or may be injured or affected by the making of any such excavation or tunnel before such pipes, cables or conduits shall be disturbed.

No unnecessary damage or injuries shall be done to any tree or shrub or the root thereof.

#### **Section 6: Sidewalks**

If any sidewalk is blocked by any such work, a temporary sidewalk shall be constructed or provided which shall be safe for travel and convenient for users. The temporary sidewalk is

subject to inspection by the Public Services Director, and shall not be open for use until approved by him.

### **Section 7: Restoring Surface**

Any person, firm or corporation making any excavation or tunnel in or under any public street, alley or other public place in the Town shall restore the surface to its original condition if there is no pavement there. Backfilled material shall be properly compacted down.

Any opening in a paved or improved portion of a street shall be repaired and the surface replaced by the applicant, in compliance with the Ordinances of the Town, including this Ordinance, and under the supervision of the Public Services Director.

### **Section 8: Surfacing Materials**

**8.1** Parallel or Diagonal street openings in excess of ten feet in width or twenty feet in length; also Cross or Right Angle openings in excess of twenty feet in width (Amended 04-22-85): The hot topping for these openings shall consist of 2 1/2 inches of binder or base mix, or thickness equivalent to the existing pavement, whichever is greater, confined within the limit of the opening. The full width of the paved street or sidewalk to a point 20 feet beyond the end of the opening and 20 feet prior to the beginning of the opening will be overlaid with not less than 1 inch of the surface mix.

**8.2** Cross or Right Angle street openings twenty feet or less in width: The hot topping for these openings shall consist of 2 1/2 inches of binder or base mix, or thickness equal to the existing pavement, whichever is greater, confined within the opening limits, plus 1 inch of surface mix raised slightly above the existing street or sidewalk surface to allow for settling. Openings wider than 20 feet will fall within the preceding paragraph, and resurfacing of those openings shall comply with those provisions.

All hot top paving contractors shall be approved in writing by the Public Services Director prior to beginning work.

All hot top paving shall be completed within 14 days following the final day of backfill.

### **Section 9: Supervision**

The Public Services Director shall from time to time inspect or cause to be inspected, all excavations and tunnels being made in or under any public street, alley or other public place in the Town to see to the enforcement of the provisions of this Ordinance. Notice shall be given to him at least 10 hours before the work of refilling any such tunnel or excavation commences.

### **Section 10: Protective Measures & Routing of Traffic**

It shall be the duty of every person, firm or corporation cutting or making an excavation in or upon any public place, to place and maintain barriers and warning devices necessary for the safety of the general public. The Selectmen may restrict the use of lanterns or open flame devices in fire hazard areas.

The permittee shall take appropriate measures to assure that during the performance of 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 and to the general public.

When traffic conditions permit, the Selectmen may, by written approval, permit the closing of streets and alleys to all traffic for a period of time prescribed by them, if in their opinion that is necessary. Such written approval 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.

Warning signs shall be placed far enough in advance of the construction operation to alert traffic within a public street, and cones or other approved devices shall be placed to channel traffic, in accordance with the instructions of the Public Services Director.

### **Section 11: Relocation and Protection of Utilities**

The permittee shall not interfere with any existing facility without the written consent of the Selectmen and the owner of the facility. If it becomes necessary to relocate an existing facility this shall be done by its owner. No facility owned by the Town shall be moved to accommodate the permittee unless the cost of such work is borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the facility. The permittee shall support and protect by timbers or otherwise 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 said work. The permittee shall secure approval of method of support and protection from the owner of the facility. In case any of said 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 owners 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 paragraph 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.

## **Section 12: Abandonment of Substructures**

Whenever the use of a substructure is abandoned, except the abandonment of service lines designed to serve single properties, the person owning, using, controlling, or having an interest therein, shall within 30 days after such abandonment file with the Public Services Director 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, which installation is pursuant to a governmental function, the owners shall remove such abandoned substructures or pay the cost of its removal during the course of excavation or construction of the facility by the Town or any other public body.

## **Section 13: Protection of Adjoining Property**

The permittee shall at all times and at his or its own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain consent from the owner of such private property for such purpose. The permittee shall, at its own expense shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out said work. Whenever it may be necessary for the permittee to trench through any lawn area said area shall be reseeded or the sod shall be carefully cut and rolled and replaced after ditches have been backfilled as required by this Ordinance. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove, even temporarily, any trees or shrubs which exist in parking strip areas without first obtaining the consent of the appropriate Town department or Town official having supervision of such property.

## **Section 14: Placement of Excavated Material**

All material excavated from trenches and piled adjacent to the trench or in any street shall be piled, and maintained in such 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, such as might be the case in a narrow alley, the Selectmen shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

## **Section 15: Clean Up**

As the excavation work progresses, all streets shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All clean up operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the Public Services Director. From time to time, as may be ordered by the Public Services Director and in any event immediately after completion of said work, the permittee shall, at his or its own expense, clean up and remove all refuse and unused materials of any kind resulting from said work, and upon failure to do so within twenty-four hours after having been notified to do so by the Public Services Director, said work may be done by the Public Services Director and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder.

## **Section 16: Protection of Watercourses**

The permittee shall maintain all gutters free and unobstructed for the full depth of the adjacent curb and for at least one foot in width from the face of such curb at the gutter line. Whenever a gutter crosses an intersecting street, an adequate waterway shall be provided and at all time maintained.

The permittee shall make provisions to take care of all surplus water, muck, silt, slickings, or other run-off pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide.

## **Section 17: Breaking Through Pavement**

- 1) Pavement will, as a general rule, be cut only with pavement breaker blades or pavement saws. The Selectmen, Public Services Director or Town Manager may, if they feel a particular project justifies it, authorize the use of different equipment in specific cases.
- 2) Heavy duty pavement breakers may be prohibited by the Selectmen when the use endangers existing substructures or other property.
- 3) Saw cutting of Portland cement concrete may be required when the nature of the work or the condition of the street warrants. When required, the depth of the cut shall be not less than one inch. Depths greater than one inch may be required by the Public Services Director when circumstances warrant. Saw cutting may be required by the Public Services Director outside of the limits of the excavation over cave-outs, over-breaks and small floating sections.
- 4) Approved cutting of bituminous pavement surface ahead of excavations may be required by the Public Services Director to confine pavement damage to the limits of the trench.

- 5) Sections of sidewalks shall be removed to the nearest score line or joint.
- 6) Unstable pavement shall be removed over cave-outs and over-breaks and the subgrade shall be treated as the main trench.
- 7) Pavement edges shall be trimmed to a vertical face and neatly aligned with the centerline of the trench.
- 8) Cutouts outside of the trench lines must be normal or parallel to the trench line.
- 9) Boring or other methods to prevent cutting of new pavement may be required by the Public Services Director.
- 10) Permittee shall not be required to repair pavement damage existing prior to excavation unless his cut results in small floating sections that may be unstable, in which case permittee shall remove and pave the area.

### **Section 18: Backfilling**

Fine material, free from lumps and stone, selected from the spoil shall be thoroughly compacted around and under the substructure to the upper level of such substructure. Above the upper level of the substructure, backfill material shall be placed to the subgrade of the pavement in lifts consistent with the type of soil involved and the degree of consolidation specified by the Public Services Director. Broken pavement, large stones over three inches in diameter, roots and other debris and peat-type material shall not be used in the backfill. The backfill material will be placed in one foot lifts with each lift compacted with compaction equipment approved by the Public Services Director. The last eighteen inches of backfill material will be placed in three six-inch lifts. Each lift being compacted with the same approved equipment used on the lower layers. Backfilled material is generally required to be 95% compacted. Exceptions to this rule may be made by the Public Services Director when, in his judgment, this is warranted by the nature of a specific project. Such backfill shall be done in a manner that will permit the restoration of the surface to a density condition not less than that existing prior to excavation unless otherwise specified. The Public Services Director may require soil tests to be furnished by a recognized soil testing laboratory or registered professional engineer specializing in soil mechanics when, in his opinion, backfill for any excavation is not being adequately compacted. In order for the resurfacing to be permitted, such tests must show that the backfill material meets the minimum requirements as prescribed by the Selectmen. All expense of such tests shall be borne by the permittee.

### **Section 19: Prompt Completion of Work**

After an excavation is commenced, the permittee shall prosecute with diligence and expedition all excavation work covered by the excavation permit and shall promptly complete

such work and restore the street to its original condition, or as near as may be so as not to obstruct the public place or travel thereon more than is reasonable necessary.

### **Section 20: Urgent Work**

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

### **Section 21: Emergency Action**

Nothing in this ordinance shall be construed to prevent the making of such excavations as may be necessary in emergency situations for the preservation of life or property, provided that the person making such excavation shall apply for such a permit on the first working day after such work is commenced.

### **Section 22: 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. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris and between the hours of 8 PM and 7 AM shall not use, except in case of emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

### **Section 23: Preservation of Monuments**

Any monument set for the purpose of locating or preserving the lines of any street or 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 Selectmen to do so. Permission to remove or disturb such monuments, reference points or bench marks shall only be granted upon condition that the person applying for such permission shall pay all expenses incident to the proper replacement of this monument by the Town.

### **Section 24: Inspections**

The Public Services Director shall make such inspections as are reasonably necessary in the enforcement of this Ordinance.

**Section 25: Winter Permits**

No permits will be issued between December 1 of any one year and March 15 of the following year except when, in the judgment of the Board of Selectmen and the Public Services Director, a situation of extreme emergency exists.

**Section 26: Conflict with Other Enactments**

When this ordinance is in conflict with any other ordinance, rules or regulations of the Town of Kennebunk, the provisions of the ordinance, rules or regulations, which impose the greater restriction, shall prevail.

**Section 27: Penalty**

Any person, firm or corporation violating any of the provisions of this ordinance shall be fined not less than twenty-five dollars nor more than five hundred dollars for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. All fines collected hereunder shall inure to the Town.

**Section 28: Fees**

Fees shall be shown on a fee schedule set by vote of the Board of Selectmen each year, after notice and hearing. (06-12-2002)

ADOPTED 09-17-1984; AMENDED 06-12-2002; 06-21-2011