

**MINUTES FOR SPECIAL TOWN MEETING  
MONDAY, JUNE 18, 2018**

To either of the Constables of the Town of Stoneham in the County of Middlesex,

In the name of the Commonwealth of Massachusetts, you are directed to notify and warn the inhabitants of the Town of Stoneham qualified to vote in elections and Town affairs to meet in the **Town Hall Auditorium, 35 Central Street, on Monday, June 18, 2018, at 7:00 p.m.**

to act upon the following articles of this Warrant:

Tellers were appointed to check the names of voters entering the Town Hall and the checklist showed 50 voters were inside the meeting.

The meeting was called to order by Moderator Jeanne Craigie at 7:00 PM. Moderator Craigie asked resident David Kurdzionak to lead the Pledge of Allegiance and his sister Anne Kurdzionak sang the National Anthem.

**Article 1.** To see if the Town will vote to authorize the Selectmen to petition the General Court for special legislation to authorize the Town to issue certain licenses for the sale of all alcoholic beverages to be drunk on premises as follows:

**AN ACT AUTHORIZING THE TOWN OF STONEHAM TO GRANT CERTAIN  
LICENSES FOR THE SALE OF ALCOHOLIC BEVERAGES TO BE DRUNK ON  
THE PREMISES**

*Be it enacted by the Senate and House of Representative in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Notwithstanding the provisions of Section 11 of Chapter 138 of the General Laws, the licensing authority of the Town of Stoneham is hereby authorized to grant restaurants with seating capacities of 35 or more licenses for the sale of all alcoholic beverages to be drunk on the premises under Section 12 of said Chapter 138. The licenses shall be subject to all of said Chapter 138, except Section 11.

SECTION 2. The licenses granted under this Act, if revoked or no longer in use, shall be returned physically, with all of the legal rights and privileges pertaining thereto, to the licensing authority and may be granted by the licensing authority of the Town of Stoneham to new applicants that are persons, corporations, organizations, or entities located in the applicable permitted location, solely for use within the same permitted location.

SECTION 3. Notwithstanding the provisions of Section 11 of Chapter 138 of the General Laws this act shall be submitted to the voters of the Town of Stoneham at an annual or special town election in the form of the following question which shall be placed on the

official ballot used at said election “Shall an act passed by the general court in the year 2018 entitled “AN ACT AUTHORIZING THE TOWN OF STONEHAM TO GRANT CERTAIN LICENSES FOR THE SALE OF ALCOHOLIC BEVERAGES TO BE DRUNK ON THE PREMISES” be accepted? If a majority of the votes cast in answer to said question is in the affirmative, this act shall therefore take full effect, but not otherwise.

SECTION 4. This Act shall take effect upon its passage.

and to determine whether the General Court may make amendments which shall be within the scope of the general public objectives of the petition; pass any vote or take any action relative thereto.

### **Director of Planning and Community Development**

**Article 1. Voted** that the Town authorize the Selectmen to petition the General Court for special legislation to authorize the Town to issue certain licenses for the sale of all alcoholic beverages to be drunk on premises as printed in article 1 of the June 18, 2018 Special Town Meeting Warrant.

**Majority Vote Required**

**Majority Vote Passes Per Moderator**

**\*Letters sent to legislators June 19, 2018**

**Article 2.** To see if the Town will vote to amend Stoneham Town Code, Chapter 16, Board of Selectmen, by adding a new Article VII., entitled “Grant of Location in Public Ways” and adding a new Sec. 16-166, entitled “Grant of Location & Rights of Way” as follows:

### **Sec. 16-166. Grants of Location & Rights-of-Way**

#### **Sec. 16-166.1 Preamble**

In partial fulfillment of the obligation to see to the prudent management of the Town’s affairs and assets and in light of the continuing technological revolution in telecommunications, passage of the Telecommunications Act of 1996 and deregulation of the electric and natural gas industries in the Commonwealth, the Town hereby establishes a comprehensive, non-discriminatory, and fair system of regulation for all entities which desire to use the Town’s Rights-of-Way.

This Bylaw is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution, M.G.L. Chapter 43B section 13, M.G.L. Chapter 40 sections 4, 21 and 22F, and Chapter 85.

#### **Sec. 16-166.2 Introduction**

The purpose and intent of this Bylaw is to:

- (a) Provide the Town with accurate and current information concerning all facilities located in the Town's Rights-of-Way together with current information concerning entities owning or controlling the Facilities, and
- (b) Permit and manage reasonable access to the public Rights-of-Way on a competitively neutral basis, and
- (c) Manage Grants of Location in Public Ways, and
- (d) Conserve the limited physical capacity of the Rights-of-Way held in public trust by the Town, and
- (e) Assure that the Town is appropriately compensated when its Rights-of-Ways are utilized by non-governmental entities, and
- (f) Assure that the Town's current and on-going costs of granting and regulating private access to and use of the public Right-of-Way are fully paid by the persons seeking such access and causing such costs, and
- (g) Assure that the Town can continue to fairly and responsibly protect the public health, safety and welfare.

**Sec. 16-166.3                      Definitions**

**Applicant:** Any person or entity, including without limitation implied, Public Utility, Telecommunications Carrier, Local Exchange Carrier or municipal department that owns or exercises general responsibility and control over any Facility.

**Application:** The written application on a form prescribed by the Awarding Authority with any required documentation and the application fee by which an Applicant or Co-Locator requests a Right-of-Way Permit.

**Application Fee:** A non-refundable processing fee which shall accompany each application for a Right-of-Way Permit. The application fee shall be in the amount set forth by separate action by the Board of Selectmen.

**Attachment:** Any device, apparatus, appliance, equipment, wire or cable or other thing including any Telecommunication Facility installed or proposed to be installed on or in any existing facility whether by Applicant or Co-Locator or proposed to be installed on any new facility by Applicant or Co-Locator.

**Awarding Authority:** The Board of Selectmen of the Town of Stoneham which has authority to exercise the powers granted by this Bylaw.

**Construction:** Those activities requiring a street opening or building permit, and shall also

include any site preparation, cemetery burial and caretaking operations, seismic surveys, grading, assembly, erection, substantial repair, alteration, or similar action, including demolition, for or of public or private rights-of-way, structures, utilities or similar property.

**Contractor:** All officers or employees of Applicant or Co-Locator who perform or any person or entity engaged by or on behalf of Applicant or Co-Locator to perform construction, repair or maintenance work on overhead or underground facilities owned by Applicant and permitted by the Awarding Authority which are located in the Right-of-Way. The contractor for purposes of this Bylaw and for all questions of liability in connection with any construction, repair, or maintenance work on overhead or underground facilities owned by Applicant, which are located in the Right-of-Way shall be conclusively deemed an agent of Applicant or Co-Locator for whom Applicant or Co-Locator is fully responsible.

**dBA:** The A-weighted sound-pressure level expressed in decibels and referenced to 20 micropascals.

**Default:** The failure of the permit holder (including all contractors or other agents of permit holder)

- (i) to pay when due any license rental,
- (ii) to perform fully any covenant of the license or otherwise fail to comply with any provision of the license agreement, the Right-of-Way Permit or the Bylaw following ten days prior written notice to Licensee from Town
- (iii) to keep its Certificate of Insurance in full force and effect, or
- (iv) to provide the service that is outlined in its Application (except for interruptions in service due to emergency repair Work) for a period of six (6) consecutive months.

**DTE:** The Massachusetts Department of Telecommunications and Energy created by Chapter 25 M.G.L.

**Effective Date:** The date upon which this Bylaw becomes effective.

**Emergency Repair Work:** Right-of-Way work which must be commenced immediately to correct a hazardous condition in which the safety of the public is in imminent danger, such as a threat to life or health of the public or where immediate correction is required to maintain or restore essential public utility service.

**Excess Capacity:** The volume or capacity in any existing facility that is not being used or is not proposed to be used as part of a concrete plan for the future at the time that an application is made for a Right-of-Way Permit by an Applicant or Co-Locator.

**Existing Facility:** An overhead or underground facility in existence on the date of the Application for a Right-of-Way Permit.

**Facility:** Any overhead or underground facility or attachment thereto including without

limitation any utility or other pipe, duct, line, pole, wire, cable, transmission line, conduit, pedestal, wave guide, dish, antenna, electronic or other thing located or proposed to be located in, on, above, along, under or across a Right-of-Way.

**FCC:** Federal Communications Commission.

**Grandfathered Facility:** An overhead or underground facility in existence on the Effective Date.

**Grant of Location:** Permission granted by the Awarding Authority of the Town to a public Utility or Person, in order to conduct its regulated activities, to locate poles, piers, abutments or conduits or attachments thereto or railway routes on, in, above, along, under or across a Public Way in accordance with the procedures set out in M.G.L. Chapter 166 section 22, Chapter 161 section 70, Chapter 162 section 8 and with this Bylaw.

**Grant of Location Applicant:** An Applicant or Co-Locator which is a public utility conducting a business described in section 21 of Chapter 166 of the Massachusetts General Laws of a Person.

**Highway Superintendent:** That individual, appointed or elected in accordance with Chapter 41, sections 1, 66 or 69E of the M.G.L.

**Inspector of Wires:** That individual appointed by the Town to fulfill the responsibilities set out in M.G.L. Chapter 166 section 32.

**License Agreement:** An agreement between the Town and an applicant owner of a facility setting forth detailed contractual terms and obligations of the owner of a facility and entered into incident to the grant of a Right-of-Way Permit.

**Licensed Contractor:** A contractor authorized by the Awarding Authority as a provision of the license agreement with the Applicant to undertake work in the Town Right-of-Way.

**Local Exchange Carrier:** Every person or entity that directly or indirectly owns, controls, operates and manages plant, equipment or property within the Town used or to be used for the purpose of offering telephone service and which is licensed by the FCC and certified by the DTE under C. 159 M.G.L. as a local exchange carrier.

**Measurable Interference:** Interference as defined by FCC Regulations (47 C.F.R.) which affects the telecommunications services provided by a permit holder.

**Modification:** A material physical change to an existing facility such that its use, capacity or location is materially altered.

**Network:** All public and private poles, towers, transmitters, receivers, relay devices,

conduits, pipelines, cables, wires, ducts, structures, manholes, hand holes, and related structures and equipment, which are sited in a public way or a public Right-of-Way or any part of a public way or public right-of-way and which are used for telecommunications services.

**New Facility:** An overhead or underground facility or an attachment that has not yet been constructed but that is proposed and described in an application for a Right-of-Way Permit.

**Normal Working Hours:** 7:30 a.m. to 4:30 p.m. Monday through Friday excluding Town holidays.

**Occupied Area:** The area in square feet to be occupied by an overhead facility (including space adjacent to the facility and rendered practically unusable by others whether because of physical limitations or potential measurable interference or otherwise) all as reasonably determined by the Awarding Authority. In the case of pole lines, for the purposes of computing square feet, the width dimension generally shall be determined with reference to the maximum distance that protuberances such as crossarms, guy wires, etc. extend perpendicularly from the center-line of the poles. Also included in the license for a pole and at no additional rental, is the right to penetrate the surface of the Right-of-Way to the depth reasonably necessary to support the pole.

**Occupied Volume:** The volume measured in cubic feet occupied by an underground facility (including a minimum of three [3] foot space adjacent to the facility rendered practically unusable by others whether because of physical limitations or potential measurable interference or otherwise) all as reasonably determined by the Awarding Authority.

**Overhead Facility:** Any tower, telecommunication facility and pole including poles and overhead wires and associated overhead structures including attachments located or proposed to be located above the surface of the Right-of-Way including the underground supports and foundations for such facilities.

**Overhead License Rental Payment:** The annual dollar amount to be paid by an Applicant to the Town for using the Right-of-Way for an overhead facility.

**Overhead License Rental Rate:** Shall have the meaning subscribed to it and shall be computed annually as set out in Section 16-166.8 of this Bylaw.

**Permit Holder:** An Applicant or Co-Locator to whom a Right-of-Way Permit has been granted.

**Permit Term:** The period for which the permit holder has been granted a Right-of-Way Permit. Said period shall be as set forth in Section 16-166.7 of this Bylaw.

**Planning Board:** The Planning Board of the Town of Stoneham.

**Pole or Poles and Overhead Wires and Associated Overhead Structures:** poles, towers,

supports, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cut-outs, switches, communication circuits, appliances attachments, and appurtenances located above ground, upon, along or across any Public Way or private ways of the Town and used or useful in the transmission of intelligence by electricity or otherwise, or for the transmission of television signals, whether by electricity or otherwise, or for the transmission of electricity for lighting, heating or power, or for the construction or operation of a street railway or an electric railroad; **provided**, that said phrase shall not mean or include any of the following:

- (i) poles, towers, overhead wires and associated overhead structures used exclusively in the transmission but not the distribution of electricity;
- (ii) poles used exclusively for police and fire alarm boxes or any similar municipal equipment installed under the supervision and to the satisfaction of the engineer of the municipality;
- (iii) wires (exclusive of supporting structures) crossing any portion of any underground utility district from which overhead wires have been prohibited, or connecting to buildings on the perimeter of such portion, when such wires originate in an area from which poles and overhead wires and associated overhead structures are not prohibited;
- (iv) overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the same building or to an adjacent building without crossing any public Right-of-Way;
- (v) radio antennae, their associate equipment and supporting structures used by a utility for furnishing communication services; and
- (vi) service terminals including transformers in pedestals above ground used to distribute electric or communication service in underground systems.

**Pole Attachment:** An attachment which is a wire or cable for transmission of intelligence by telegraph, telephone or television, including cable television, or for the transmission of electricity for light, heat, or power or for the transmission of telecommunications services and any related device, apparatus, appliance or equipment installed upon any pole or in any telegraph duct or conduit owned or controlled in whole or in part by one or more public utility.

**Public Utility:** A gas and electric company subject to M.G.L. Chapter 164, telephone and telegraph company subject to M.G.L. Chapter 166, cable TV company subject to M.G.L. Chapter 166A, water and aqueduct company subject to M.G.L. Chapter 165, or street railway subject to M.G.L. Chapter 161 or electric railroad subject to M.G.L. 162.

**Public Utility Use:** The use of a facility by a public utility during the permit term in conducting its regulated activities but not including any non-public utility use by such public utility or any use by a non-regulated affiliate of a public utility or any other use by any other person or entity.

**Public Way:** Any road (including such appurtenances as berms, curbs, drains, sewers, water

mains, sidewalks and paved and unpaved shoulders within the paper layout) to which the public has access and that the Town is responsible for maintaining.

**Public Works Construction License:** A license or authorization granted by the Awarding Authority as a provision of the license agreement with the Applicant for all Contractors (who are not officers or employees of a public utility or of a municipal department) to perform road opening work in the Public Ways of the Town.

**Regulated Activities (of Public Utilities):** The transmission of natural gas and electricity by a gas or electric company subject to M.G.L. Chapter 164, the transmission of voice or telegraph messages by a telephone and telegraph company subject to M.G.L. Chapter 166, the transmission of video broadcasts by television or cable television (including other activities deemed incidental thereto by federal law) subject to M.G.L. Chapter 166A, the provision of street railway services subject to M.G.L. Chapter 161 or transportation by electric railroad subject to M.G.L. Chapter 162.

**Right-of-Way:** The surface and space on, along, above and below any real property which is a Public Way or other way in which the Town has an interest in law or equity, whether held in fee or other estate or interest, or as trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, park, skyway, or skyway bridge.

**Right-of-Way Permit:** A permit granted by the Awarding Authority to an Applicant for permission to construct, to repair and maintain, and to use overhead and underground facilities that it owns and which are located or to be located in the Right-of-Way. Also a permit granted by the Awarding Authority to a Co-Locator for an attachment to a new or existing facility.

**Right-of-Way Work:** Any construction, repair or maintenance of utility or other pipes, ducts, lines, poles, wires, cables, conduits, pedestals, antennas, dishes, electronics or other thing located in, on, above, under or across a Right-of-Way.

**Street Opening Work:** Any cutting, excavating, compacting, construction, repair or other disturbance within or under a Public Way together with restoration of the Public Way in accordance with the Town Street Opening Bylaw following such disturbance but excluding the location or relocation of utility poles for which a Grant of Location has been obtained pursuant to M.G.L. Chapter 166 section 22.

**Telecommunications:** The transmission between or among points specified by the user of information of the user's choosing without change in the form or content of the information as sent and received.

**Telecommunications Carrier:** Every person or entity that directly or indirectly owns, controls, operates or manages plant, equipment or property within the town used or to be used for the purpose of offering telecommunications service and which is licensed by the FCC and certified by the DTE under C.159 M.G.L. as a telecommunications common carrier.

**Telecommunications Facility:** A facility other than customer premises equipment used by a telecommunications carrier to provide telecommunications service and includes software integral to such equipment (including upgrades), cables, wires, lines, wave guides, electronics, dishes and antennas.

**Telecommunications Service:** The offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public regardless of the telecommunications facilities used.

**The Telecommunications Act of 1996:** Public Law 104-104-Feb. 8, 1996. 110 Stat.57.

**Town:** The Town of Stoneham.

**Transmission Line:** Lines and associated structures used for the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

**Underground Facility:** Any pipe, duct, line and conduit and telecommunications facility or other thing including attachments located or proposed to be located under the surface of the ground but excluding the underground foundations or supports for overhead facilities.

**Underground License Rental Payment:** The annual dollar amount to be paid by an Applicant for use of the Right-of-Way for an underground facility.

**Underground License Rental Rate:** Shall have the meaning subscribed to it and shall be computed annually as set out in Paragraph VIII B of this Bylaw.

**Usable Space:** The total usable capacity of any overhead or underground facility located in the Right-of-Way as reasonably determined by the Awarding Authority.

#### **Sec. 16-166.4                      Necessity of a permit**

No work in, on, under, along, above or across a Right-of-Way or use of a Right-of-Way shall commence until the Applicant and any Co-Locator each shall have applied for and obtained from the Awarding Authority a Right-of-Way Permit. Applicants with grandfathered facilities and any Co-Locator with grandfathered facilities located in the Right-of-Way shall be deemed to have applied for and been granted a valid Right-of-Way Permit for the permit term for such facilities and to be subject to all of the provisions of the license agreement substantially in such format as the Awarding Authority might deem appropriate.

An Applicant or Co-Locator which wishes to continue to use a grandfathered facility after the expiration of the permit term each must file an Application and treat such facility as a new facility. From and after the Effective Date, Applicant or Co-Locator must also obtain a Right-of-Way Permit for any modification of or new attachment to a grandfathered facility.

Any Applicant or Co-Locator using a grandfathered facility for any purpose other than a public utility use must notify the Town of such use of each such facility within one hundred eighty (180) days after

the Effective Date. Any Applicant or Co-Locator which after the Effective Date wishes to make a use of its grandfathered facility which is not a public utility use must, prior to commencing such use, apply for and obtain a Right-of-Way Permit for such non-public utility use.

Traffic lights, fire hydrants, mail boxes and similar intrusions in the Right-of-Way that are accessory uses to the primary use of the property such as awnings, balconies, over-hanging signs and sidewalk cafes are exempted from this Bylaw.

Prior to the Town accepting a private way as a Public Way, such Applicant with a facility located in, on, under or across the private way and each Co-Locator using such facility including a Co-Locator Public Utility shall apply for and obtain a Right-of-Way Permit from the Awarding Authority.

A public utility that is petitioning for a Grant of Location in accordance with Ch. 166 section 22, Ch. 161 section 70, or Ch. 162 section 8 of the M.G.L. as part of its Application for a Right-of-Way Permit shall so indicate on the Application. A Right-of-Way Permit granted to a public utility for a facility to the extent of public utility use shall constitute a Grant of Location as well.

No Right-of-Way Permit shall be granted unless Applicant demonstrates to the reasonable satisfaction of the Awarding Authority that sufficient existing capacity remains in existing facilities to accommodate an attachment or that Applicant will construct new facilities in accordance with the requirements of this Bylaw. Except for transmission lines, in the event that all of the usable space of existing overhead facilities has been used up, the Town may in its reasonable discretion require that the Applicant construct new underground facilities.

All construction work contemplated by this Bylaw shall be done in a good and workmanlike manner using the best engineering and construction practices and shall be done in accordance with:

- (1) all applicable laws and regulations,
- (2) all of the provisions of this Bylaw,
- (3) any conditions contained in the Right-of-Way Permit, and
- (4) such reasonable supplemental instructions not inconsistent with the foregoing as the Awarding Authority or its authorized representative may from time to time issue.

Work that involves road opening activity must comply with the Town Street Opening Bylaw and Department of Public Works' Procedures. Applicants proposing road opening activity must contact and consult with the Town's Director of Public Works regarding further information and requirements.

No person or entity may perform any work in or under a Right-of-Way unless it is a permit holder and:

- (1) is a municipal department, public utility, telecommunications carrier or local exchange carrier or their respective officers or employees or
- (2) has engaged a Town licensed contractor and such holder performs all such Right-of-Way Work as agent of permit holder after complying with the Town Street Opening Bylaw.

**Sec. 16-166.5****Requirements of application****A. Information Required of All Applicants and Co-Locators**

Applicants or Co-Locators seeking a Right-of-Way Permit shall file on forms designated by the Awarding Authority a completed and signed Application at the office of the Awarding Authority which shall include the following information:

- (1) The identity and legal status of the Applicant or Co-Locator including any parent or affiliated corporation.
- (2) The address and telephone number of the corporation and the name of the officer, agent or employee responsible for the accuracy of the Application.
- (3) If a public utility (or municipal department), the federal identification number of the entity. All others must in addition specify their FCC license number and submit evidence of certification by the DTE.
- (4) A general description of Applicant's existing overhead or underground facilities within the Town that it is using to provide service and the service that it is currently providing.
- (5) A detailed description of the service that Applicant or Co-Locator intends to offer or provide to persons, forms, businesses or institutions within the Town and whether the use of the facility to provide the service will constitute a public utility use.
- (6) A detailed description of the underground or overhead facilities Applicant or Co-Locator intends to use or construct, their useful life and full dimensions of the proposed facility including but not limited to the following as applicable: height of poles, number of wires and their diameter, height of wires above the Right-of-Way, voltage of electric transmission lines, diameter of mains and conduits.
- (7) Maps or plans showing the exact location of the existing or proposed new facility in the Right-of-Way using engineering metes and bounds, street names and intersecting street names. All maps and plans must show a north arrow and include a Locus Map at an appropriate scale (1-inch equals 400 feet is the preferred scale). A copy of the maps and plans must be provided in an appropriate digital format as specified by the Awarding Authority.
- (8) A statement as to whether new facilities will be built or existing facilities will be used and who is the Applicant with respect to such facility.
- (9) In the case of a Co-Locator seeking a permit for an attachment to a facility, the Applicant of which is exempt in whole or part from the obligation to make annual license rental payment for the facility as provided herein, such application shall be made jointly by Applicant and Co-Locator. Each must sign the application and Applicant must acknowledge in writing in form and substance satisfactory to the Town, its obligation to pay the amount, if any, of annual license rental payment due the Town in respect of such attachment.

(10) The names of Co-Locators who share or will share the facility. Applicants must provide evidence that Co-Locators have received their own Right-of-Way Permit and identify all pending Co-Locator Application.

(11) Evidence that Applicant or Co-Locator has obtained all other governmental approvals and permits needed to use existing facilities and to offer or provide services.

## **B. Petitions for Grants of Location**

Applicants or Co-Locators that are public utilities and that are seeking a Grant of Location as part of the Right-of-Way Permit shall also provide the following information as part of the application:

- (1) A statement as to the demonstrated need to construct the new facility or make an attachment to an existing facility.
- (2) A list of abutters' names and addresses within two hundred (200) feet.
- (3) The kind, size and tested strength of supporting or service wires for poles.
- (4) The maximum voltage that will be transmitted over wires and the maximum cubic feet of gas that will be transported through mains.
- (5) The size and pressure of gas mains and what the main is made of.
- (6) A list of all posts, poles or other supports of wires included in the Grant of Location.
- (7) The number of cross arms in use with each pole and the number of wires that are already attached thereto and the number of wires that are proposed.
- (8) The location of conduits and manholes in relation to all of the existing underground facilities, including those not owned by Applicant, and proposed new underground facilities.

## **C. Applications for New Facilities - Supplemental Information Required.**

If new facilities are to be constructed, Applicant must submit the following additional information as part of the Application:

- (1) Preliminary engineering plans, specifications and a Site Plan of the facilities to be located within the Right-of-Way at a scale of one inch equals forty (40) feet which shall show
  - (a) all property lines,
  - (b) the exact location of the proposed new facilities, and
  - (c) existing facilities, streets, landscape features, residential dwellings, and all buildings located within two hundred (200) feet of the new facility prepared by a Professional Engineer registered to

perform the required work in the Commonwealth of Massachusetts or other qualified professional registered to perform the required work in the Commonwealth of Massachusetts.

- (2) A network map showing the location and route of the new facilities superimposed on the Public Ways of the Town on a scale of one (1) inch equals two hundred (200) feet prepared by a Professional Engineer registered to perform the required work in the Commonwealth of Massachusetts or other qualified professional registered to perform the required work in the Commonwealth of Massachusetts. The Awarding Authority may permit an alternate scale if unique circumstances warrant an alternate scale and scale of the map permits adequate conveyance of the information depicted.
- (3) A copy of the maps and plans must be provided in an appropriate digital format as specified by the Awarding Authority.
- (4) The location of all existing facilities, including those not owned by Applicant, located along the proposed route.
- (5) The specific trees, structures, improvements, facilities and obstructions, if any, that Applicant proposes to temporarily or permanently remove or relocate.
- (6) Evidence as to what, if any, excess capacity is available for attachment to existing facilities located along the proposed route with a specification of how much excess capacity will exist after the installation of the new facility. If co-location is not proposed, an affidavit attesting to the fact that Applicant made diligent but unsuccessful efforts to obtain permission to install or co-locate new facilities on existing facilities, the reason for the denial of co-location and whether an appeal to the DTE has been adjudicated.
- (7) If new facilities are to be constructed, the excess capacity that will exist in or on them after their installation and use by the Applicant and any identified Co-Locator.
- (8) The useful life of the proposed facility or attachment.
- (9) Information as to the type and frequency of any telecommunications equipment that will be installed.
- (10) A preliminary construction schedule and completion date.
- (11) Financial statements prepared in accordance with generally accepted accounting principles demonstrating Applicant's financial ability to construct, operate, maintain, relocate and remove the proposed Facilities.
- (12) Information in sufficient detail to establish Applicant's technical qualifications, experience and expertise regarding the facilities to be constructed and operated.
- (13) Evidence that Applicant has obtained all other governmental approvals and permits needed to construct the new facilities.

(14) The name of the licensed contractor who will perform the construction work. In extraordinary situations where the work will be / is out for bid, provide the anticipated bid response date. The Contractor will need to apply to be licensed by the Town.

(15) An application fee.

(16) A Certificate of Insurance in coverages as specified in Section 16-166.7 J.

(17) Such other information as may be reasonably required by the Awarding Authority.

#### **D. Number of Copies Applications Required.**

Applicants must submit at least seven (7) copies of ALL application materials.

### **Sec. 16-166.6 Application procedure**

#### **A. Departmental Reviews Required.**

Upon receipt of a completed and signed Application, the Awarding Authority shall submit the application and associated plans to the Conservation Commission, Department of Public Works, Planning Board / Town Planner, Police Department, Fire Department and the Building Department (hereafter referred to as “the departments”) for review. The departments shall promptly review the Application and make written recommendations concerning approval to the Awarding Authority and, if appropriate, shall include recommendations concerning permit conditions and supplemental instructions. The departments requested to review the application and plans shall submit their comments within thirty-five (35) days of the date of Application. Failure to respond within this time frame shall be deemed as having no objection to the application. The Awarding Authority shall not act on any application until the thirty-five (35) day period for departmental reviews has lapsed.

#### **B. Application and Review Fees.**

The Applicant, as part of the filing of an Application, shall pay such application fees as established by the Board of Selectmen which shall not be less than one hundred (100) dollars. Further, the Applicant shall be responsible for any and all expenses associated with giving notice of a public hearing if any such hearing is required.

Further, if the application involves the construction of new facilities, the modification of existing facilities or a program of attachments the total construction cost of any of the foregoing is estimated to exceed one million (1,000,000) dollars, the Town may require the Applicant to enter into an agreement with the Town to reimburse the Town for the reasonable cost of engineering review by the Town’s consultant of the plans submitted. Applicants shall submit a deposit to secure the cost of this review.

#### **C. Grant of Location Public Hearing.**

If the Right-of-Way Application includes a Petition of the Applicant for a Grant of Location for a new facility, the Awarding Authority shall promptly schedule a public hearing to be held within sixty-five (65) days of the date of a completed and signed application.

Notice of the public hearing shall be published in a newspaper of general circulation in the Town of Stoneham for no less than two (2) consecutive weeks prior to the Public Hearing.

Further notice shall be posted in the Town Hall. Owners of property abutting within two hundred (200) feet the location on which the new facility is proposed shall be notified by mail with a copy of the newspaper advertisement at least fourteen (14) days prior to the public hearing and given the opportunity to speak at the public hearing and present evidence. A copy shall also be sent to the Town Clerk at 35 Central Street. The Applicant shall be responsible for all costs related to a public hearing.

#### **D. Timely Decision.**

The Awarding Authority shall make a Decision on approval or disapproval of the application in a timely manner, but within no more than one hundred eighty (180) days of the date of submittal of the application or public hearing, whichever is later.

The Awarding Authority shall review the application, any evidence presented at a Grant of Location public hearing, and the recommendations received from the departments and make a determination on the application taking into account the recommendations received, testimony and evidence presented if any, and such other facts as it may reasonably consider such as:

- (1) The likelihood that the new facility will incommode the public use of public ways or endanger or interrupt navigation.
- (2) The financial and technical ability of the Applicant or Co-Locator to construct new facilities or to use the Right-of-Way.
- (3) The capacity of the Right-of-Way to accommodate the proposed new facilities, modifications or attachments.
- (4) The capacity of the Right-of-Way to accommodate additional new facilities if the permit is granted.
- (5) Potential damage or disruption (including measurable interference with telecommunications services) to existing facilities, or public property if the permit is granted.
- (6) The effect, if any, on public health, safety and welfare if the permit is granted.
- (7) The availability of alternate routes and/or locations for the proposed new facilities.
- (8) Applicable federal and state laws and Town Bylaws which might prohibit or affect the permit if granted.

If the application is considered favorably, a Right-of-Way Permit containing such conditions and supplemental instructions as the Awarding Authority reasonably deems appropriate shall promptly issue upon the satisfaction of any conditions precedent which the Awarding Authority may establish. If the application is not favorably considered, the Awarding Authority shall communicate in writing to the Applicant or Co-Locator the reasons its application was not favorably considered.

#### **E. Posting of Decision.**

Upon issuance of a decision to approve or disapprove, the Awarding Authority shall cause the decision to be posted in the Office of the Town Clerk for public review.

This decision shall include the reasons for the decision and any conditions attached to said decision. A decision to grant Approval shall include an Order of Conditions which incorporates, but is not limited to the following provisions:

- (1) Reimbursement of all reasonable costs associated with regulatory review and oversight which were not covered by the application fees and engineering fees previously paid; insurance, and all municipal costs associated with road opening, traffic control, utility and conduit location, and utility permitting, monitoring and relocation.
- (2) Indemnification of the Town of Stoneham for all costs, damages, and liability associated with property damage or personal injury claims of any sort related to the project.
- (3) A requirement that the Applicant shall obtain permits from the appropriate departments and agencies for all project work including but not limited to road openings, network location, safety of proximate structures, road repair and resurfacing, wiring, connections, and wetland alterations and crossings.
- (4) A requirement that the Applicant shall make unused or vacant conduit capacity available for sale or leased use by other networks and networks developers in conformity with the provisions of this Bylaw.
- (5) Construction must begin within six (6) months from the date of the decision and be completed within a construction period to be specified in the Order of Conditions.

#### **F. Grant of Location to be Included in Right-of-Way Permit.**

If a Grant of Location has been requested as part of the application for a Right-of-Way Permit and the Application has been considered favorably, the Right-of-Way Permit shall also constitute an order granting the location. The Grant of Location will specify where the new facility or attachment may be placed, and (with the exception of Grants of Location for transmission lines) the kind or poles, piers or abutments which may be used, the number of wires or cables which may be attached thereto, the height to which the wires or cables may run and the maximum voltage between conductors to be carried through same. Grants of Locations for poles are limited to one pole per location. The Grant of Location may contain such other conditions and supplemental instructions as the Awarding Authority reasonably deems appropriate.

**Sec. 16-166.7                      Terms of the Right-of-Way permit**

**A. Conditions of Permit.**

All Right-of-Way Permits granted are conditioned upon:

- (1) the Applicant having obtained and submitted to the Awarding Authority, prior to construction and installation of its new facilities, a Bond as required in subsection (K)(2) hereafter, and,
- (2) Permit holder's agreement to make any excess capacity of its facility available to other Applicants on commercially practical and technically feasible terms, and,
- (3) to the extent feasible and subject to reasonable availability and agreement between a telecommunications carrier and the Town concerning price, maintenance, access and security, interconnection of the new telecommunications facility with public buildings, and
- (4) the execution and delivery of a Town of Stoneham Right-of-Way license agreement in the form and substance satisfactory to the Awarding Authority.

**B. Permit Term.**

Rights-of-Way Permits shall be valid for the period commencing on the date of filing of an application and ending upon the earlier to occur of:

- (1) the expiration of the useful life of the facility as reasonably determined by the Awarding Authority  
or
- (2) twenty years from the date of the application.

A permit holder desiring to continue to use the facility after the expiration of the permit term shall not more than one hundred eighty (180) days nor less than ninety (90) days before expiration of the current permit file an application with the Town for a permit as though the existing facility were a proposed new facility. Each Co-Locator must also file for a new permit.

**C. Revocation of Permits.**

Except to the extent that a Right-of-Way Permit also constitutes a statutory Grant of Location and current law limits the ability of the Awarding Authority to revoke a Grant of Location, the Awarding Authority during the permit term may revoke a Right-of-Way Permit granted hereunder after notice and hearing if it shall reasonably determine that:

- (1) permit holder is in default
- (2) permit holder fails to start to construct the facilities for which a permit was granted within six (6) months of granting of the permit

- (3) permit holder has failed to relocate its facility or attachment to a new location within the designated time following an order from the Awarding Authority to relocate such facility or attachment or
- (4) if the Awarding Authority determines that public necessity and convenience requires the revocation of a Grant of Location held by a street railway. The permit holder shall be given not less than ten (10) days prior written notice of the time and place of the hearing on revocation and shall have the opportunity at the public hearing to present evidence.

#### **D. Removal of Facilities.**

Following revocation of the permit or the expiration of the permit term without an application to continue to use the facility unless then existing statutes shall require a different result and, if ordered by the Town, permit holder shall cease using the Right-of-Way. Permit holder shall remove all of its overhead and underground facilities from the Right-of-Way and restore the area to its original condition within six (6) months following expiration of revocation of the permit. In the event that the permit holder fails to remove its facilities, the Awarding Authority may treat such as abandoned property and, among other remedies, remove the facilities and restore the area at the owner's sole cost and expense.

#### **E. Removal of Unauthorized Facilities.**

With the exception of permits held by municipal departments and permits held by public utilities, within thirty (30) days following written notice from the Town, any person or entity that owns, controls or maintains any overhead or underground facilities located within the Right-of-Way for which a permit has not been obtained and which is not a grandfathered facility shall apply for a permit and may request a hearing before the Awarding Authority and shall have the opportunity at the hearing to present evidence. If the Application for a permit is denied, Applicant shall, at its own expense, remove such facilities from the Right-of-Way and restore the area to its original condition within six months of the date of the denial of the permit.

In the event that the Applicant fails to remove its facilities, the Awarding Authority may treat such as abandoned property and, among other remedies, remove the facility and restore the area at owner's sole cost and expense.

#### **F. Re-Location of Facilities due to Public Necessity.**

The location of any overhead or underground facility covered by a Right-of-Way Permit may be changed by order of the Awarding Authority if it determines in its reasonable discretion that public necessity requires relocation of the facility. Except for emergency repair work, Applicant is required to notify all Co-Locators upon receiving an order to relocate the facility from the Awarding Authority. Applicant and all Co-Locators shall, at their own expense, relocate their facilities to such location as shall have been approved by the Awarding Authority within ninety (90) days of the receipt of the order of the Awarding Authority. Upon relocation Applicant shall promptly supply Awarding Authority with "as built" plans of the relocated facility. Following the transfer of the facility and any attachments from the existing facility to the new facility, the existing facility shall be removed from the site within ninety days from the date of the completion of the transfer.

Unless directly and proximately caused by the willful, intentional or malicious acts by the Town, the Town shall not be liable for any damage to or loss of any overhead or underground facility located in the Right-of-Way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the Right-of-Way by or on behalf of the Town. Rights-of-Way Permits and Grants of Location for facilities that have been ordered to be relocated will be amended to reflect the new location once the facilities have been re-located.

#### **G. Assignment of Facilities.**

Except in connection with a transaction to which Section 15B of Chapter 166 of the Massachusetts General Laws applies, a Right-of-Way Permit is not assignable. If a permit holders transfers ownership or use of its facilities to another entity, such entity must apply for and receive its own permit in accordance with this Bylaw.

#### **H. Non-exclusive grant.**

No permit granted under this Bylaw shall confer an exclusive right, privilege, license or franchise to occupy or use the Right-of-Way of the Town for delivery of services or any other purposes. No permit granted under this Bylaw shall convey any right, title or interest in the Right-of-Way but shall be deemed a license to use and occupy the Right-of-Way in accordance with the terms of this Bylaw and the Town of South Hadley Right-of-Way license agreement. Further, no permit shall be construed as a warranty of title. A permit shall be limited to a license to use only that specific portion of a Right-of-Way as specified in the plan that accompanies the Application and in any permit or license agreement.

#### **I. Co-Location of Facilities.**

Issuance of a Right-of-Way Permit is conditioned upon the agreement of the Applicant(s) to make excess capacity available to other Co-Locators on commercially practical and technically feasible terms. All new facilities for which a Right-of-Way Permit has been issued shall be constructed, installed and located in accordance with the following terms and conditions:

- (1) Attachments shall be installed within existing underground or overhead facilities whenever excess capacity exists within such existing facility.
- (2) Whenever existing facilities have been required by the Town to be located underground within a Right-of-Way, no permit will be granted for an overhead facility.
- (3) Whenever any existing facility is required by the Town for reasons of public necessity to be relocated, each Applicant owner shall relocate its facilities within a reasonable period of time and all Co-Locators who share the facility shall, absent extraordinary circumstances or undue hardship as determined by the Awarding Authority, also relocate their attachments concurrently to minimize the disruption of the Right-of-Way.
- (4) Whenever new underground facilities must be constructed because the excess capacity of existing facilities has been exhausted, Applicant shall anticipate its needs for at least thirty years and is

encouraged to construct new underground facilities sufficient to meet its needs for this time period as well as provide excess capacity to Co-Locators on commercially practical and technically feasible terms.

- (5) The Town shall have the right, free of charge, to place its fire alarm telegraph, telephone and police and traffic signal wires upon any poles or within any conduits in each case when it is practicable and safe so to do. In every underground conduit hereafter constructed, four (4) ducts (being agreed as sufficient space) not less than three (3) inches in diameter, spaced three (3) inches apart and encased in concrete shall be reserved and maintained for the above enumerated systems of the Town, and the Town shall have the right of access thereto at all reasonable times for purposes of repair, alteration, installation or maintenance thereof. Handholes shall be installed, spaced no further than two hundred fifty (250) feet apart and located at every street intersection to accommodate cable installation.

#### **J. Insurance.**

The permit holder shall acquire and continuously maintain while it possesses a Right-of-Way Permit liability insurance coverage on all personnel and equipment used to construct, operate, maintain and repair the overhead and underground facilities located within the Right-of-Way.

This insurance must be with insurance companies licensed to do business in the Commonwealth of Massachusetts and shall contain the following coverages and be in the following minimum amounts:

Commercial General Liability Insurance – including operation, independent contractors, complete operations for a period of one (1) year from completing the Right-of-Way Work, XCU hazards, broad form property damage and personal injury.

General Aggregate:	\$ 2,000,000.00
Products and complete operations	
Aggregate	\$ 2,000,000.00
Each occurrence	\$ 1,000,000.00
Combined single limit	\$ 1,000,000.00

Automobile Liability Insurance (covers owned, non-owned and hire vehicles)

Bodily Injury Liability	\$ 500,000.00 ea. person
	\$ 1,000,000.00 ea. accident
Property Damage Liability	\$ 250,000.00 ea. accident
Combined Single Limit	\$ 1,000,000.00

Worker's Compensation and Employer's Liability

Each Accident	\$ 100,000.00
Disease – Policy Limit	\$ 500,000.00
Disease – each Employee	\$ 100,000.00

Certificates of Insurance shall provide for at least thirty (30) days notice to the Awarding Authority of cancellation or material change. The name of the municipality shall be listed as an additional insured on the Certificate of Insurance.

## **K. Construction Requirements**

- (1) All permit holders are required to obtain a building and electrical permit (if applicable), and (except for poles and attachments thereto) a road opening permit from the Awarding Authority. Once commenced, construction shall proceed at an uninterrupted and consistent pace so that the Right-of-Way Work described in the permit will be completed within a reasonable time.
- (2) Before commencing construction, permit holders shall submit to the Awarding Authority a performance bond, with corporate surety satisfactory to the Awarding Authority, in an amount equal to the value of the construction which shall assure:
  - (a) the satisfactory completion of installation and commencement of operation of the system in accordance with the terms of the permit,
  - (b) the indemnity of the Town from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, and installation of the facilities authorized pursuant to the permit,
  - (c) the satisfactory restoration of adjoining property and public property in accordance with the provisions of this Bylaw.

This bond shall be maintained in force until one (1) year after the completion of the construction work.

- (3) Construction of new facilities must conform to the plan accompanying the Application and to the terms of the permit and license agreement. All Right-of-Way Work must conform to the Americans with Disabilities Act and the Architectural Access Board Regulations as currently in effect.
- (4) Right-of-Way Work shall comply with the following:
  - (a) Working Hours. Except for emergency repair work, Right-of-Way Work shall occur during normal working hours. Permit holder must give notice of the intended Right-of-Way Work seventy-two (72) hours in advance to the Town's Director of Public Works and unless the requirement for a police detail is waived by the Police Chief of the Town or by other Bylaw, must arrange for and pay for a police detail to be present throughout the period of time that the Right-of-Way Work is being conducted.
  - (b) Obligation to Locate Existing Facilities. Permit holder or contractor must inform itself as to the existence and location of all existing facilities located in the same general area as the new facilities are to be located and must confer with the owners thereof in order to obtain

information as to the vertical and horizontal locations of the facilities and other conditions that might affect the Right-of-Way Work.

- (c) **Non-Interference with Existing Facilities.** Permit holder or contractor shall not interfere with an existing facility without the written consent of the Awarding Authority and the owner of the existing facility. If it becomes necessary to relocate an existing facility to accommodate the new facility, this shall be done by its owner and the cost of such work shall be borne by the permit holder.
- (d) **Dig Safe.** Permit holder shall, in accordance with Chapter 164 section 76D of the M.G.L., notify all Public Utilities seventy-two hours in advance of making any excavation in a Public Way. Such notification shall be made by means of obtaining a DIG-SAFE number. Said number shall be provided on the road opening application.
- (e) **Protection of Existing Facilities.** Permit holder or contractor shall adequately support and protect by timbers, sheeting, etc. all existing overhead or underground facilities which may be in any way affected by the Right-of-Way Work and shall do everything necessary to support, sustain and protect them under, over, along or across such work area. Excavation work shall be performed and conducted in such manner that it shall not interfere with access to fire stations, fire hydrants, water gates, underground vaults, catch basins, manholes or any other public structure.
- (f) **Adjoining Property.** Permit holder or contractor shall, at all times at its own expense, preserve and protect from injury any adjoining property and shall take such precautions as may be necessary for this purpose. Permit holder shall be responsible for all damages to public or private property or streets resulting from its failure to properly protect and carry out the Right-of-Way work.
- (g) **Trees.** Permit holder or contractor shall not remove, even temporarily, any trees or shrubs which exist in the Right-of-Way work area without first obtaining the consent of the Town Tree Warden. In the event a tree is either accidentally destroyed by the permit holder or contractor or is authorized for removal by the Town Tree Warden, permit holder or contractor shall remove the tree, stump and debris from the work site and replace the tree with a tree meeting specifications provided by the Town Tree Warden in a location approved by the Town Tree Warden. Replacement quantity shall be determined by measuring the circumference of the tree(s) at four (4) feet off the ground divided by 3.14 to determine an equivalent caliper. The equivalent caliper shall be multiplied by one and one half (1.5) to determine the minimum caliper replacement required by one (1) or more trees.
- (h) **Excavated Material.** Permit holder or contractor shall remove all excess excavated material, surplus water, muck, silt, residue or other run-off pumped or removed from excavations from the Right-of-Way work site.
- (i) **Temporary Repairs of Underground Facilities.** At the end of each day, all trenches must be plated if repair work is not completed. No un-plated trenches are permitted overnight and work

in plated trenches must be continually prosecuted to completion to minimize the time trenches are plated.

- (j) Noise. Permit holder or contractor shall perform the Right-of-Way work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. During the hours from 7:00 p.m. to 7:00 a.m. permit holder or contractor shall not use, unless otherwise specifically permitted by the Awarding Authority any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

(1) Construction Noise Levels

7:00 a.m. to 5:00 p.m. (Monday – Friday)

9:00 a.m. to 5:00 p.m. (Saturday)

70 dBA L10 level with a Maximum Noise Level not to exceed 86 dBA.

Construction noise levels shall not exceed General Noise Levels on Sundays, Legal Holidays, Saturdays before 9:00 a.m., Saturdays after 5:00 p.m. and weekdays between the hours of 5:00 p.m. and 7:00 a.m.

(2) General Noise Levels - Everyday

Daytime - 7:00 a.m. to 7:00 p.m.

Less than 10 Minutes 75 dBA

Between 10 Minutes and 2 Hours 70 dBA

In excess of 2 Hours 60 dBA

Nighttime - 7:00 p.m. to 7:00 a.m.

Less than 10 Minutes 60 dBA

Between 10 Minutes and 2 Hours 55 dBA

In excess of 2 Hours 45 dBA

- (k) Debris and Litter. The permit holder or contractor shall remove all debris and litter remaining from the Right-of-Way work site in a timely manner.
- (l) Lawn Surfaces and Plantings. All lawn surfaces which are disturbed during Right-of-Way work shall be replaced with sod or six (6) inches of screened loam, lime, fertilized and re-seeded with good quality lawn seed at the discretion of the Town. Any areas containing plantings shall be restored to their original condition with the same or similar plantings.
- (m) Erosion Control. Permit holder shall be responsible for all erosion control and for obtaining any necessary permits from the Town. Permit holder or contractor shall protect drainage structures from siltation by whatever means required including but not limited to the installation of hay bales and/or filter fabric. In the event that a drainage structure becomes

damaged from siltation as a result of the Right-of-Way work, permit holder or contractor shall clean the structure before completing the Right-of-Way work.

- (n) As Built Plans. Within thirty (30) days following completion of construction of new facilities, permit holder shall file with the Awarding Authority complete As-Built Plans of the new facilities including an accurate map certifying the location of all facilities within the Right-of-Way prepared by a Professional Engineer registered to perform the required work in the Commonwealth of Massachusetts or other qualified professional registered to perform the required work in the Commonwealth of Massachusetts. A copy of the maps and plans must be provided in an appropriate digital format as specified by the Awarding Authority.
- (o) Tree trimming. Permit holders who own and maintain overhead facilities are responsible for trimming trees or other vegetation growing in the Right-of-Way to prevent their branches or leaves from touching or otherwise interfering with the overhead facility. All trimming or pruning shall be at the sole expense of the permit holder and performed under the supervision of the Town Tree Warden. Approval by the Town Tree Warden must be granted prior to undertaking trimming of trees or vegetation within the Right-of-Way. Permit holder must respond within five (5) calendar days, excluding weekends and holidays, of a request to trim trees by the Town Tree Warden.

#### **L. Emergency Repair Work.**

When notified by the Town, permit holder is required to respond to calls for emergency repair work within two (2) hours of the notice and to commence repairs immediately upon arrival at the site to protect the public.

#### **M. Maintenance.**

Permit holder shall at all times employ ordinary and reasonable care and install and maintain in use nothing less than commonly accepted methods and devices for preventing failures of overhead or underground facilities and accidents which are likely to cause damage, injuries or nuisances to the public. Owners of poles shall, upon the receipt of written notice served by the Inspector of Wires, promptly make such substitution or repairs of such poles, wires, posts, supports or attachments as may be required by the Inspector of Wires.

### **Sec. 16-166.8                      Rental payments**

#### **A. Overhead License Rental Payments**

- (1) The overhead license rental payment for each overhead facility shall be computed by multiplying the occupied area of the facility by the applicable overhead license rental rate.
- (2) The occupied area of an overhead facility shall be determined in the reasonable discretion of the Awarding Authority.

- (3) The overhead license rental rate shall be determined annually by the Awarding Authority within sixty (60) days of the commencement of each fiscal year utilizing assessment data for the fiscal year just ended. The rate for the fiscal year in which an Application is filed (or the year of the Effective Date in the case of grandfathered facilities) shall be the applicable rate for the entire permit term.
- (4) An annual overhead license rate shall be calculated by:
  - (a) determining the assessed value of all taxable land in the Town for the previous fiscal year, and
  - (b) dividing the amount obtained in (a) by the total number of acres of land in Town subject to tax in that fiscal year and by expressing this quotient on a dollar per square foot basis (this represents a reasonable method to derive the value of the Town's investment in its Rights-of-Way) and
  - (c) determining in the reasonable judgement of the Awarding Authority the Town's cost of long-term capital and a reasonable capital amortization term. The combination of these two items shall be expressed as an amortization constant. (This constant represents the Town's reasonable judgment of the term over which the Town should recover its investment in its Rights-of- Way and a reasonable return on such investment which shall not exceed twenty (20) years) and
  - (d) multiplying the quotient obtained in (b) above by the constant determined in (c) and by expressing this product in dollars per square foot.

## **B. Underground License Rental Payment**

- (1) The underground license rental payment for each underground facility shall be computed by multiplying the occupied volume of the facility by the applicable underground license rental rate.
- (2) The occupied volume of an underground facility shall be determined in the reasonable discretion of the Awarding Authority.
- (3) The underground license rental rate shall be determined annually by the Awarding Authority within sixty (60) days of the commencement of each fiscal year utilizing assessment data for the fiscal year just ended. The rate for the fiscal year in which an Application is filed (or the year of the Effective Date in the case of grandfathered facilities) shall be the applicable rate for the entire permit term.
- (4) An annual underground license rate shall be calculated by dividing the product obtained from the calculation described in Paragraph A (4) (d) above by the useable depth of the Rights-of-Way in the Town of Stoneham as reasonably determined by the Awarding Authority and expressing the quotient so obtained in dollars per cubic foot.

## **C. Exemption from Rental Payments**

Applicants utilizing facilities (which includes use by Co-Locators) on the terms described below shall be exempt from the payment of underground or overhead license rental payments during the periods described as follows:

- (1) Applicants which are municipal departments to the extent that such facilities are used only for municipal purposes are exempt from the payment of rental payments hereunder.
- (2) Applicants with grandfathered facilities shall be exempt from the payment of rental payments to the extent of the type and extent of the uses being made of such grandfathered facilities as of the Effective Date and during the period commencing on the Effective Date and ending on the expiration or earlier termination of the permit term.
- (3) Applicants with grandfathered facilities which after the Effective Date propose to make uses of them, or allow Co-Locators to make uses of them which are not Public Utility Uses, shall have the exemption described in sub-paragraph (2) above reduced pro-tanto as to reasonably determined by the Awarding Authority and shall forthwith begin paying a pro-tanto portion of the annual rental payment for the use of the facility no longer subject to exemption. The rental payment shall be calculated as described above and the calculation shall utilize the fiscal year in which the Application for non-exempt use is made.

The pro-tanto non-exempt portion of the annual rental payment shall be reasonably determined by the Awarding Authority by comparing the portion of the occupied Area or occupied volume subject to nonexempt use to the total occupied area or occupied volume use being made of the facility. Evidence of well-established uniform practices evidenced by written policies or procedures of Applicants in establishing pole attachment fees or other similar charges to Co Locators or in allocating costs among affiliates shall be considered as prima facie evidence in determining reasonable allocation by the Awarding Authority.

- (4) Applicants with new and existing facilities which after the Effective Date propose to make public utility use or allow Co-Locators to make public utility use of a facility shall be pro-tanto exempt during the permit term from the payment of the appropriate annual rental payment otherwise payable with respect to such facility to the extent of its public utility use determined as set out in sub-paragraph (3) above.
- (5) The routine replacement of a portion of a facility or a minor adjustment of the location of part of a facility (such as the replacement or relocation of a pole or replacement of wires or cables) in situations where the use and capacity remain unchanged in some circumstances may require an Applicant or Co-Locator to file an application for a Right-of-Way Permit but in such situations the exempt status of the facility shall not be affected.
- (6) All exemptions except those for municipal departments shall end upon the end of the initial permit term, but in no event later than July 1, 2020 unless then applicable law shall require a continuation of the exemption.

All orders and decisions by the Awarding Authority regarding Grants of Location, Rights-of-Way Permits, Transfers, Alterations, or any other actions authorized by this Bylaw are to be recorded and posted in the Office of the Town Clerk.

**Sec. 16-166.10 Expiration of approval due to failure to act**

In the event the recipient of the Grant of Location, Alteration, Right-of-Way Permit, or a Transfer of a License fails to act to begin and complete the work in accordance with the time schedule set forth in the Order of Conditions, the Approval shall expire. The Applicant shall not be entitled to reinstatement of the Order of Conditions.

**Sec. 16-166.11 Appeals**

A person or entity aggrieved by a decision of the Awarding Authority under this Bylaw may appeal such decision to the appropriate court of competent jurisdiction or, to the extent applicable law provides, to the DTE or the FCC.

**Sec. 16-166.12 Severability**

If any clause, section, or other part of this Bylaw shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Bylaw shall not be affected thereby but shall remain in full force and effect.

or do anything in relation thereto.

**Director, Department of Public Works**

**Article 2. Voted** that the Town amend Stoneham Town Code, Chapter 16, Board of Selectmen, by adding a new Article VII., entitled “Grant of Location in Public Ways” and adding a new Sec. 16-166, entitled “Grant of Location & Rights of Way” as printed in Article 2 of the June 18, 2018 Special Town Meeting Warrant establishing local process and procedure relating to so-called Grants of Location allowing permission by persons and companies to construct and maintain transmission lines upon, along, under or across public ways in the Town of Stoneham

**Majority Vote Required  
Majority Vote Passes Per Moderator**

**Article 3.** To see if the Town will vote to amend Stoneham Town Code, Chapter 11A “Stormwater” by adding **Sec. 11A.3. “Stormwater Management and Erosion Control”** as follows:

### **Sec.11A.3. Stormwater Management and Erosion Control**

#### **Sec. 11A.3.1 Purpose**

The harmful impacts of soil erosion and sedimentation include impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and overloading or clogging of municipal catch basins and storm drainage systems. Stormwater runoff from developed land uses can have these harmful impacts; it can also increase flooding and decrease groundwater recharge.

The purpose of Section 11A.3 is to provide for the health, safety and welfare of the citizens of the Town of Stoneham through the regulation of stormwater runoff from land disturbance and developed and redeveloped land uses.

The provisions of Section 11A.3 shall be administered so as to:

- (a) Require practices that reduce soil erosion and sedimentation, and control the volume and rate of stormwater runoff, resulting from land disturbance activities and developed land uses;
- (b) Promote infiltration and the recharge of groundwater;
- (c) Ensure that adequate soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained;
- (d) Require practices to control waste associated with construction activities, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary wastes;
- (e) Ensure adequate long-term operation and maintenance of stormwater management structures;
- (f) Comply with the requirements of the Town of Stoneham’s National Pollutant Discharge Elimination System (NPDES) permit for discharges from the municipal storm drain system; and
- (g) Ensure compliance through inspection, monitoring, and enforcement.

#### **Sec. 11A.3.2 Definitions**

Unless the context clearly indicates otherwise, the following words and terms, as used in Section 11A.3, shall have the following meanings:

**Applicant:** Any person requesting a Stormwater Permit.

**Best Management Practice (BMP):** An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.

**Common Plan of Development Sale:** Any plan reflected in an announcement, documentation or physical demarcation indicating That one (1) or more distinct construction activities are or may be undertaken on a Site or on contiguous Sites, either simultaneously or at different times or on different schedules.

**Construction and Waste Materials:** Excess or discarded building or site materials at a construction site, including concrete truck washout, chemicals, litter and sanitary waste, that may adversely impact water quality.

**Erosion:** The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

**Erosion and Sedimentation Control Plan:** A document prepared by a qualified professional engineer or a Certified Professional in Erosion and Sedimentation Control, that specifies best management practices designed to control surface runoff, erosion and sedimentation during land-disturbing activities prior to or during construction.

**Grading:** Changing the level or shape of the ground surface.

**Impervious Surface:** Any man-made material or structure on or above the ground that prevents water from infiltrating the underlying soil. Impervious Surfaces may include roads, paved parking lots, sidewalks, and rooftops.

**Land-Disturbing Activity (or Disturbance of Land):** Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

**Massachusetts Stormwater Management Standards:** The Stormwater Management Standards issued by the Massachusetts Department of Environmental Protection, aimed at encouraging recharge and preventing stormwater discharges from causing or contributing to the pollution of the surface waters or groundwater of the Commonwealth.

**Municipal Storm Drain System (or Storm Drain System):** The system of conveyances owned by the Town (including roads, catch basins, curbs, gutters, ditches, man-made channels, pipes, and outfalls) by which stormwater is collected or conveyed.

**New Development:** Any construction activities or land alteration that disturbs one (1) or more acres of land, on an area that does not contain Impervious Surfaces.

**Operation and Maintenance Plan (O&M Plan):** A plan establishing the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a Stormwater Management System.

**Owner:** A Person with a legal or equitable interest in property.

**Pollutant:** Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, and agricultural waste, and any other material that may cause or contribute to exceedance of water quality standards in the waters to which the Storm Drain System discharges.

**Redevelopment:** Any construction, land alteration or improvement of Impervious Surfaces that disturbs one or more acres of land, on an area that already contains Impervious Surfaces.

**Runoff:** Rainfall, snowmelt, or irrigation water flowing over the ground surface.

**Sediment:** Mineral or organic soil material that is transported, by wind or water, from its origin to another location.

**Sedimentation:** The process or act of deposition of sediment.

**Site:** Any parcel of land or area of property where land-disturbing activities are, were, or will be performed.

**Soil:** Any earth, sand, loam, clay, rock, gravel, or similar material.

**Stabilization:** The uses, singly or in combination, of mechanical, structural, or vegetative methods, to prevent, reduce or slow erosion.

**Stormwater:** Any surface flow, runoff or drainage resulting entirely from any form of natural precipitation.

**Stormwater Management Plan:** A document containing sufficient information for the SSB to evaluate the environmental impact, effectiveness and acceptability of the measures proposed by the applicant for reducing adverse post-construction impacts from stormwater, including controlling stormwater runoff and promoting infiltration.

### **Sec. 11A.3.3 Responsibility for Administration**

The Stoneham Stormwater Board (SSB) shall administer, implement and enforce Section 11A.3, with assistance from the Town Administrator. Any powers granted to or duties imposed upon the SSB, except the power to hear appeals, may be delegated in writing by the SSB to other employees or agents of the Town.

#### Subsection 1 Rules and Regulations

The SSB may adopt, and periodically amend, rules and regulations to effectuate the purposes of Section 11A.3 or to implement any post-construction design requirements of the Town's NPDES stormwater discharge permit. Failure by the SSB to promulgate such rules and regulations shall not have the effect of suspending or invalidating the requirements of Section 11A.3.

#### Subsection 2 Waiver

The SSB may waive strict compliance with any requirement of Section 11A.3 or the rules and regulations promulgated hereunder, where such action is in the public interest and is not inconsistent with the purpose and intent of Section 11A.3. In making this determination, the SSB shall consider whether:

- (a) The public health, safety, and the environment will be protected;
- (b) Strict application of the requirement to be waived would undermine the public interest;
- (c) Specific substitute requirements can be adopted that will result in the substantial protection of the Municipal Storm Drain System, and the rights of persons affected by the waiver; and
- (d) The action made possible by the waiver will not violate the provisions of federal or state law, other applicable provisions of local bylaws or regulations, or the Town's NPDES stormwater discharge permit.

### **Sec. 11A.3.4 Applicability**

#### Subsection 1 Regulated Activities

- (a) Any activity that results in disturbance of one (1) or more acres of land and any land-disturbing activity that is part of a Common Plan of Development or Sale that will ultimately result in the disturbance of one (1) or more acres of land, shall be subject to the requirements of Section 11A.3 Stormwater Management and Erosion Control.
- (b) Any Person, activity or parcel that discharges, through pipes or other manmade conveyances, to the Town's Municipal Separate Storm Sewer System (sometimes referred to herein as "MS4") or any brook, stream, river, pond, lake, resource water or wetland within the Town or subject to the Clean Water Act (33 U.S.C 1342).
- (c) No Person shall, during the period from December 1 to April 1 inclusive, discharge or pipe, or cause to be discharged or piped, any ground or roof water onto a public way or sidewalk within the limits of the Town unless he has first obtained a permit therefore issued by the Director of Public Works.
- (d) No person shall undertake any such activity under Sec. 11A.3.1 Subsection (a) or (b) above unless it is authorized by a stormwater permit issued by the SSB, or exempt pursuant to Sec. 11A.3.4 Subsection 2.

#### Subsection 2 Exempt Activities

The following activities are exempt from a permit under Section 11A.3:

- (a) Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by MGL Chapter 131 Section 40 and 310 CMR 10.04;
- (b) Normal maintenance of lawns and landscaping;
- (c) Activities that are subject to the jurisdiction of the Stoneham Conservation Commission under Town Code Chapter 23 or MGL Chapter 131 Section 40 and its implementing regulations; demonstrate compliance with the Massachusetts Stormwater Management Standards and those established under Town Code Chapter 11A, as reflected in an Order of Conditions; and are in compliance with the requirements of that Order of Conditions; and
- (d) Any parcel of less than one (1) acre; However it shall be required during new construction to provide a minimum of one (1) inch of retention per square foot of total impervious area regardless of soil infiltration rate; and during modifications that increases the total parcel's impervious area by ten (10) percent of the existing or modifies a permanent structure's footprint by more than one hundred fifty (150) square feet shall provide a minimum of one (1) inch of retention per square foot of increased impervious area.

### **Sec. 11A.3.5 Permits and Procedure**

#### Subsection 1 Stormwater Permit Application

Prior to the commencement of any activity regulated by Section 11A.3, a stormwater permit application shall be filed with the SSB, including:

- (a) A completed stormwater permit application form with original signatures of all owners;
- (b) An Erosion and Sediment Control Plan satisfying the requirements of Sec. 11A.3.6;
- (c) A Stormwater Management Plan satisfying the requirements of Sec. 11A.3.7;
- (d) An Operation and Maintenance Plan satisfying the requirements of Sec. 11A.3.8; and
- (e) Payment of any application fee pursuant to Sec. 11A.3.5 Subsection 6.

#### Subsection 2 Entry

Filing a stormwater permit application shall be deemed to grant the SSB or its agent permission to enter the site to verify the information contained in the application.

#### Subsection 3 Public Hearing

The SSB shall hold a public hearing on each stormwater permit application that satisfies the requirements of Sec. 11A.3.5 Subsection 1. The hearing may be combined with the hearing for any other permit or approval for the same project that is within the jurisdiction of the SSB.

The SSB shall accept comments on the application submitted by any person in writing or at the public hearing.

The Applicant shall be responsible for advertisement of the public hearing in a local paper for a period of no less than two (2) weeks prior to the meeting with the last publication date a minimum of eight (8) days before the meeting.

#### Subsection 4 Information Requests

At any time after submission of the stormwater permit application, the SSB or its designee may request additional information from the Applicant on the proposed activity. The SSB shall not be required to act on the stormwater permit application until the requested information has been provided.

#### Subsection 5 Action by the SSB

After the close of the public hearing on the application, the SSB may:

- (a) Approve the stormwater permit application and issue a permit if it finds that the proposed activity will protect water resources and meet the objectives and requirements of Section 11A.3;
- (b) Approve the stormwater permit application and issue a permit with conditions, modifications or restrictions that the SSB determines are required to ensure that the proposed activity will protect water resources and meet the objectives and requirements of Section 11A.3; or
- (c) Disapprove the stormwater permit application and deny the permit if it finds that the proposed activity will not protect water resources or will fail to meet the objectives and requirements of Section 11A.3.
- (d) Require the permittee to post, before the start of land disturbance activity, a surety bond, irrevocable letter of credit or other acceptable form of security. The bond shall be in a form acceptable to Town Counsel, and shall be in an amount deemed sufficient by the SSB to ensure that the work will be completed in accordance with the permit.

#### Subsection 6 Fee Structure

Each stormwater permit application shall be accompanied by the appropriate application fee established by the SSB which shall not be less than five hundred (500) dollars. In addition, the SSB may retain a Registered Professional Engineer or other professional consultant to advise it on any aspects of the stormwater permit application. The SSB may require the applicant to pay the reasonable costs of such engineer or consultant pursuant to rules promulgated by the SSB pursuant to Sec. 11A.3.3 Subsection 1 and MGL Chapter 44 Section 53G. The SSB shall not be required to act on the stormwater permit application until the costs of such engineer or consultant have been paid.

## Subsection 7 Project Changes

The permittee, or the permittee's agent, shall notify the SSB in writing prior to any change or alteration of an activity authorized in a stormwater permit. If the SSB determines that the change or alteration is significant, the permittee shall obtain an amended stormwater permit prior to implementation of the change or alteration.

### **Sec. 11A.3.6 Erosion and Sediment Control Plan**

The Erosion and Sediment Control Plan shall contain sufficient information to describe the nature and purpose of the proposed activity, pertinent conditions of the site and adjacent areas, proposed erosion and sedimentation controls, and any other proposed pollution prevention measures.

#### Subsection 1 Design Standards

The erosion and sediment control and pollution prevention measures set forth in the Erosion and Sediment Control Plan shall be designed to meet Standard 8 of the Massachusetts Stormwater Management Standards, minimize the total area of disturbance, and properly manage construction and waste materials.

#### Subsection 2 Site Plan

The Erosion and Sediment Control Plan shall include a site plan, stamped and certified by a qualified Professional Engineer registered in Massachusetts or a Certified Professional in Erosion and Sediment Control, containing the following information:

- (a) The names, addresses, and telephone numbers of the owner, the applicant, and the persons or firms who prepared the plan;
- (b) Title, date, north arrow, scale, legend, and locus map;
- (c) Locations of watercourses and water bodies;
- (d) Lines of existing abutting streets showing drainage (including catch basins), driveway locations and curb cuts;
- (e) Property lines showing the size of the entire site, and a delineation and number of square feet of the land area to be disturbed;
- (f) Drainage patterns and approximate slopes anticipated after major grading activities (construction phase grading plans);
- (g) The location and details of erosion and sediment control measures, including both structural and non-structural measures, interim grading, and material stockpiling areas;

- (h) The location and description of and implementation schedule for temporary and permanent seeding, vegetative controls, and other stabilization measures; and
- (i) Such other information as is required by the SSB.

### **Sec. 11A.3.7 Stormwater Management Plan**

The Stormwater Management Plan shall contain sufficient information for the SSB to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the applicant for reducing adverse post-construction impacts from stormwater. The Stormwater Management Plan shall fully describe the proposed activity in drawings and narrative.

#### Subsection 1 Design Standards

The stormwater management measures set forth in the Stormwater Management Plan shall be designed to meet Standards 1-6 (Standard 7 for Redevelopment on parcel larger than one (1) acre regardless of size of disturbance or alteration) of the Massachusetts Stormwater Management Standards, as well as any post-construction design requirements adopted under Sec. 11A.3.3 Subsection 1.

The Stormwater Management Plan for any parcel (larger than one (1) acre) that discharges, through pipes or other manmade conveyances, to the Town's Municipal Separate Storm Sewer System (sometimes referred to herein as "MS4") or any brook, stream, river, pond, lake, resource water or wetland within the Town or subject to the Clean Water Act (33 U.S.C 1342) shall additionally be designed to infiltrate two (2) inches of water, regardless of soil infiltration rates, per impervious square foot prior to any discharge. In addition ninety (90) percent of the average load of Total Suspended Solids (TSS) and sixty (60) percent of the Total Phosphorus (TP) shall be removed prior to any discharge.

#### Subsection 2 Site Plan

The Stormwater Management Plan shall include a site plan, stamped and certified by a qualified Professional Engineer registered in Massachusetts, containing the following information:

- (a) The names, addresses, and telephone numbers of the owner, the applicant, and the persons or firms who prepared the plan;
- (b) Title, date, north arrow, scale, legend, and locus map;
- (c) The site's existing and proposed topography with contours at 2-foot intervals;
- (d) Existing site hydrology, including any existing stormwater conveyances or impoundments;
- (e) Estimated seasonal high groundwater elevation (November to April) in areas to be used for stormwater retention, detention, or infiltration;
- (f) The existing and proposed vegetation and ground surfaces with runoff coefficient for each;

- (g) A drainage area map showing pre- and post-construction watershed boundaries, drainage area and stormwater flow paths;
- (h) Drawings of all components of the proposed drainage system; and
- (i) Such other information as is required by the SSB.

### **Sec. 11A.3.8 Operation and Maintenance Plan**

Each parcel shall have its own O&M Plan, setting forth operation and maintenance measures designed to ensure that all aspects of the stormwater management system operate as designed throughout the life of the system. The O&M Plan shall remain on file with the SSB and shall be an ongoing requirement, enforceable against the owner of the parcel to which it applies, pursuant to the provisions of Sec. 11A.3.11.

#### Subsection 1 Contents

The O&M Plan shall include:

- (a) The name of each owner of the parcel for which the O&M Plan is being submitted;
- (b) Maintenance specifications, including a schedule, for all drainage structures, including swales and ponds, and any other component of the stormwater system that requires maintenance; and
- (c) The signature of each owner.

#### Subsection 2 BMPs Serving More Than One Lot

In the case of stormwater BMPs that are serving more than one (1) parcel, the applicant shall include a mechanism to ensure that those BMPs are properly operated and maintained. The applicant shall identify the lots or units that will be serviced by the proposed stormwater BMPs.

The applicant shall also provide a copy of the legal instrument (deed, declaration of trust, articles of incorporation, etc.) that establishes the terms of and legal responsibility for the operation and maintenance of stormwater BMPs. In the event that the stormwater BMPs will be operated and maintained by an entity or person other than the sole owner of the lot upon which the BMPs are placed, the applicant shall provide a plan and easement deed that provides a right of access for the entity or person to be able to perform said operation and maintenance functions.

#### Subsection 3 Recording

The SSB shall, as a condition of any Stormwater Permit, require that notice of the associated O&M Plan be recorded with the Registry of Deeds (for recorded land) or filed with the Registry District of the Land Court (for registered land).

#### Subsection 4 Annual Report

The SSB may, as a condition of any Stormwater Permit, require that the property owner submit an annual report documenting maintenance activities.

#### Subsection 5 Changes to Operation and Maintenance Plans

- (a) The owner of a parcel to which an O&M Plan applies shall notify the SSB prior to any proposed change in ownership of the parcel.
- (b) In the case of a stormwater BMP that serves more than one (1) lot, the owners of the parcels served by the BMP must obtain SSB approval for any change to the entity or person operating or maintaining the BMP or the legal instrument that establishes terms and legal responsibility for the operation and maintenance of the BMP.
- (c) The O&M Plan may be amended to achieve the purposes of Section 11A.3 by mutual agreement of the SSB and the parcel owners; provided, however, that all such amendments shall be in writing and signed by all owners and the SSB.

### **Sec. 11A.3.9 Inspections, As-Built Plan and Access**

#### Subsection 1 SSB Inspection

The SSB or its designated agent may make inspections to assess compliance with the Stormwater Permit. The SSB may require the applicant to notify the SSB before significant site milestones, such as installation of erosion and sediment control measures or completion of site clearing.

#### Subsection 2 Permittee Inspections

The SSB may require the permittee or an agent thereof to conduct and document periodic inspections of all control measures before, during or after construction and to submit reports of the results of such inspections to the SSB.

Annually each year between the months of April and September the parcel(s) owner(s) shall comply with the Town's dry weather outfall and interconnection screening and sampling plan by conducting a minimum of one (1) test per discharge location to show IDDE compliance and Stormwater Management Plan effectiveness. All required test results shall be submitted to the Town no later than December 1st.

#### Subsection 3 As-Built Plan

After the stormwater management system has been constructed and before the surety has been released, the applicant must submit to the SSB a record plan detailing the actual stormwater management system as installed.

### **Sec. 11A.3.10 Surety**

Upon receipt of an As-Built Plan demonstrating compliance with the terms and conditions of the stormwater permit, the SSB may release any surety required pursuant to Sec. 11A.3.5 Subsection 5.

If the project is phased, the SSB may release part of such surety as each phase is completed in compliance with the stormwater permit.

### **Sec. 11A.3.11 Enforcement**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of Section 11A.3. The SSB and its authorized agents shall enforce Section 11A.3 and may pursue all civil and criminal remedies for violations.

#### Subsection 1 Enforcement Orders

If any person violates or fails to comply with any of the requirements of Section 11A.3, the SSB may order compliance by written notice to the responsible person via certified mail or hand delivery. The order shall include the name and address of the alleged violator, the address at which the violation is occurring or has occurred, a statement specifying the nature of the violation, a description of the actions needed to resolve the violation and come into compliance, the deadline within which such actions must be completed, and a statement that, if the violator fails to come into compliance by the specified deadline, the Town may do the work necessary to resolve the violation at the expense of the violator. In addition, said order may require:

- (a) Cessation of regulated activity until compliance is achieved;
- (b) Maintenance, installation or performance of additional erosion and sediment control measures;
- (c) Repair, maintenance or replacement of the stormwater management system or portions thereof in accordance with the stormwater permit and/or the O&M Plan;
- (d) Monitoring, analyses, and reporting; and
- (e) Remediation of erosion, sedimentation, or any other adverse impact resulting directly or indirectly from failure to comply with the Erosion and Sediment Control Plan, the Stormwater Management Plan, the O&M Plan, or any other terms or conditions of a stormwater permit or Section 11A.3.

#### Subsection 2 Appeals

Any person aggrieved by an enforcement order issued pursuant to Sec. 11A.3.11 Subsection 1 may request a hearing before the SSB by submitting to the SSB, within thirty (30) days of such order, a letter explaining why the order was not justified. The SSB shall thereupon schedule and hold a hearing regarding such request and, upon the close of such hearing, may uphold, modify or rescind the order as the facts and applicable law may require. The SSB's decision shall be deemed its final action with respect to the matters determined, and any further appeal shall be to a court of competent jurisdiction.

#### Subsection 3 Action by the Town to Remedy a Violation

If a violator fails to come into compliance by the deadline specified in an enforcement order, the SSB may undertake the work necessary to resolve the violation at the joint and several expense of the violator and property owner. For situations involving an immediate threat, the SSB may immediately take such action as is necessary to protect public health, safety or the environment, without first issuing an enforcement order. Written notice of any remediation action undertaken by the SSB shall be provided to the property owner within twenty four (24) hours of the commencement thereof.

#### Subsection 4 Recovery of Costs

If the SSB undertakes remediation work pursuant to Sec. 11A.3.11 Subsection 3, it shall, within thirty (30) days after completing the work, notify the violator and the property owner in writing of the costs incurred by the Town, including administrative costs, associated with that work.

The violator and the property owner shall be jointly and severally liable to repay the Town for those costs within thirty (30) days of receipt of that notice; provided, however, that the violator or the property owner may file a written protest objecting to the amount or basis of costs with the SSB within such thirty (30) days. The SSB shall schedule and hold a hearing regarding such protests and, upon the close of such hearing, may uphold, modify or rescind the costs required to be repaid, as the facts and applicable law may require.

If the amount due is not received by the Town by the expiration of the time in which to file such a protest, or within sixty (60) days after the final decision of the SSB or, if appealed to court, a court of competent jurisdiction resolving that protest, the amount of the Town's costs shall constitute a lien on the property pursuant to MGL Chapter 40 Section 58. Interest shall accrue on any unpaid costs at the statutory rate, as provided in MGL Chapter 59 Section 57.

#### Subsection 5 Civil Relief

If a person violates any provision of Section 11A.3 or an order issued thereunder, the Board of Selectmen may seek injunctive relief in a court of competent jurisdiction restraining the person from activities that would create further violations or compelling the person to abate or remedy the violation.

#### Subsection 6 Criminal Penalty

Any person who violates any provision of Section 11A.3 or any order issued thereunder may be punished by a fine of not more than three hundred dollars (\$300.00). Each day or part thereof that such violation occurs or continues shall constitute a separate offense. A criminal complaint may be filed by the SSB, with the authorization of the Board of Selectmen.

#### Subsection 7 Non-Criminal Disposition (Ticketing)

As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D, in which the Director of the Public Works Department and the Building Inspector shall be the Enforcing Person. The penalty for the first and each

subsequent violation shall be three hundred dollars (\$300.00). Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

#### Subsection 8 Entry to Perform Duties under this Bylaw

To the extent permitted by state law, or if authorized by the Owner or other party in control of the property, the Town and its agents, officers and employees may enter privately owned property for the purpose of performing their duties under this Bylaw and may make or cause to be made such examinations, surveys, sampling, or remedial activities as the Town deems reasonably necessary.

#### Subsection 9 Remedies Not Exclusive

The remedies listed in Section 11A.3 are not exclusive of any other remedies available under any applicable federal, state or local law

or do anything in relation thereto.

### **Director, Department of Public Works**

**Article 3.** Voted that the Town amend the Town of Stoneham Code – Chapter 11A, Stormwater by adding Sec. 11A.3. “Stormwater Management and Erosion Control” as printed in Article 3 of the June 18, 2018 Special Town Meeting Warrant establishing a local process and procedure to regulate the harmful impacts of unregulated soil erosion and sedimentation in stormwater runoff in the Town of Stoneham.

### **Majority Vote Required Majority Vote Passes Per Moderator**

**Article 4.** To see if the Town will vote to amend Stoneham Town Code, Chapter 13, Streets and Sidewalks, **Sec. 13-15. “Streets and Sidewalks”** by replacing the existing Sec. 13-15 through Sec. 13-16.6 in its entirety and replacing it with a new Sec. 13-15, as follows:

#### **Sec. 13-15 Street Opening**

##### **Sec. 13-15.1 Purpose**

Public roadways have been established and are maintained primarily for the purpose of movement of vehicles and pedestrians. It is also desirable to allow individuals and utility companies to utilize public rights of way for purposes other than transportation. However, to prevent recurring, dangerous and annoying interruptions to traffic and pedestrians and to avoid interference with future road construction and to provide a uniform standard of construction and construction methods, it is necessary that strict

control be maintained and standard procedure be followed for excavations, construction and maintenance of Town roadways.

### **Sec. 13-15.2 Authority**

This Bylaw is adopted in accordance with the authority granted, inter alia, by Article 89, Section 6 of the Amendments to the Massachusetts Constitution, M.G.L. Chapter 40 Section 21, M.G.L. Chapter 165 Section 20, M.G.L. Chapter 166 Section 25 and M.G.L. Chapter 166A and the authority granted by town meeting.

### **Sec. 13-15.3 Definitions**

Unless the context specifically indicates otherwise, the meaning of terms used in this section shall be as follows:

**Abutter** shall refer to the Owner(s) of land abutting the activity.

**ADA** shall refer to the Americans with Disabilities Act of 1990, as amended (42 USC 12101-12213), and the Accessibility Guidelines for Buildings and Facilities (Appendix to Part 1191) of the U.S. Architectural and Transportation Barriers Compliance Board, as amended.

**Applicant** shall mean any Person, Owner, User, Public Utility or duly authorized agent who owns or exercises general responsibility and control over:

- (i) Utility or other pipes, ducts, lines or other items buried in or under a public way, or
- (ii) Real property abutting a public way, or
- (iii) Real property served by the public way or by items of the type specified in (i) above and who wishes to perform street opening work by requesting a permit from the Town of Stoneham.

**Application Fee** shall refer to such fee as may from time to time be established pursuant to Chapter 40, Section 22F of the General Laws which fee shall accompany each application for a street opening permit.

**Architectural Access Board Regulations** shall refer to the Rules and Regulations of the Architectural Access Board, Mass Executive Office of Public Safety (521 CMR 1.00 et seq.), as amended.

**As-Built Drawing(s)** shall mean detailed drawing(s) prepared and sealed by the Design Engineer upon completion of construction, which show actual construction and field dimensions, elevations, details, changes made to the construction drawings by modification, details which were not included on the construction drawings, and horizontal and vertical locations of underground utilities which have been impacted by the utility installation.

**A.S.T.M.** shall mean the American Society for Testing and Materials.

**Awarding Authority** shall mean the Board of Selectmen of the Town of Stoneham has authority to exercise the powers granted by this Bylaw.

**Awarding Authority Representative** shall mean the Municipal officer or employee to whom the Awarding Authority in writing has delegated some of its powers hereunder so that the process of permit granting, inspection, and administration will proceed expeditiously.

**Authorized Enforcer** refers to the Town, its employees or agents designated to enforce this Bylaw.

**Cold Patch** refers to dense graded or open graded mix with cutback asphalt as the binder with 1% of the mix being hydrated lime based on the total weight of the aggregate. The mineral aggregates and bitumen shall be proportioned and combined to meet the limits specified in Table A, Subsection M 3.11.03 and M 3.11.04 of the Standard Specifications. Bituminous material shall be either cutback asphalt, Grade MC-250 or MC800 conforming to Section M 3.02.0 of the Standard Specifications.

**Commonwealth** shall mean the Commonwealth of Massachusetts.

**Connection** shall mean the joining or fastening together of pipes so that substances can be transferred from one pipe to another.

**Construction License** shall mean any Person constructing, installing or repairing water, sewer, electrical, communication, gas, drainage and all related appurtenances on Town or private property that is licensed to perform such work by the Director.

**Controlled Density Fill** refers to flowable fill, a mixture of Portland cement, flyash, sand and water. It shall contain a minimum of 250 pounds of class F flyash or high air (25%) and shall be self-leveling. It is hand-tool excavatable.

**Daily** shall mean every calendar day.

**Department or DPW** shall mean Stoneham Department of Public Works.

**Director** shall mean the Director of Stoneham Department of Public Works, or his or her duly authorized representative(s).

**Easement** shall mean an acquired legal right for the specific use of land owned by others.

**Excavation or Trench** shall mean any opening in the surface of the Earth made in any manner whatsoever, except an opening in a lawful structure below the surface of a Public Place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the Public Place.

**Facility** shall mean any pipe, pipeline, tub, main, service, trap, vent, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, pole line, anchor, cable, junction box, or any other material, structure or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under or over any public place.

**Insurance Certificate** shall mean a document issued by an insurance company/broker that is used to verify the existence of insurance coverage under specific conditions granted to listed individuals.

**Municipality** shall mean a city, town, village, or borough possessing its own local government under the Commonwealth.

**Newly Constructed, Reconstructed or Repaved** shall mean any street, which has been newly constructed, reconstructed or repaved curb to curb within the past five (5) years.

**Owner** shall refer to any Person, or entity, who individually, or jointly or severally with others holds legal title to any land or premises, or has been legally assigned the care, charge, or control of any premises as agent, manager, executor, administrator, trustee, lessee, or guardian of the estate of, or by, the holder of legal title.

**Permit** shall mean an authorization issued pursuant to M.G.L. c. 84B and 314 CMR 2.00 and 3.00, 5.00, or 7.00, to implement the requirements of the State and Federal Acts and Regulations adopted thereunder.

**Permittee** shall mean any Person issued a Permit under this Bylaw.

**Person** shall mean any individual, firm, company, association, society, corporation or government entity.

**Public Place or Public Way** 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.

**Public Sewer** shall mean every sewer laid in any land, easement, street or way, public or private, to which all owners of abutting properties have equal rights, and which is controlled and has been accepted by the Town. No Sanitary Sewer shall be deemed to be a Public Sewer unless it meets all these criteria, even if such sewer is located in any land, street or way, public or private.

**Recoverable Charges** shall mean all cost directly or indirectly incurred by the Town.

**Rules &/or Regulations** shall mean all Rules and Regulations of the Town.

**Right-of-Way Permit** shall mean permit authorizing worked within the public right of way issued by the Town.

**Sanitary Sewage** shall mean a combination of the liquid and water carried wastes from residences, businesses and commercial buildings, institutions and industrial establishments that contains human waste as distinguished from industrial wastewater.

**Sanitary Sewer** shall mean a pipe intended to convey only Sanitary Sewage or, if so stipulated with respect to the particular sewer, Sanitary Sewage plus industrial or other wastes, and to which storm, surface, and ground waters are not intentionally admitted.

**Schedule of Rates / Permit Fees** shall mean the fixed prices or rates established by the Town and on file with the Department, in accordance with which all charges for special services or permits is listed.

**Sewer Service** shall mean the pipe connecting a building's plumbing system to the Sanitary Sewer that carries Sanitary Sewage to a wastewater treatment plant.

**Sewer Entry Permit** shall mean a permit given by the Director to make a connection between a Sewer Service and a Sanitary Sewer.

**Sewer Extension** shall mean the addition to a Sanitary Sewer of a Sewer Service or additional pipe, together with appurtenant works, which when connected to the Sanitary Sewer becomes the property of, and is operated and maintained by, the Person owning the sewer system unless accepted by the Town.

**Shall** is mandatory; **May** is permissive.

**Storm Drain** shall mean a pipe that carries storm water and surface waters and drainage but excludes sanitary sewage and industrial wastes, other than unpolluted cooling water.

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

**Town** shall mean the Town of Stoneham, Massachusetts and all its duly authorized representatives and agents.

**Utility** shall mean any private company, corporation, or quasi-municipal corporation which supplies services such as but not limited to, water, sewer, electric, gas, communication or cable.

**Water Entry Permit** shall mean a permit given by the Director to make a connection between a Water Service and a Water Main.

**Week(ly)** shall mean any seven (7) consecutive calendar days.

#### **Sec. 13-15.4 Application for permit or license**

- (1) An application for permit must be filed with the Town before preliminary investigation will be made for permit issue. Standard application forms for permits may be secured from the Department.
- (2) Each application form shall be completely filled in, signed and mailed or delivered to the Department. An explanation of the application sketches shall be made either in the space provided on the application form or a separate sheet, in duplicate, which the Applicant shall attach to the application. Such diagrams or sketches shall show the location of the work to be done in relation to the outstanding features of the road, such as property lines, intersections, pavement lines, sidewalks, trees, drainage structures and utility poles, by number, and the character and extent of work to the satisfaction of the Director.
- (3) The Applicant will be required to disclose the methods and materials proposed to be used on unusual or complex projects. In the event the Applicant discovers that additional work or repairs not designated in the original permit must be done in the same location, the

Applicant must make application to the Town for a permit to authorize the additional work in the same manner as the first permit.

- (4) The application shall contain an agreement of the Applicant to guarantee for one (1) year after completion and acceptance, the work to be performed thereunder and to pay Recoverable Charges should the Applicant fail to properly perform its obligation under the Town's Bylaws, Rules and Regulations.
- (5) An application for a Construction License shall include:
  - (a) A fee in accordance with the current Schedule of Rates but not less than one hundred (100) dollars per license for review services or fifty (50) dollars per license for one (1) year renewal of unexpired license in good standing with the Town.
  - (b) A reference from at least one other Municipality in which the firm has done work or proof of current licensure in another Municipality of the Commonwealth.
  - (c) Provide written acknowledgement of reviewing Town Bylaws, Rules, Regulations, procedures, design and construction standards established by the Department and compliance with all requirements.
  - (d) Provide an Insurance Certificate naming the "*Town of Stoneham*" as an additional insured party which shall remain in full force and effect for a period of at least one (1) year from the date of approval.
    1. This certificate shall contain a provision that coverage afforded under the policies will not be canceled until at least fifteen (15) days prior written notice has been given to the Town. Said insurance shall indemnify the Town against any and all claims, liability or actions for damages incurred in or in any way connected with the performance of the Applicant, and for or by reason of any act or omission of said Applicant in the performance of his or her work.
- (6) An application for a Public Way Obstruction Permit shall include:
  - (a) A fee in accordance with the current Schedule of Rates but not less than one hundred (100) dollars per permit for review services.
  - (b) Permits beyond thirty (30) days or if required by the Director shall require approval of the Board of Selectmen.
  - (c) Provide written acknowledgement of reviewing Town Bylaws, Rules, Regulations, procedures, design and construction standards established by the Department and compliance with all requirements.
  - (d) Provide an Insurance Certificate naming the "*Town of Stoneham*" as an additional insured party which shall remain in full force and effect for a period of at least one year from the date of approval.
    1. This certificate shall contain a provision that coverage afforded under the policies will not be canceled until at least fifteen (15) days prior written notice has been given to the Town. Said insurance shall indemnify the

Town against any and all claims, liability or actions for damages incurred in or in any way connected with the performance of the Applicant, and for or by reason of any act or omission of said Applicant in the performance of his or her work.

- (7) An application for a Street Opening Permit, Trench Permit, Water Entry Permit, Sewer Entry Permit, Stormwater Management Permit, Statement of Grades or a Driveway / Curb Cut permit shall include:
- (a) A fee in accordance with the current Schedule of Rates but not less than one hundred (100) dollars per permit for review services.
  - (b) Any supporting documentation and Profession Review Fee as required under supplemental Rules and Regulations.
  - (c) Provide written acknowledgement of reviewing Town By-Laws, Rules, Regulations, procedures, design and construction standards established by the Department and compliance with all requirements.
  - (d) Provide a current Construction License and an Insurance Certificate naming the “*Town of Stoneham*” as an additional insured party which shall remain in full force and effect.
    - 1. This certificate shall contain a provision that coverage afforded under the policies will not be canceled until at least fifteen (15) days prior written notice has been given to the Town. Said insurance shall indemnify the Town against any and all claims, liability or actions for damages incurred in or in any way connected with the performance of the Applicant, and for or by reason of any act or omission of said Applicant in the performance of his or her work.
- (8) An application for a Blasting Permit shall be applied for at the Stoneham Fire Department and include:
- (a) A fee in accordance with the current Schedule of Rates but not less than one hundred (100) dollars per location for review services. Every street shall be considered a different location for review.
  - (b) Supporting documentation the contractor is licensed by the Department of Public Safety.
  - (c) Provide written acknowledgement of reviewing Town Bylaws, Rules, Regulations, procedures, design and construction standards established by the Department and compliance with all requirements.
  - (d) Provide contractor information and an Insurance Certificate naming the “*Town of Stoneham*” as an additional insured party which shall remain in full force and effect.
- (9) Applicants for licenses shall be approved or disapproved within a fourteen (14) day period after filing a completed application.

- (10) All licenses expire within one (1) year of issuance, upon failure of contractor to provide the Department with a valid and current insurance certificate or as revoked by the Director.
- (11) Applicants for permits shall be approved or disapproved within a thirty (30) day period after filing a completed application.

**Sec. 13-15.5 Plans and specifications**

- (1) When applications are made for permits requiring plans and specifications they must be submitted as required with the application form. They should be so detailed so that the exact location of the various parts of the work, the risk or injury to the public and the probability of damage to trees, Abutters and any Facility can be ascertained to the satisfaction of the Director.
- (2) Work shall comply with standards under applicable Rules and Regulations set forth by the Town in addition to material requirements of A.S.T.M.
- (3) As-Built Drawing(s) shall be furnished by the Permittee to the Department a maximum of thirty (30) calendar days after final inspection.

At minimum this drawing shall be neat, scalable, dimensioned, legible and fit onto an 8 ½' by 11' piece of paper or larger and contain points of interest to the Department. As-Built Drawing(s) shall comply with additional requirements under Rules and Regulations governing the work performed.

**Sec. 13-15.6 Rejection of application**

- (1) When it appears that the work called for in an application would cause substantial or needless damage to a Public Place, or create excessive disturbances to traffic, or exceptionally dangerous conditions not commensurate with the benefits to the Applicant, the request for permit will be denied. The Applicant will be informed of such rejection and the reason for the rejection.
- (2) The Director may refuse to issue a permit to any Person or Utility when, in his or her opinion, work performed under a previous permit theretofore issued to the Applicant has not been properly executed, or when said Applicant has failed to reimburse the Town for Recoverable Charges billed under terms governing the previous permit.

**Sec. 13-15.7 Bond requirements**

- (1) Prior to the issuance of a permit, the Applicant shall deposit, with the Town, a surety bond in an amount and form as shall be determined by the Director. The amount shall be established separately for each permit so that the Town will be protected against loss in the event of the failure of the Applicant to complete the work, make required repairs or restoration of damages involving the work or encroachment authorized by the Permit.

- (2) The permit specific surety bond shall be computed on the basis of cost projected by the Director to cover the Town's cost and expense to make proper restoration or repairs. Immediately upon approval of an application for permit but prior to its issuance, the Director shall advise the Applicant as to the amount of surety bond required. Refundable cash deposits shall not be accepted.
- (3) If acceptable to the Director, an annual blanket surety bond no less than ten thousand (10,000) dollars in a form acceptable to the Director, may be deposited to avoid the inconvenience and expenses of providing refundable cash deposit or bonds for each permit requested.
- (4) Blasting operations shall be conducted only by Persons who have posted a \$10,000 bond for a single operation or if the Director determines it appropriate, a \$15,000 blanket bond for all blasting operations, with the Treasurer of the Commonwealth, or who have posted a bond with the Stoneham Town Clerk in accordance with Massachusetts General Laws Chapter 148, Section 19.
- (5) The surety bond shall be released to the Permittee upon the expiration of the guarantee period following an examination by the Director. The guarantee period, if not specified under any other Rules or Regulations, shall be for a period of one (1) year following the permanent trench repair. During the guarantee period, the Permittee shall be responsible for the restoration, repair and maintenance of their work within forty-eight (48) hours of notification by the Department.
- (6) Permittee may request a final trench inspection no sooner than the April 15<sup>th</sup> after installation of the permanent trench. A full release of the bond to the Permittee will be made providing the trench repair complies with the following findings:
  - (a) The surface of the patch is level with or no higher than one quarter (1/4) inch above the grade of the original surface.
  - (b) No apparent crack at sawcut line (1/16-inch maximum)
  - (c) No apparent pavement or concrete raveling.
  - (d) No apparent pavement or concrete cracking.
  - (e) A minimum of eight (8) months has passed since permanent trench patching repairs were made.

A failure to request a final inspection, in writing, before the one (1) year anniversary of the installation of the permanent trench will result in the guarantee period continuing until a final inspection is conducted following a written request. Failure to fulfill the requirements listed above may result in Town calling on the surety company to make the necessary repairs for compliance even if beyond the original one (1) year anniversary.

## Sec. 13-15.8 Insurance requirements

- (1) An Applicant for a permit or license shall purchase and maintain, at its sole cost, including, but not limited to all premium costs and the cost of all deductibles, insurance in a company or companies lawfully authorized to do business in the Commonwealth of Massachusetts and approved by the Town as will protect the Applicant from claims set forth below which may arise out of or result from the Applicant's operations under the Contract, whether such operations are by the Applicant, an agent of the Applicant, a Subcontractor or by anyone for whose acts any of them may be liable:
  - (a) Claims under Workers' Compensation disability benefit; and other similar employee benefit acts;
  - (b) Claims for damages because of bodily injury, occupational sickness or disease, or death;
  - (c) Claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees covered by Workers' Compensation Insurance;
  - (d) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
- (2) The Insurance required by the above shall be written for not less than the following minimum limits of liability and as updated from time to time hereafter by the Awarding Authority:
  - (a) Commercial General Liability Insurance (which shall be written on an "occurrence basis"):

Personal Injury and Property Damage  
Per Occurrence - One Million (\$1,000,000.)  
Aggregate - Two Million (\$2,000,000.)

The Commercial General Liability Policy shall provide insurance for the Contractor for Bodily Injury and Property Damage to third parties arising out of:

Work Performed by the Permittee Himself with His Own Employees: Premises operations and products and completed operation.

Work Performed by Subcontractors, Permittee's Protective Liability: ("sublet work" or "Independent Contractors") line. Use of subcontractors may be subject to provision within the specifications regarding prior approval by the Town. All subcontractors performing work under a Permit shall name the Town of Stoneham as additional insured on all liability insurance.

The Permittee's Liability Assumed: "Hold Harmless" or "Indemnity Agreement" line also known as Contractual Liability Insurance. This coverage must be explicitly stated on the Permittee's insurance certificate. The Town of Stoneham must be listed as additional insured or co-insured on the liability insurance policy.

Coverage shall be extended to include protection against property damage caused by explosion (including blasting), and collapse of structures and damage to underground pipes and utilities.

(b) Comprehensive Automobile Liability:

Bodily Injury and Accidental Death

Per Person – Five Hundred Thousand Dollars (\$500,000.)

Per Occurrence – One Million Dollars (\$1,000,000.)

Property Damage - \$300,000

(c) Excess liability, written on an occurrence basis, in the minimum amount of Two Million Dollars (\$2,000,000) in umbrella form over all other liability insurance required above.

(d) Workers' Compensation - as required by law.

(3) The above insurance policies shall also be subject to the following requirements:

(a) Additional Insured - The Town shall be named as an additional insured on the Comprehensive General Liability and Comprehensive Automobile Liability Policies. In no event shall the Town be responsible for the payment of the contractor's premium payment liability.

(b) Certificates of Insurance - Certificates of Insurance acceptable to the Town shall be addressed to and filed with the Town prior to the commencement of work by the Permittee for all insurance required above. Renewal certificate shall be addressed to and filed with the Town at least thirty (30) days prior to the expiration date of required policies.

(c) Subcontractors - The Permittee shall not allow any subcontractor to commence work until the Permittee has obtained and evidenced, to the satisfaction of the Town.

(d) Non-Waiver – The insurance policies required shall not be construed to excuse the faithful performance by the Permittee or limit the liability of the Permittee.

(e) Such insurance shall be primary with respect to any insurance maintained by the Town and shall not call on the Town's insurance for contributions.

(f) Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in the Commonwealth of Massachusetts.

- (g) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those required herein.
- (h) The Permittee's failure to obtain, to procure or maintain the required insurance shall constitute a severe violation under which the Town may immediately suspend operations of the Permittee without further consideration.
- (i) The Licensee shall be responsible for all deductibles.
- (j) The Town, its officials, and employees shall be named as "additional insureds" on all liability insurance policies.
- (k) Neither this insurance section, nor the provision of insurance or insurance proceeds, shall limit the liability of the Contractor pursuant to this Bylaw.
- (l) The Contractor shall provide the Town with certificate(s) of insurance for all policies required herein upon expiration of the policies. All certificates shall contain, at a minimum, a thirty (30) day notice of cancellation or reduction in the coverage amount(s).

**Sec. 13-15.9 Permit & life cycle pavement fees**

- (1) Permit fees will be fixed prices or rates established by the Town and on file with the Department but shall not be less than one hundred (100) dollars per application. Each street impacted shall require an additional application fee but the work may be approved under one (1) permit.
- (2) The Applicant must pay the fee at the time of application (except as herein noted). Upon the completion of the final Trench and Excavation repairs the Town will measure the actual area to the nearest square foot to determine compliance with the permit fee. If the Permittee has excavated more than originally intended, then Permittee will pay to the Town any additional charges. All measurements shall be rounded up to the nearest square foot.
- (3) A Utility, at the discretion of the Director, may be billed upon the asphalt patching of the Excavation.
- (4) Each DigSafe request from a Utility shall constitute a Street Opening Permit application whose fee shall be payable as stated under Sec. 13-15.9(3).
- (5) All payments are to be made to the "*Town of Stoneham*".
- (6) The Following is a schedule of the fees which shall be charged by the Town by and through the Department for "life cycle pavement fees"

- |     |                         |                       |
|-----|-------------------------|-----------------------|
| (a) | Age of Pavement (Years) | Fee (Per square foot) |
|     | Less than 1             | \$120 (If allowed)    |
|     | Less than 5             | \$100 (If allowed)    |
|     | 5 to 10                 | \$50                  |
|     | 10 to 20                | \$20                  |
- (b) If a contractor seeks a waiver of the life cycle pavement fee under Sec. 13-15.9(6) the following must be complied with prior to permit approval:
- (1) A roadway reconstruction plan in accordance with Sec. 13-15.9 must be submitted and approved by the Director.
  - (2) Contractor is repairing or replacing a resident's water or sewer service on an unforeseen emergency basis and not related to work performed with a building permit and with final approval of a written waiver by the Director detailing the reason(s).
- (c) Only a maximum twenty five (25) percent reduction in "life cycle pavement fees shall be allowed for an Age of Pavement of five (5) years or less if approved by the Director.

**Sec. 13-15.10 Issuance of Permit**

- (1) A Permit shall be issued:
  - (a) After proper completion of all aspects of the application for Permit and Department review period.
  - (b) Upon receipt of a surety bond and insurance in the correct amounts.
  - (c) Payment of fees as required.
  - (d) Issuance of Grant of Location and/or Right-of-Way Permit
- (2) A Permit form must be signed by the Director before it becomes valid.
- (3) The Permittee is forbidden to commence work until the above mentioned items have been complied with and the Permittee has notified the Department's office at least twenty-four (24) hours in advance of the exact date and hour work is proposed to begin.
- (4) The following Permits expire thirty (30) calendar days from the date issue:
  - Driveway / Curb Cut Permit
  - Sewer Entry Permit
  - Street Opening Permit
  - Trench Opening Permit
  - Water Entry Permit
  - Public Way Occupation Permit

### **Sec. 13-15.11 Emergency permits**

- (1) When permission has been granted orally or by electronic mail by the Town to perform emergency work, the Person or Utility concerned must file a written application, including all required fees, for a Permit on the first working day following oral approval in a manner prescribed for non-emergency work. Thereupon, a written permit will be sent in confirmation of the oral permission as a permanent record of the transaction.
- (2) The Person performing emergency work must have an Insurance Certificate on file with the Town and have appropriate licenses prior to performing any work within Town limits.
- (3) The Person performing emergency work will still be required to pay all necessary fees and shall make full payment, including a bond, within seven (7) days of submitting to the Town for a written permit as outlined in Sec. 13-15.11(1).
- (4) Any Person found to have submitted false information or completed work beyond the scope of the emergency permit will be subject to penalties under Sec. 13-15.36 of this Bylaw.

### **Sec. 13-15.12 Permit display**

- (1) A copy of the Permit shall be available at the job site at all times for inspection by Town, State and Federal employees.
- (2) To be valid, the Permit must show the effective date and must be signed by the Director. This shall also apply to any Utility and their sub-contractors.

### **Sec. 13-15.13 Revoking permits and licenses**

- (1) In the event of Permittee's failure to strictly comply with the Rules, Regulations and Bylaws of the Town, any permit issued by the Town is revocable effective immediately upon making written notification of the violation to the Permittee by ordinary mail, postage prepaid, addressed to the address of the Permittee shown on the application for permit or electronic mail, addressed to the address of the Permittee shown on the application for permit.

No future permits shall be approved until the Director is satisfied with the Permittee's compliance to the Rules, Regulations and Bylaws of the Town or corrective actions are completed as ordered. Revocation of permits shall not prevent any Utility from performing emergency work for public safety if performed in compliance with Section 13-15.11 Emergency Permits.

### **Sec. 13-15.14 Extension of time**

- (1) If work requiring a Permit under Sec. 13-15.10(4) is not completed within thirty (30) calendar days from the date of issue, renewal or extension of the Permit must be obtained.

The Permittee shall make a written request seeking an extension of time and the reason(s) for the request a minimum of seven (7) days prior to the original Permit's date of expiration.

- (2) All required work shall be completed in a manner satisfactory to the Town on or before the assigned date except in cases where permanent repairs, such as loaming and seeding, may be made at a future date as approved in writing.
- (3) Extensions of time, up to thirty (30) calendar days at a time, may be granted. At the Director's sole discretion a renewal fee equal to the original permit fee may be payable upon approval of written request(s) of an extension.
- (4) If an extension is not paid for, requested or granted, the Permittee shall immediately complete required restoration and removal all equipment and material from any Public Place. A fine will be assessed by the Director under Sec. 13-15.36 of this Bylaw for each day work of non-compliance continues without a permit or failure to properly vacate the Public Place.

#### **Sec. 13-15.15 Indemnification**

- (1) The Applicant must agree as a condition governing the issuance of a permit that they will hold harmless the Town and its employees from any and all claims and actions whatsoever arising from the exercises of said Permit.

#### **Sec. 13-15.16 Responsible for boundary lines**

- (1) Permittee shall retain their own land surveyors to establish the line or otherwise inform themselves of the demarcation between Public Places and private holdings.

#### **Sec. 13-15.17 Clearance for vital structures**

- (1) 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, loops and all other vital equipment as designated by the Town.
- (2) The Town shall retain the right to dictate sequence of Permittee work to ensure vital structures are accessible and functional for public safety.

#### **Sec. 13-15.18 Protective measures & traffic control safety**

- (1) It shall be the duty of the Permittee to make certain that the security of the traveling public is safeguarded and its rights are not unreasonably curtailed. Unless specifically indicated in the permit or authorized by the Director, the traveled path shall not be obstructed.
- (2) The portion of the Public Way which is torn up or which is used for storing materials, or is otherwise unsafe for public travel, shall be adequately protected at all times to avoid the

possibility of accidents. Such areas shall be marked at night by lights, flasher beacons or other warning devices approved by the Director.

- (3) When portions of the traveled way are made dangerous for the movement of vehicles or pedestrians, a sufficient number of uniformed police officers shall be employed by the Permittee to direct the traffic safely through the work zone. The work shall, if possible, be planned to avoid such conditions.

#### **Sec. 13-15.19 Detours**

- (1) When, in the opinion of the Director, a Public Way may be obstructed by the Permittee's proposed operations to such an extent as to unduly restrict vehicular traffic or make hazardous its use, a parallel Town road bypass may be designated by the Police Chief, Fire Chief or Director. All expenses incurred by the Permittee and by the Town as a result of this bypass establishment, use and restriction of said detour, shall be the entire responsibility of the Permittee. The Permittee shall notify the Police and Fire Departments of the layout and expected time of the use of the detour. The Permittee shall supply and maintain such signs at their expense as may be reasonably necessary to clearly outline the detour.
- (2) Preliminary to detouring of traffic over a parallel Town road bypass, an inspection shall be made by the Permittee, Police Chief, Fire Chief and Director to determine the adequacy of the signs and the structural condition of the road involved. A second inspection shall be made by the same individuals when the detour is terminated so that there will be an agreement as to the extent of repairs, if any, to be made by the Permittee to restore the conditions equal to those existing prior to the establishment of the detour.
- (3) If a Detour or parallel Town road bypass is approved, the Permittee shall not be required to employ uniformed police officers unless the work is performed on a street with an average daily travel exceeding two thousand five hundred (2,500) vehicles or on one of the following streets:

Central Street, Elm Street, Franklin Street, Forest Street, Green Street,  
High Street, MacArthur Road, Main Street, Marble Street, Montvale Avenue, North Street,  
Oak Street, Park Street, Perkins Street, Pleasant Street, Pond Street, Spring Street, Stevens  
Street, Summer Street, Washington Street, William Street, Wright Street

#### **Sec. 13-15.20 Storm Drains to be kept open**

- (1) The work performed under Permit shall be planned and carried out so that Storm Drains are effective at all times. Any damages arising from the failure of the Permittee to properly keep culverts, ditches, inlets, catch basins or any other drainage device from becoming obstructed, shall be borne by Permittee and the bond shall be held by the Town until such damages are paid. Any material entering Storm Drains shall be cleaned to the satisfaction of the Director.

### **Sec. 13-15.21 Facility relocation and protection**

- (1) The Permittee shall not interfere with any existing Facility without the written consent of the Town and/or the Owner of the Facility.
- (2) If it becomes necessary to relocate an existing Facility, this shall be done by its Owner.
- (3) No Facility shall be placed within three (3) horizontal feet of a Facility owned by the Town except for crossings approved by the Director.
- (4) No Facility owned by the Town shall be moved to accommodate the Permittee, unless the cost of such work be borne entirely by the Permittee and the scope of work is approved by the Town.
- (5) The cost of moving a privately owned Facility shall be similarly borne by the Permittee unless it makes other arrangements with its Owner.
- (6) The Permittee shall support, sustain and protect by the use of timbers under, over, along or across all piles, conduits, poles, wires or other apparatus which may require support or protection.
- (7) The Permittee shall secure approval of the method of support and protection from the Person owning the Facility. In case any pipes, conduits, poles, wires, or apparatus should be damaged, and for this purpose, pipe coating or other encasement or devices are to be considered as part of a structure, the Permittee shall promptly notify the Person owning the Facility.
- (8) A damaged Facility shall be repaired by the 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 injury to Persons. The only exception will be such instances where damage is exclusively due to the negligence of the Person owning Facilities. The Town shall not be made a party to any action because of this paragraph. The Permittee shall inform themselves as to the existence and location of all underground Facilities and protect the same against damages.
- (9) A damaged Town Facility shall be repaired by the Permittee and the expense of such repairs shall be borne solely by the Permittee. It is the intent of this paragraph that the Permittee shall assume all liability for damage to Facilities and injury to Persons. The Town may require additional repairs and inspections, including video, beyond the original damaged area.
- (10) The Town reserves the right to deny any permit that will impact any Town Facility as noted above or if the Permittee fails to agree to scope and condition of Permit approval.

### **Sec. 13-15.22 Protection of adjoining property**

- (1) The Permittee shall at all times, and at their own expense, preserve and protect from injury residents of the Town, Abutters' property and Public Ways by providing proper foundations and lateral support, and by taking such other precautions as may be necessary for the purpose.
- (2) The Permittee shall, at their own expense, shore up and protect buildings, trees, walls, fences or other property likely to damage during the progress of the Excavation work and shall be responsible for all damage to public or private property resulting from its failure to properly protect and carry out said work.
- (3) The Permittee shall not remove, even temporarily, any trees or shrubs which exist in public property, without first obtaining the consent of the Town Tree Warden. (see Massachusetts General Laws, Chapter 87, Section 5 – Cutting Trees).
- (4) In the case a tree is destroyed or damaged by the Permittee or a tree is authorized for removal by the Tree Warden. All tree stumps and debris resulting from the work shall be removed from the location and replacements shall be made by the Permittee; the species and place of relocation to be designated by the Tree Warden.
- (5) Replacement quantity shall be determined by measuring the circumference of the tree(s) at four (4) feet off the ground divided by 3.14 to determine an equivalent caliper. The equivalent caliper shall be multiplied by one and one half (1.5) to determine the minimum caliper replacement required by one (1) or more trees.
- (6) The Permittee shall deliver to the Tree Warden, a *bona fide* order, placed with a recognized established nursery before installing the authorized trees. The order shall include in it a statement that the size and species required will be in accordance with "USA" Standard for Nursery Stock and that planting will be done in accordance with the applicable provisions of "Massachusetts Department of Public Works Standard Specifications".
- (7) The Permittee may, if approved by the Tree Warden, make an equivalent financial contribution to the Town for the replacement of trees at other locations approved by the Town.

#### **Sec. 13-15.23 Care of excavation material**

- (1) All material excavated from trenches, and files adjacent to the trench of, in any Public Way, shall be piled and maintained in such a manner as not to endanger those working in the trench, pedestrians, or Person(s) in the Public Way, and so that as little inconvenience as possible is caused to those using adjoining properties.
- (2) Whenever necessary, in order to expedite the flow of traffic or to abate the dirt or dust nuisance, boards or bins may be required by the Town to prevent the spreading of material into the Public Way.

- (3) Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the Town 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.
- (4) It shall be the Permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal.

#### **Sec. 13-15.24 Asphalt Repairs**

- (1) Before any excavation may begin where a paved surface exists, the Permittee shall cut the pavement, using an approved method. No tearing of the pavement will be allowed.
- (2) The trench will be backfilled to within twenty-four (24) inches of final grade.
  - (a) Backfill shall be thoroughly compacted by mechanical means in layers not to exceed six (6) inches. Each backfill layer shall be 95% of its optimum density.
  - (b) No stone or rock fragments larger than three (3) inches shall be deposited in the backfill and no more than twelve (12) percent of material shall pass the No. 200 sieve. If the existing material is unsuitable it shall be replaced.
  - (c) Frozen material shall not be used for backfilling under any circumstance.
  - (d) Surfaces shall be broom-cleaned immediately after backfilling and appropriate measures taken for the control of dust.
- (3) Following backfill a pavement foundation will be placed level with the bottom of the adjacent asphalt binder. The foundation shall consist of approved MassDOT Dense Graded Crushed Stone for Sub-base, or approved equal, spread uniformly and compacted as directed in Sec. 13-15.24(2)(a) above.
- (4) Soil compaction tests conducted by a Soils Engineer retained by the Permittee, shall be provided upon inspection of the trench preparation and subgrade if any of the following conditions are met.
  - (a) Trench width, in a paved surface, exceeds six (6) feet for a length that exceeds twenty (20) feet.
  - (b) Trench length, in a paved surface, exceeds fifty (50) feet.
  - (c) As directed by the Director.

A test shall occur every one hundred (100) feet and at every intersection.

A minimum of two (2) test shall occur if the trench length is less than one hundred (100) feet.

- (5) Unless approved in writing by the Director the Permittee shall temporarily patch, at the end of each shift, any location subject to vehicular or pedestrian traffic with a minimum of two (2) inches of asphalt. Prior to placement of permanent asphalt the trenches shall be cut a minimum of twelve (12) inches beyond all sides of the trench. Any broken or irregular edges of existing pavement shall be cut away in straight lines leaving a sound vertical face at least twelve (12) inches beyond the sides of the trench or any observed settlement, cracking or unraveling.
- (6) Streets paved within ten (10) years shall be heated utilizing an infrared machine a minimum of two (2) feet beyond each side of the trench to thermally bond the asphalt patch to the surrounding pavement.
- (7) Streets paved more than ten (10) years ago shall have all edges coated with asphalt emulsion immediately prior to asphalt patching.
- (8) A asphalt patch consisting of Bituminous Concrete type I-1 will then be placed in courses not to exceed three (3) inches and in all cases be level with or no greater than one half (1/2) inch above the adjacent grade of paved surfaces. Rolling shall be done with a self-propelled roller weighing not less than eight (8) tons and shall continue until a firm, even surface true to the lines and grade is obtained. This patch will be maintained, as necessary and directed by the Director, by the Permittee.

Use of cold patch material is specifically prohibited for asphalt patch.

- (9) At the discretion of the Director, a “curb to curb” two (2) inch overlay twenty five (25) feet in each direction from the centerline of a perpendicular trench, a total of fifty (50) feet, may be required or a “curb to curb” two (2) inch overlay twenty-five (25) feet in each direction from both ends of a parallel trench may be required.

In either event the overlay will be matched in to each limit of the overlay by utilizing an infrared machine a minimum of two (2) feet beyond each limit of the overlay.

Tack coat will be applied with a tack truck equipped with a spreader bar at a minimum rate of .07 gallons per square yard.

This treatment shall be required when the pavement surface is less than five (5) years old.

- (10) All sidewalk and apron work must comply with the latest MassDOT construction standard details
- (11) In the event of non-acceptable maintenance of trench repairs, the Permittee will be notified of such situations. Upon notification, the Permittee will make required improvements within forty-eight (48) hours. Failure to do so will result in Town making such

improvements and charging the cost of the same as Recoverable Charges to Permittee. In emergency situations, the Town will make immediate repairs and the Permittee will be billed directly.

- (12) The guarantee period, if not specified under any other Rules and Regulations, shall be for a period of one (1) year following the permanent trench repair. During the guarantee period, the Permittee shall be responsible for the restoration, repair and maintenance of their work.
- (13) The Permittee shall maintain the pavement after backfilling is completed or as directed by the Department and shall keep same safe for pedestrian and vehicular traffic until the final trench inspection. If the Permittee does not meet the requirements of Sec 13-15.7(6) the Director may require infrared repairs, mill and overlay, full replacement or any other remedial action deemed necessary.

### **Sec. 13-15.25 Concrete Repairs**

- (1) Concrete repairs shall follow all the requirements of Sec. 13-15.24 except as listed below.
- (2) The trench will be backfilled to within twelve (12) inches of final grade.
  - (a) Backfill shall be thoroughly compacted by hand or mechanical means in layers not to exceed six (6) inches. Each backfill layer shall be 95% of its optimum density.
  - (b) No stone or rock fragments larger than three (3) inches shall be deposited in the backfill and no more than twelve (12) percent of material shall pass the No. 200 sieve.
  - (c) Frozen material shall not be used for backfilling under any circumstance.
  - (d) Surfaces shall be broom-cleaned immediately after backfilling and appropriate measures taken for the control of dust.
- (3) Following backfill, a temporary pavement patch of two (2) inches will be placed. The foundation shall consist of approved MassDOT Gravel Borrow Type B, or approved equal, spread uniformly and compacted as directed in Sec. 13-15.25(2)(a) above.
- (4) At the end of ninety (90) day stabilization period the temporary asphalt patch will be cut out and the trench trimmed with neat straight cuts and square corners a minimum distance of twelve (12) inches beyond the limits of the temporary patch area or nearest scoreline, whichever is greater.
- (5) Concrete sidewalks shall be of broom finished Portland cement concrete with one (1) inch deep score lines spaced five (5) feet apart on centers. Sections shall be a maximum of thirty (30) feet in length, with sections separated from each other and from driveway sections by one-half (1/2) inch thick premolded bitumastic filler. The depth (thickness) of concrete and of filler shall be four (4) inches except at driveways where it shall be six (6)

inches. Portland cement concrete driveway aprons from the sidewalk to the gutter line shall be constructed to the same specs as the sidewalk where it crosses the driveway.

- (6) All sidewalk and apron work must comply with the latest MassDOT Construction standard details. The Director reserves the right to order increased concrete thickness and/or the installation of reinforcement regardless of latest MassDOT construction standard details.
- (7) The new concrete shall be cured and sealed in accordance to manufacturer specifications of a product approved by the Department.
- (8) All sidewalk and accessible ramps shall be reconstructed in kind and in conformance with the ADA and Architectural Access Board Regulations that are currently in effect.

#### **Sec. 13-15.26 Trench limitations**

- (1) Minimum trench width for pipe and appurtenance installation shall be pipe inside diameter plus three (3) feet. Trenches shall not be unnecessarily wide, so as to increase excessively the load on the pipe resulting from backfill.
- (2) Underground electrical, communication, gas or other Utility companies shall be exempt from requirements of Sec. 13-15.26(1).
- (3) All ledge will be removed to a width two (2) feet greater than the diameter of the pipe and one (1) foot below the underside of the pipe. A twelve (12) inch bed of crushed stone will be placed in the trench prior to laying pipe.
- (4) The maximum length of open trench permissible, at any time, shall be two hundred (200) feet and no greater length shall be opened for pavement removal, excavation, construction, backfilling, patching or any other operation without the written permission of the Director.
- (5) The maximum amount of trenches, within their guarantee period, allowed per Person is five (5). Additional trenches will not be allowed without the written permission of the Director.

#### **Sec. 13-15.27 Relocated or new utilities**

- (1) Whenever existing poles, lines, guys, braces, anchors or transformers are to be relocated or new poles, guys, braces, anchors or transformers set, the proposed location shall be designated by stakes or flags placed at the site.

The location of all poles, guys, braces or anchors proposed shall be submitted to the Director on a scalable drawing for comments prior to submission to the Board of Selectmen for approval. No permits will be issued without prior Board of Selectmen approval.

- (2) Whenever new gas main extensions are proposed a scalable drawing shall be submitted to the Director for comments prior to submission to the Board of Selectmen for approval. No permits will be issued without prior Board of Selectmen approval.
- (3) Whenever new underground electrical and communication conduit is proposed a scalable drawing shall be submitted to the Director for comments prior to submission to the Board of Selectmen for approval. No permits will be issued without prior Board of Selectmen approval.

No Utility shall install or construct, except by way of direct one (1) for one (1) replacement or upgrading of existing Facilities including full removal of existing Facilities, any poles and overhead wires and associated overhead structures upon, along or across any public or private way within the Town. Any poles and overhead wires and associated overhead structures installed or constructed in violation of this bylaw shall be immediately removed by the Utility responsible therefor. This section implements M.G.L. Chapter 166, Section 22C and shall be construed in a manner consistent with the definitions in Section 22A of Chapter 166.

#### **Sec. 13-15.28 Prompt completion of work**

- (1) After an excavation has commenced, the Permittee shall prosecute with diligence and expedition all excavation work covered by the Permit and shall promptly complete such work and restore the street as specified herein. The Permittee shall perform such restoration so as not to obstruct, impede or create a safety hazard to either pedestrian or vehicular traffic.
- (2) Permit expiration will be as noted on application or under Sec. 13-15-10.
- (3) Permit extensions shall follow requirements listed under Sec. 13-15-14.

#### **Sec. 13-15.29 Noise, Dust & Debris**

- (1) Each Permittee shall conduct and carry out work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and Abutters.
- (2) The Permittee shall take appropriate measures to reduce, to the fullest extent practicable, noise, dust and unsightly debris and follow the orders of the Director regarding mitigation measures.
- (3) The following noise restrictions shall be enforced:

Permit holder or contractor shall perform the Right-of-Way work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. During the hours from 7:00 p.m. to 7:00 a.m. permit holder or contractor shall not use, unless otherwise specifically permitted by the Awarding Authority

any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

(1) Construction Noise Levels

7:00 a.m. to 5:00 p.m. (Monday – Friday)

9:00 a.m. to 5:00 p.m. (Saturday)

70 dBA L10 level with a Maximum Noise Level not to exceed 86 dBA.

Construction noise levels shall not exceed General Noise Levels on Sundays, Legal Holidays, Saturdays before 9:00 a.m., Saturdays after 5:00 p.m. and weekdays between the hours of 5:00 p.m. and 7:00 a.m.

(2) General Noise Levels - Everyday

Daytime - 7:00 a.m. to 7:00 p.m.

Less than 10 Minutes 75 dBA

Between 10 Minutes and 2 Hours 70 dBA

In excess of 2 Hours 60 dBA

Nighttime - 7:00 p.m. to 7:00 a.m.

Less than 10 Minutes 60 dBA

Between 10 Minutes and 2 Hours 55 dBA

In excess of 2 Hours 45 dBA

**Sec. 13-15.30 Preservation of monuments**

- (1) 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 without first obtaining permission, in writing, from the Director to do so. Insofar as the Director has the right 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 Director 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 incidental to the proper replacement of the monument, precise survey reference point or permanent survey bench mark by the Town.

Replacement at a minimum shall consist of a granite bound set by a professional land surveyor licensed in the Commonwealth.

**Sec. 13-15.31 Restoration of damaged and disturbed areas**

- (1) Any Person or Utility damaging or disturbing areas in the Public Way, including but not limited to sidewalks, curbing, grass plots and trees, shall be charged for the repair or replacement. Concrete curb shall be only replaced with granite curb at no cost to the Town.

#### **Sec. 13-15.32 Restoration of pavement markings**

- (1) All permanent pavement markings (crosswalks, traffic center lines, etc.), that are obliterated or damaged during construction, shall be repainted or replaced by or under the direction of the Department at the expense of the Permittee.

#### **Sec. 13-15.33 Excavation during winter**

- (1) No Person or Utility shall be granted a permit to excavate or open any street or sidewalk from December 1st of each year to April 1st of the next year unless an emergency or special condition exists and permission is obtained in writing, from the Director.

Any Person or Utility wishing to obtain a Street Opening Permit between the aforementioned dates, shall first explain fully, in writing, the nature of the emergency situation to the Director before permission is granted.

- (2) If a hazardous condition, which would endanger life and/or property exists, excavation work shall not be delayed by this article. However Sec. 13-15.11 Emergency Permits will still apply.

#### **Sec. 13-15.34 Inspections**

- (1) The Department shall make such inspections as are reasonable necessary in the enforcement of this Bylaw and any Rules and Regulations. The Director, as an Authorized Enforcer and Authorized Awarding Authority, shall have the authority to promulgate and cause to be enforced such Rules and Regulations as may be reasonably necessary.
- (2) The Town bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this Bylaw and any Rules and Regulations at reasonable times.
- (3) While performing inspections on private commercial properties the Town shall observe all safety Rules applicable to the premises established by the company and the company shall be held harmless for injury or death to Town employees and the Town shall indemnify the company against loss or damage to its property by Town employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in this Bylaw and any Rules and Regulations and other state and federal Regulations.

- (4) No work shall begin before obtaining a signed permit from the Director and paying all required fees.
- (5) Inspections will normally be scheduled between the hours of 8:00 AM and 3:00 PM, Monday through Friday. Contractors are responsible for requesting an inspection. Inspection fees will be fixed prices or rates established by the Town and on file with the Department but shall not be less than fifty (50) dollars per inspection.
- (6) The Permittee will be charged all costs for inspections made outside normal working hours. Charges will reflect prevailing wage rate of personnel performing the inspection with a four (4) hour minimum charge.
- (7) A minimum twenty four (24) hour notice is required to schedule an inspection. Failure to notify the Department a minimum of twenty four (24) hours in advance may subject the Permittee to the following charges, except in cases of emergency, at the discretion of the Director.
  - (a) Four (4) hour minimum charge for performance of inspections between the hours of 8:00 AM and 3:00 PM.
  - (b) Eight (8) hour minimum charge for performance of inspections made outside of the time specific under Sec. 13-15.34(5).
- (8) Trenches shall not be backfilled until they are inspected.

#### **Sec. 13-15.35 Excavation on a Repaved street**

- (1) Whenever the Department has developed plans to reconstruct a street, it shall give notice to all Town departments and Facility Owners which have, or may wish to lay pipes, wires or other facilities in or under the street.
- (2) Upon receipt of such notice, such Person or Utility shall have a minimum of thirty (30) days in which to install or lay any such facility but shall finish all work no later than the first July 4<sup>th</sup> after being notified.
- (3) If an extension of time is needed by a Person or Utility for the installation of such facilities, the Person or Utility shall make a written application to the Director explaining fully the reasons for requesting such an extension of time no later than the June 20th prior to the expiration date.
- (4) At the expiration of the time fixed and after such street has been Newly Constructed, Reconstructed or Repaved, no permit shall be granted to open such street for a period of five (5) years, unless in the judgment of the Director an emergency condition exists or the necessity for making such installation could not reasonably have been foreseen at the time such notice was given. If a permit is granted, the Director may impose extraordinary

conditions on the Permittee to preserve the structural condition of the pavement and to blend the permanent patch with the existing pavement.

### **Sec. 13-15.36 Penalties**

- (1) Any Person or Utility who violates any section of this Bylaw following written warning shall be fined not less than three hundred dollars (\$300) for the 1st violation and any subsequent violations. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- (2) Each day a violation continues shall constitute a separate offense.
- (3) If the work, or any part thereof, mentioned in the preceding articles shall be unskillfully or improperly done, the Town shall cause the same to be skillfully and properly done and shall keep an account of the expense thereof; and, in such cases, such Person or Utility shall pay the Town an amount equal to the whole of said expense incurred by said Town with an additional amount of fifty percent (50%) to cover indirect costs. The total cost is referred to herein as Recoverable Charges. Thereafter, upon completion of the work and the determination of the costs thereof the Town shall issue no further Permit(s) to any Person or Utility until it shall receive payment of said costs.
- (4) Any Person or Utility who continues to violate any portion of this Bylaw shall receive no further Permit(s) until such time as the Director is satisfied that the Person or Utility shall become fully compliant.

### **Sec. 13-15.37 Enforcement**

- (1) The Director, as an Authorized Enforcer, shall enforce all Rules, Regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations of this Bylaw.
- (2) The Director may issue a written order to enforce the provisions of this Bylaw thereunder, which may include requirements to:
  - A. Cease and desist all construction activity until there is compliance with the Rules, Regulations and conditions of the permit;
  - B. repair, maintain, or replace damaged or disturbed areas.
  - C. perform monitoring, analyses, and reporting;
  - D. remediate adverse impact resulting directly or indirectly from Permittee actions.
- (3) If the Director determines that abatement or remediation of adverse impacts is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property Owner fail

to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work, and the violator and/or property Owner shall reimburse the Town's expenses.

- (4) Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and/or property Owner shall be notified of the costs incurred by the Town, including administrative costs. The violator and/or property Owner may file a written protest objecting to the amount or basis of costs with the Department within thirty (30) days of receipt of the notification of the costs incurred. The Board of Selectmen will review the written protest and shall notify the violator and/or property Owner of their decision.

If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Board of Selectmen affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property Owner and shall constitute a lien on the Owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, § 57, after the thirty-first (31<sup>st</sup>) day at which the costs first become due.

- (5) Any Person who violates any provision of this Bylaw, written order or permit issued thereunder, shall be punished by a fine as set forth in Sec. 13-15.37. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- (6) Any Person violating any of the provisions of this Bylaw shall be liable to the Town for any expense, loss, or damage occasioned the Town by reason of such violation. Included are any fines, charges, and assessments made or imposed on the Town by any federal or state agencies as well as reasonable attorney's fees incurred in the prosecution of these enforcement actions, as further described in Sec. 13-15.37(7).
- (7) As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D, in which the Director of the Town shall be the Enforcing Person. The penalty following a written warning for the 1st violation and any subsequent violations shall be three hundred dollars (\$300). Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- (8) The decisions or orders of the Director shall be final. Further relief shall be to a court of competent jurisdiction.
- (9) The remedies listed in this Bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.

### **Sec. 13-15.38 Appeals**

- (1) In the event a Person is aggrieved by a determination of the Director under this Bylaw, they may file a written appeal with the Board of Selectmen within ten (10) days thereof.

- (2) The Board of Selectmen shall hear appeals within thirty (30) days of receiving a request therefore. The decision of the Board of Selectmen shall be final in all respects.
- (3) Any penalties or fines accorded will be enforced following the outcome of the hearing, or in the case of no appeal, on the eleventh working day after written notification.

**Sec. 13-15.39 Severability**

- (1) If any provision, paragraph, sentence, or clause of this Bylaw shall be held invalid for any reason, all other provisions shall continue in full force and effect.
- (2) This Bylaw shall not contravene nor render ineffective any of the lawfully established Rules and Regulations of the Commonwealth.

**Sec. 13-15.40 Bylaw in Force**

- (1) This Bylaw shall be in full force and effect from and after its passage, approval, recording, and publication as provided by law.

or do anything in relation thereto.

**Director, Department of Public Works**

**Article 4.** Voted that the Town amend the Town of Stoneham Code- Chapter 13- Streets and Sidewalks, Section 13-15, Street Open Bylaw, by deleting the existing section 13-15 in its entirety and also Section 13-16, Contractor's Construction License, and replacing it with a new section 13-15, entitled "Street Opening" as printed in Article 4 of the June 18, 2018 Special Town Meeting Warrant.

**Majority Vote Required  
Passes Unanimous**

**Meeting Dissolved at 7:24 PM.**

**Respectfully Submitted:  
Maria Sagarino  
Town Clerk**

