

Chapter 13

Streets and Sidewalks

State law reference—Regulation of use of ways for certain purposes, G.L. c. 85, Sec. 10. Jurisdiction of towns over highways, G.L. c. 82, Sec. 17; see also Regulation of public ways, generally, G. L. c. 85, Sec. 1, et seq. Regulation of sidewalks, generally, G.L. c. 83, Sec. 25 et. seq.

Cross references—Motor vehicles and traffic, generally, Ch. 8. Driving or standing vehicles on sidewalks or crosswalks, Sec. 8-2. Removal, altering or defacing of barriers, signs and other protective devices, Sec. 9-2. Unlawfully parking large vehicles on street. Sec. 8-8. Kindling of fires on highways, Sec. 9-7. Distribution of handbills, circulars, programs or other advertising materials, Sec. 9-8. Singing or playing musical instruments in public way, Sec. 9-13. Planning Board, Approval of subdivisions, Ch. 17, Art. II, Sec. 17-6, et seq.

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Sec. 13-1. Excavations.

No person except a duly authorized officer of the town, shall without a permit from the selectmen dig up any portion of a public way nor obstruct any public way for the purpose of erecting, repairing, altering or removing any building.

Every permit granted for such an excavation or obstruction shall specify the length of time it shall continue in force and a copy shall be given the superintendent of public works. Every person receiving such a permit shall execute a written agreement to indemnify and save harmless the town against all damages or cost by reason of any claim for damages on account of the existence of such obstruction or excavation. The selectmen may impose such conditions, terms and limitations as they shall see fit in respect to erecting barricades, maintaining lights and taking other precautions for the safety of travelers. (1932 Bylaws, Art. 12, Sec. 1)

Cross reference - Earth removal, Ch. 13A. Zoning by-laws, Alteration of land, Ch. 15, Sec. 6.8.10; Land fill regulation, Ch. 15, Sec. 6.10, et seq.

Sec. 13-2. Obstructions or dumping generally.

No person shall place or cause to be placed in any street, sidewalk, public place or private way in the town any obstruction or make any dumping ground for the deposit of ashes, garbage, carrion, filth, offal or any kind of rubbish, except in such place and in such manner as shall be directed by the Board of Health. (1932 Bylaws, Art. 12, Sec. 2)

Sec. 13-3. Display or sale of goods on sidewalks.

No person shall occupy any portion of a sidewalk for display or sale of goods. (1932 Bylaws, Art. 12, Sec. 5)

State law reference—Solicitation of business on public sidewalks, G.L. c. 93, Sec. 40.

Sec. 13-4. Playing, etc., in public way.

No person shall throw stones, snow balls, sticks or other missiles, kick at football or play at any game in which a ball is used or engage in any amusement, game or exercise, which interferes with the free, safe and convenient use of any public way. (1932 Bylaws, Art. 12, Sec. 7)

Sec. 13-5. Shooting missiles in public way.

No person shall shoot with or use a bow and arrow, bean blower or shoot any missile with the aid of an elastic or air gun in any of the public ways of the town. (1932 Bylaws, Art. 12, Sec. 8)

Sec. 13-6. Spilling contents of vehicle onto street.

No person shall drive or conduct any vehicle in such condition or so construct it or so load it as to allow its contents to fall, blow, leak or spill on the public street. (1932 Bylaws, Art. 12, Sec. 11)

Sec. 13-7. Placement of materials in erecting, repairing or removing buildings.

Any person who intends to erect, repair or take down any building abutting on any way which the town is obliged to keep in repair and who desires to make use of any portion of such way for the purpose of placing building materials or rubbish thereon shall give notice thereof to the selectmen. Upon such notice the selectmen may grant a permit to occupy such portion of such way to be used for such purposes as in their judgment the necessity of the case demands and the security of the public allows. Such permit shall, in no case, be in force longer than ninety days and shall be on such condition as the selectmen may require and, in every case, upon condition that during the whole of every night, from twilight in the evening until sunrise in the morning, lighted lanterns shall be placed so effectually to secure all travelers from liability of coming in contact with such building materials or rubbish. (1932 Bylaws, Art. 12, Sec. 12)

Sec. 13-8. Standing so as to obstruct passage.

No person shall stand on any public way in such a manner as to obstruct a free passage for pedestrians. (1932 Bylaws, Art. 12, Sec. 17)

Sec. 13-9. Erection or maintenance of canopies, awnings, etc.

No person shall erect or maintain any canopy, awning, shade, frame or shade curtain in any public street at a height less than seven feet from the sidewalk, and then only by the permission of the Board of Selectmen. (1932 Bylaws, Art. 12, Sec. 18)

Sec. 13-10. Parades and processions.

No person shall form or conduct any parade in any public street, public sidewalk or public way within the town or form or conduct, for the purpose of display or demonstration, any procession or assembly of people, except a military or funeral parade or procession, within such public street, sidewalk or way without first obtaining a written permit from the chief of police. No person shall take part in any such parade, procession or assembly which is not authorized by such a permit. (1932 Bylaws, Art. 12, Sec. 19)

Sec. 13-11. Snow removal—From certain sidewalks.

The tenant, occupant and, in case there shall be no tenant or occupant, the owner of any building or lot of land bordering on the following streets shall, after the ceasing to fall of any snow, if in the daytime within five hours and if in the night before one o'clock in the afternoon succeeding, cause such snow to be removed from the sidewalk abutting such premises:

Central Square, on all sides.

Franklin Street:

- (1) On northerly side from Fuller Street to Central Square.
- (2) On southerly side from Spencer Street to Central Square.

Main Street:

- (1) On easterly side from a point opposite the northerly side of Maple Street to southerly side of Church Street.
- (2) On westerly side from Marble Street to Benton Street.
- (3) On westerly side from northerly side of Maple Street to southerly side of Hersam Street
- (4) On westerly side from southerly end of building occupied by Sloane Furniture Company northerly to Maple Street.
- (5) On westerly side from driveway at southerly end of the Trodella Block building northerly to Montvale Avenue. (1932 Bylaws, Art. 11, Sec. 20; 3-21-32; 4-8-57)
- (6) on all sides, from North Street to Marble Street (Art. 9, 10-16-17)

State law reference - Authority of town to provide for snow removal, G.L. c. 85, Sec. 5.

Sec. 13-12. Same—Deposit of snow on certain sidewalks or streets.

The tenant, occupant and, in case there shall be no tenant or occupant, the owner of any building or lot of land bordering any and all public ways, shall not, in the process of snow removal on the lands owned, occupied, leased or rented by them, deposit snow or cause snow to be deposited on the sidewalk areas or any other portion of said public ways. (10-15-84, Art. 5)

Sec. 13-13. Printed Material Vending Machines.**13-13.1 Definitions.**

When used in this section the following terms shall have the following meanings:

Certificate holder means the holder of a Certificate of Compliance issued by the Superintendent of Public Works (or the successor officer within the Town of Stoneham) (hereinafter also referred to as the “Superintendent”) in accordance with the provisions of this section.

Certificate of Compliance means the certificate issued by the Superintendent on a yearly basis to the certificate holder upon successful completion of the application process each year.

Operator means any natural person or other legal entity including, but not limited to, corporations, partnerships, joint ventures and the like who either own, operate or are otherwise in control of a newsrack located in or on a public way in the Town of Stoneham.

Printed Material Vending Machine means any typed of unmanned device for the vending or free distribution of newspapers, periodicals or printed material of whatever nature located in or on a public way.

Printed Material Vending Machine Sticker means a sequentially numbered sticker issued by the Superintendent for placement on individual Printed Material Vending Machines in accordance with the provisions of this section.

Public Way means any public way or way which the clerk of the Town certifies is maintained and used as a public way, or a way or sidewalk dedicated to public use.

Superintendent means the Superintendent of Public Works of the Town of Stoneham or such person as said Superintendent may delegate.

13-13.2 Certificate of Compliance.

a. Requirement. No person shall affix, erect, construct or maintain a Printed Material Vending Machine in or on any part of a public way without first obtaining a yearly Certificate of Compliance from the Superintendent in accordance with the provisions of this section. Only one annual Certificate of Compliance per publication shall be required.

b. Application Process. Each operator of a Printed Material Vending Machine who intends to place a Printed Material Vending Machine in or on any part of the public way must complete a written application on a yearly basis on a form provided by the Superintendent.

c. Application. The application shall describe in detail the location of each Printed Material Vending Machine and be accompanied by a sketch or photograph of each newsrack location showing compliance with the standards set forth in this Section 13-13.2(c) and indicating the distance, in feet, of the Printed Material Vending Machine from curbs, crosswalks, fire hydrants, street lights, trash receptacles, traffic signal equipment, bike racks, and mail boxes within a twenty-foot radius of the newsrack. The application sketch or photograph must also demonstrate that the placement of the newsrack is in compliance with the regulations of the State Architectural Access Board, 521 CMR, and will not reduce the clear space for the passage of pedestrians to less than four (4') feet. The applications shall also include:

1. The name and address, telephone number, and email address of the applicant who is the operator of the newsrack(s);
2. The name, address, telephone number and email address of a natural person (if different from the applicant) who the Town may notify and/or contact at any time concerning the operator/applicant's Printed Material Vending Machine(s);
3. A certificate of insurance naming the Town of Stoneham as an additional insured in an amount established by the Superintendent as sufficient to indemnify the Town and hold it harmless from any and all claims or judgments for personal injury, including death, or property damage from costs and expenses to which the Town may be subject or which it may suffer or incur by reason of the design, placement, installation, operation or maintenance of any of the applicant/operator's Printed Material Vending Machine(s); and
4. A signed statement indicating whether notice regarding Printed Material Vending Machines may be sent by electronic mail.

d. Issuance of Certificate of Compliance. Each year, within thirty (30) days of the submission of a completed application, upon a finding that the applicant is in compliance with the provisions of the section, the Superintendent shall issue a Certificate of Compliance. Included with the Certificate of Compliance shall be an appropriate number of sequentially numbered Printed Material Vending Machine stickers. Each sticker shall correspond with a specific Printed Material Vending Machine, the location of which had been approved as part of the application process. Only those Printed Material Vending Machine(s) that have been issued a sticker in conjunction with the issuance of a Certificate of Compliance shall be deemed approved. The Superintendent shall approve proposed locations on a first come first serve basis. No preference shall be given to operators who may have had Printed Material

Vending Machine in a particular location prior to the effective date of this section. No publication shall be approved for more than one (1) Printed Material Vending Machine at any particular location.

e. Denial of Certificate of Compliance. If an application for a Certificate of Compliance is denied in whole or in part, the Superintendent shall state the specific reasons for denial. The Superintendent shall assist the applicant in determining reasonable alternative locations to those which were denied. Any applicant who has been denied a Certificate of Compliance may appeal such denial to the Superintendent by submitting a written request for such a hearing to the Superintendent within thirty (30) days of said denial. Such hearing shall be heard by the Superintendent or his/her designee within fourteen (14) days of receipt of the written appeal. The Superintendent or his/her designee shall issue a decision within ten (10) days of the close of said hearing.

f. Fees for Certificate of Compliance. The initial application fee for each yearly Certificate of Compliance shall be One Hundred Dollars (\$100.00) dollars plus twenty-five (\$25.00) dollars per Printed Material Vending Machine covered under said Certificate of Compliance to partially cover administrative costs.

g. Amending Certificate of Compliance. If within the applicable year after the Superintendent has issued a Certificate of Compliance the certificate holder wishes to install additional Printed Material Vending Machine(s), beyond those which have been approved under Section 13-13.2(d) above, the certificate holder must submit an application to amend the Certificate of Compliance. Only the twenty-five (\$25.00) dollars per newsrack fee shall apply to such amendments.

13-13.3 Installation.

a. Stickers. Each Printed Material Vending Machine shall prominently display the Printed Material Vending Machine sticker issued by the Superintendent pursuant to the provisions of Section 13-13.2(d). The sticker must be adhered to the specifically designated Printed Material Vending Machine.

b. Standards. Any Printed Material Vending Machine placed in any part of the public way shall be:

1. Made of metal, plastic or an equivalent sturdy material approved by the Superintendent, with a clear window through which the printed material is dispensed, and shall not be more than fifty (50") inches in height and not more than thirty-two (32") inches in length and width;
2. Sufficiently weighted and secured so as not to be easily moved or tipped over; and
3. Completely enclosed, with a self-closing door that is either self-latching or otherwise requires manual or mechanical release at each use.

c. Placement. Placement of any Printed Material Vending Machines must be done in accordance with the regulations of the Architectural Access Board, 521 CMR, and subject to the following prohibitions. Any Printed Material Vending Machine placed near the travelled portion of a public way shall be placed parallel to and not less than eighteen inches (18") nor more than twenty-four inches (24") from the edge of the curb. Any Printed Material Vending Machine placed near a building or structure must be placed parallel to and not more than six inches (6") from the wall. Printed Material Vending Machines shall not be placed:

1. At any location whereby the clear space for pedestrian passage is reduced to less than four feet (4');
2. Within five feet (5') of any marked or unmarked crosswalk;
3. Within five feet (5') of any fire hydrant, fire lane, fire call box, or other emergency facility;
4. Within five feet (5') of any traffic control signal or traffic sign;
5. Within five feet (5') of any mailbox, bicycle rack, Town trash receptacle, telephone booth or stand;
6. Within five feet (5') of any part of a curb return of a curb ramp or driveway, or in the case of a curb ramp or driveway without a curb return, within five feet (5') of the point where the curb edgestone or edging begins a change in grade toward the driveway or ramp on each side thereof, or in the case of a termination of the curb, edgestone or edging without a change in grade or a turn, within five feet (5') of the point of the same terminates on each side of the ramp or driveway;
7. Within five feet (5') of the front or fifteen feet (15') to the rear of any designated bus stop, taxi stand, valet parking area, loading zone or fire lane;
8. In any manner which protrudes onto a street or interferes or hinders Town removal of snow, ice, and debris from the streets and sidewalks; or
9. In a manner which otherwise endangers the public safety, such as by projecting onto, into, or over any part of the roadway of any public street or by reason of its being located in such a manner as to unreasonably interfere with or impede the flow of pedestrian or vehicular traffic, sidewalk or street cleaning and/or snow removal, and the ingress or egress from any residence, place of business or any legally parked or stopped vehicle.

Should circumstances require relief from a placement provision set forth above, the Superintendent shall have the discretion to grant relief upon a sufficient demonstration of good cause or actual hardship by the certificate holder.

d. Attachment to Property. No operator shall chain or otherwise attach any newsrack to any other newsrack, tree, street light post, traffic signal or sign, or other Town infrastructure in the public way.

e. Groupings of Printed Material Vending Machines. Printed Material Vending Machines may be grouped together side-by-side, provided that no group of Printed Material

Vending Machines extends beyond ten feet (10') along a curb, and a space of not less than five feet (5') separates each group of Printed Material Vending Machines. Notwithstanding this permissible grouping, no newsrack may be grouped with any other newsrack unless such location has been approved pursuant to Section 13-13.2 (c) and (d).

f. Advertising prohibited. It shall be unlawful for any person to use a newsrack for advertising or publicity purposes other than dealing with the display, sale or purchase of the publications dispensed therein.

13-13.4 Maintenance.

a. Condition. Each Printed Material Vending Machine shall be maintained in a state of good repair and in a neat and clean condition, and free of accumulations of outdated printed materials, trash, rubbish, or debris.

b. Service. Each Printed Material Vending Machine shall be regularly serviced so that:

1. It is kept reasonably free of graffiti;
2. It is kept reasonably free of chipped, faded, peeling and cracked paint or rust and corrosion;
3. The clear plastic window through which the printed material is dispensed is not broken and is kept reasonably free of tears, peeling or fading; and
4. The structural parts of the newsrack are not broken or unduly misshapen.

13-13.5 Enforcement.

a. Nonconforming Printed Material Vending Machines. Any Printed Material Vending Machine found not be in compliance with this section shall be subject to the enforcement provisions contained herein.

b. Enforcement. The Superintendent shall enforce the provisions of this chapter and shall have the authority to issue regulations for the purpose of enforcement.

1. Upon a determination that a Printed Material Vending Machine placed in any part of a public way is in violation of this bylaw and the Superintendent has no record on file of a Certificate of Compliance for said Printed Material Vending Machine, the Superintendent shall attempt to send written notice, by certified mail, to the party thought to be the owner of the Printed Material Vending Machine and to the party thought to be the publisher of the printed material. If no application for a Certificate of Compliance is received in response received by the Superintendent within twenty-one (21) days of the date of said written notice, the Superintendent may remove said Printed Material Vending Machine.

2. Upon a determination that a Printed Material Vending Machine having a Certificate of Compliance is otherwise in violation of Section 13-13.3 or Section 13-13.4 of this Bylaw, the Superintendent shall send written notice, by certified mail, to the Certificate Holder. If the certificate holder has agreed, such notice shall be sent by electronic mail. Such notice shall include:
 - (a) The newsrack sticker number and location;
 - (b) The date of the incident or other cause giving rise to the violation;
 - (c) A brief and concise statement of the facts causing the violation; and
 - (d) A statement informing the certificate holder that at the expiration of thirty (30) days from the date the notice is received the Printed Material Vending Machine is subject to be removed by the Superintendent, unless the violation is corrected.
3. Upon removal of any Printed Material Vending Machine pursuant to this Bylaw, the Superintendent shall within seven (7) business days of said removal, send written notice to the Certificate Holder (in the event there is a Certificate Holder). If the certificate holder has agreed, such notice shall be sent by electronic mail, otherwise such notice shall be sent by certified mail. In the event there is no Certificate Holder for said Printed Vending Machine, the Superintendent shall attempt to send said written notice to the party thought to be the owner of the Printed Material Vending Machine and to the party thought to be the publisher of the printed material.
4. Any person aggrieved by a notice sent pursuant to Section 13-13.5(b)(1) (2) or (3) may appeal such action to the Superintendent by submitting a written request for such a hearing to the Superintendent. Such hearing shall be heard by the Superintendent or his/her designee within fourteen (14) days of receipt of the written appeal. The Superintendent and/or his/her designee shall issue a decision within ten (10) days of the close of the hearing.
5. When the Superintendent determines that removal of a Printed Material Vending Machine is required to prevent an imminent threat to public safety, the Superintendent may remove such Printed Material Vending Machine immediately and shall provide (or attempt to provide) notice as soon as practicable, but in no event later than as set out in Section 13-13.4(b)(3).
6. Any Printed Material Vending Machine removed pursuant to this Section 13-13.5 shall be stored for at least thirty (30) days, and may thereafter be disposed of by the Town.

c. Penalty for Violations. Violations of this bylaw may be enforced by the Superintendent of Public Works or by any police officer, pursuant to Section 1-4 of these Bylaws. This bylaw may also be enforced by non-criminal disposition in the manner provided by Section 1-4A of these Bylaws, by said Superintendent of Public Works or by any

police officer. The specific non-criminal disposition penalty that shall apply to a violation of this bylaw shall be as follows:

First Offense (within a twenty-four month period) - \$50.00

Second Offense (within a twenty-four month period) - \$100.00

Third Offense and subsequent offenses (within a twenty-four month period)
\$300.00

Each day a violation continues shall constitute a separate offense.

13-13.6 Abandonment.

a. Abandonment. The following Printed Material Vending Machines properly installed pursuant to this bylaw shall be deemed abandoned if no printed material being dispensed therein is found for a period of more than fifteen (15) days.

b. Notice and Renewal. Upon determination that a newsrack is abandoned pursuant to Section 13.13.6(a) above, the Superintendent shall send notice to the individual provided pursuant to Section 13-13.2(c), informing the certificate holder that the Printed Material Vending Machine(s) shall be removed in fourteen (14) days, unless the certificate holder informs the Superintendent that the newsrack is not abandoned and stocks the newsrack with material to be dispensed therein.

c. Voluntary abandonment. In the event that a certificate holder voluntarily abandons a newsrack location, the certificate holder shall so notify the Superintendent, completely remove the newsrack and restore the public way to a safe condition.

13-13.7 Fees.

a. A Printed Material Vending Machine removed pursuant to this Bylaw may be retrieved by the certificate holder (or lawful owner in the event there is no certificate holder) at any time prior to its disposal by the Town (which shall be no earlier than thirty (30) days from the date of its removal) upon payment of a removal fee of fifty (\$50.00) dollars plus a storage fee of ten (\$10.00) dollars per day, to a maximum combined removal and storage fee of two hundred (\$200.00) dollars per Printed Material Vending Machine.

b. After thirty (30) days, any Printed Material Vending Machine removed by the Superintendent pursuant to Section 13-13.5 shall be deemed “abandoned property” and become property of the Town of Stoneham.

c. Failure of a certificate holder to retrieve a newsrack shall not operate to dismiss any fees owed to the Town of Stoneham for removal and storage of such newsrack.

13-13.8 Effect on Other Laws.

Nothing in this section shall affect the adoption of laws, bylaws or regulations affecting Printed Material Vending Machine pursuant to other applicable law or by other governmental entities, including within the Town of Stoneham, to the extent so authorized to adopt such laws, bylaws or regulations.

13-13.9 Severability.

The provisions of this Bylaw shall be severable and if any section, part, or portion hereof shall be held invalid for any purpose by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining section, part or portion thereof.

13-13.10 Initial Application Acceptance Date.

The Superintendent shall send written notice to all operators affected by this section informing them of the date when the Superintendent will accept the first applications for Certificates of Compliance. The Superintendent shall send said notice at least sixty (60) days prior to the initial application acceptance date.

13-13.11 Effective Date.

This bylaw shall not take effect until ninety (90) days after approval by the Attorney General's Office, unless otherwise required by law. (5-4-09, Art. 9)

Sec. 13-14. Temporary repairs for certain private ways.

(a) *Petition for Temporary Repairs.* The Town Administrator shall consider any private way or portion thereof which has been open to public use for five (5) or more years for temporary repairs to be performed by the Town after having been petitioned to do so by at least seventy-five percent (75%) or more of the owners of abutting property who abut the private way or that portion of the private way to be considered for temporary repairs. (Based on one vote for each abutting property and not the number of owners of a particular property.)

Petitions must contain a statement that: "The undersigned agree to keep said private way or portion thereof open to public use for the period of years which is the life of the temporary repairs made pursuant to this petition."

(b) *Subdivisions Excluded.* Excluded from the terms of this article are private ways created pursuant to the Subdivision Control Law, General Law, Chapter 41, Section 81K et seq. And the Town of Stoneham Subdivision Regulations.

(c) *Criteria.* Temporary repairs shall be made on a qualifying private way only after the Town Administrator has determined that such repairs are required by public necessity. The Town Administrator may, after reviewing a petition, elect to have the Town perform temporary repairs on the entire portion which was petitioned for, or a lesser portion, provided at least seventy-five percent of the abutting property owners on the lesser portion of the way are in favor of such action. In making his determination as to the public necessity and the advisability of making temporary repairs, the Town Administrator shall take into consideration the following factors:

- (i) The accessibility of the properties on the private ways to emergency vehicles such as police, fire and rescue vehicles.
- (ii) The volume of traffic that utilizes the private ways.
- (iii) The percentage of abutters on the particular private way or portion thereof petitioning the Town for the repairs.
- (iv) The number of years that the way has been open to the public.
- (v) Such other relevant considerations the Town Administrator deems appropriate.

(d) *Temporary Repairs Defined.* Temporary repairs may include the surfacing or resurfacing of a way, the installation and repair of drainage, the filling of potholes, depressions and ruts, temporary patches, and/or grading.

(e) *Assessment of Costs.* All of the cost for the temporary repairs including, but not limited to, the cost of all engineering, labor, materials and/or other expenses, including but not limited to insurance, shall be borne by the owners of property abutting on the private way or portion thereof which is repaired on the basis of linear frontage. Where the cost of temporary repairs is less than Five Hundred Dollars (\$500) per abutting property, the appropriate sum shall be deposited with the Town Treasurer prior to the repairs being commenced. Where the costs of temporary repairs if Five Hundred Dollars (\$500) or greater per abutting property, betterments will be assessed pursuant to the relevant procedural provision in Chapter 80 of the General Laws (Betterments). Any abutter may, by paying the full amount of his share of the assessment, avoid the assessment of the betterment on his land.

(f) *Limitations on Liability.* The Town shall not be liable for any damages whatsoever caused by the construction, repairs or any defects or omissions therein performed pursuant to this bylaw.

(g) *Town not Responsible for Private Way.* No term or provision of this bylaw, nor any temporary repairs pursuant thereto, shall be interpreted or construed to constitute acceptance by the Town of any duty, responsibility or liability for a private way or portion thereof or for the enforcement of any private right of any petitioner or abutting owner. (5-4-92, Art. 19)

State law reference - Private ways; temporary repairs, G.L. c. 40, Sec. 6N.

Sec. 13-15. Street Opening Bylaw.

Sec. 13-15.1 Introduction.

From time to time, it is necessary to excavate in a Public Way in order, for example, to install, repair, or remove utilities or install or realign a driveway including the possible removal or re-alignment of curbing and/or fencing. Excluded from the operation of this Bylaw is the general reconstruction or repair of Public Ways by the municipal or state agency responsible for the maintenance and repair of such Public Ways. This Street Opening Bylaw is necessary to protect the health and safety of all persons traveling on public ways and is adopted in accordance with the authority granted, inter alia, by Art. 89, section 6 of the Amendments to the Massachusetts Constitution, G.L. c. 40, Sec. 21, G.L. c. 165, Sec. 20, G.L. c. 166, Sec. 25 and G.L. c. 166A.

Sec.13-15.2 Definitions.

ADA: - 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: - Any Public Utility, municipal department, person or entity who owns or exercises general responsibility and control over: (i) utility or other pipes, ducts, lines or other things 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.

Application Fee: - A non-refundable processing fee, as provided in the Fee Schedule which is appended hereto, shall accompany each application for a Street Opening Permit.

Architectural Access Board Regulations: - The Rules and Regulations of the Architectural Access Board, Mass. Executive Office of Public Safety (521 CMR), as amended.

Awarding Authority: - The Superintendent of Public Works or his designee(s) to whom the Superintendent has delegated specific authority in writing, so that the process of permit-granting, inspection, and administration will proceed expeditiously, is hereby granted the authority to exercise the powers granted by this Bylaw.

Cold Patch: - A 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.

Compaction: - Compressing of suitable material and gravel that has been used to backfill a trench by means of mechanical tamping to within 95% of maximum dry density as determined by the modified Proctor Test in accordance with ASTM 1557 method D.

Contractor: - All officers or employees of Applicant performing Street Opening Work or any person or entity engaged by or on behalf of Applicant to perform Street Opening Work. The Contractor for purposes of this Bylaw and for all questions of liability in connection with any Street Opening Work shall be conclusively deemed agents of Applicant for whom Applicant is fully responsible.

Controlled Density Fill: - Also called flowable fill, CDF is 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.

Default: - The failure of the Permit Holder (including all Contractors or other agents of Permit Holder) to (i) comply fully with provisions of applicable laws and regulations, (ii) comply fully with all of the applicable provisions of this Bylaw and the Street Opening Permit including written supplemental instructions, the Bylaws of the Town or other applicable law, and (iii) keep its Certificate of Insurance in full force and effect.

Department of Public Works: - The municipal agency generally responsible for the repair and maintenance of Public Ways within the Town.

Emergency Repair Work: - Street Opening Work which must be commenced immediately to correct (i) a hazardous condition which could reasonably be expected to result in injury, loss of life, property damage or (ii) a condition which has resulted in the catastrophic failure of a utility transmission trunk line.

Gas Company: - A Public Utility to which G.L. c. 164 Sec. 70 applies.

Infra-Red Process: - That restorative procedure whereby an infra-red heater softens existing pavement to a depth of one and one half inches, the softened area is treated with a penetrating asphalt emulsion, uniformly scarified and raked to a workable condition, and the treated surface then compacted by use of a steel-wheeled roller for the purpose of creating a smooth driving surface consistent with adjacent pavement.

Licensed Contractor: - A Contractor who holds a current and valid Public Works Contractors Construction License issued by the Awarding Authority.

Newly Paved Road: - A road that has been re-paved within the past five years.

Normal Working Hours: - 7:30 a.m. to 4:00 p.m. Monday through Friday excluding holidays.

Permit Holder: - An Applicant to whom a Street Opening Permit has been granted.

Permanent Patch: - A final repair of Street Opening Work to be performed in accordance with this Bylaw.

Permanent Patch Window: - That period of time commencing twelve months after and up to eighteen months from the date of installation of the Temporary Patch.

Processed Gravel: - Inert material that consists of hard, durable stone and coarse sand, free from loam and clay, surface coatings and deleterious materials and which meets MI. 03.1 of The Standard Specifications.

Public Utility: - Includes a Gas and Electric Company as defined in G.L. c. 164 Sec. 1, telephone and telegraph company subject to G.L. c. 159, Sec. 12, and cable television companies or other telecommunication providers regulated by the Dept. of Telecommunications and Energy.

Public Way: - Any road, including such appurtenances as berms, curbs, drains, sewers, water mains, sidewalks and paved and unpaved shoulders within the public right-of-way lay-out to which the public has access and the Town is responsible for maintaining. Also referred to as a street.

Public Works Contractors Construction License: - A license required of all Contractors who are not officers or employees of a Public Utility or municipal department who wish to perform work including Street Opening Work on Public Ways.

Refundable Deposit: - That amount of cash or money represented by a certified bank check deposited by Applicant with its Application to secure Applicant's performance of Street Opening Work in accordance with this Bylaw.

Standard Specifications: - The Mass. Department of Public Works' Standard Specifications for Highways and Bridges, latest edition.

Street Opening Permit: - A permit granted by the Awarding Authority to an Applicant for permission to do Street Opening Work in a Public Way.

Street Opening Work: - Any cutting, excavating, compacting, construction, repair or other disturbance in or under a Public Way together with restoration of the Public Way in accordance with this Bylaw following such disturbance but excluding the location or relocation of utility poles for which a grant of location has been obtained pursuant to G.L. c. 166, Sec. 27.

Temporary Patch: - The application of either Cold Patch or two separate gradations of bituminous concrete consisting of binder and top layers and compaction to achieve a density equal to that of the surrounding pavement following excavation and compaction.

Sec. 13-15.3 General.

No work (except the commencement of Emergency Repair Work in accordance with paragraph 7 hereof) in or under a Public Way shall commence until the Applicant shall have

applied for in accordance with Paragraph 4, and obtained from the Awarding Authority, a Street Opening Permit. All work contemplated by this Bylaw shall be done in a good and workmanlike manner using best engineering and construction practices and shall be done in accordance with (i) all applicable laws and regulations, (ii) all of the provisions of this Bylaw, (iii) any conditions contained in the Street Opening Permit, and (iv) such reasonable supplemental instructions not inconsistent with the foregoing as the Awarding Authority may from time to time issue. A Permit Holder shall cause to be restored those portions of a Public Way disturbed by the Permit Holder to as good a permanent condition, in the reasonable judgment of Awarding Authority, as they were in when Permit Holder made application thereunder.

No person or entity may perform any work (including Street Opening Work or Emergency Repair Work) in or under a Public Way unless it is a Permit Holder and (i) is a municipal department or Public Utility or their respective officers or employees (ii) is the holder of a current and valid Public Works Contractors Construction License, or (iii) has engaged such a holder and such holder performs all such Street Opening Work or Emergency Repair Work as agent of Permit Holder.

Sec. 13-15.4 Application procedure.

The Applicant shall file on forms designated by the Awarding Authority a completed and signed application at the office of the Awarding Authority (with a copy delivered simultaneously to the Department of Public Works) each time it desires to perform Street Opening Work. The Application shall be accompanied by any and all plans, certifications, certificates of insurance and other items specified in the Application or reasonably requested by the Awarding Authority. If the Applicant does not intend to perform the Street Opening Work itself it must in the Application designate a Licensed Contractor to perform the work as its agent. The Application shall also be accompanied by the Application Fee and the Refundable Deposit.

The Awarding Authority shall make a prompt determination on the Application taking into account the following and such other facts as it may reasonably consider:

- a. the recommendation of the Department of Public Works
- b. the reason for the Street Opening Work
- c. whether the street is recently constructed or repaved
- d. whether there are other reasonable means adequate to accomplish the purpose for which the Street Opening Permit is sought.

If the application is considered favorably, a Street Opening Permit containing such conditions and supplemental instructions as the Awarding Authority reasonably deems appropriate shall promptly issue. If the Application is not favorably considered, the Awarding Authority shall communicate in writing to Applicant the reasons its application was not favorably considered.

Sec. 13-15.5 Refundable deposit and account.

The amount of the Refundable Deposit to secure proper restoration of a Public Way after Street Opening Work is determined in the reasonable judgment of the Awarding Authority based on the extent of the Work. (A current schedule of deposits for standard work is attached.)

Following notice given by Permit Holder that final permanent repairs to the Public Way have been completed, the Awarding Authority will make a final inspection. Once the Awarding Authority has concluded that permanent repair work has been satisfactorily completed and that Applicant has no other uncured defaults under Street Opening Permits, it shall release the unexpended balance of the deposit serving as security for the Street Opening Permit related to the inspected work.

All Refundable Deposits that an Applicant submits for Street Opening Permits shall be held in one account which shall be designated as the Applicant's Refundable Deposit Account. Applicants upon request may receive periodic reports as to the balance standing within this account. Should a deposit associated with a specific permit be insufficient to secure the proper repair of a Public Way following a Default by the Permit Holder, the Awarding Authority without limitation to other remedies available to it can deduct the cost of the proper repair from Applicant's Refundable Deposit Account for the purpose of funding the proper repairs. To the extent required by G.L. c. 164 applicable to Gas Companies, the provisions of this section and Section 6 hereafter shall not be applied to Gas Companies which in their application for Street Opening Permits claim the exemption set out herein.

Sec. 13-15.6 Fee and deposit changes; municipal exemption.

From time to time hereafter the Awarding Authority, after public notice and hearing, may amend the schedule of deposits, the application fee, the hourly after-hours inspection charges or any other amounts due under this Bylaw. A reasonable hourly charge for inspectional services which must be performed outside of Normal Working Hours in accordance with a posted schedule established by the Awarding Authority will be billed to Permit Holder and due and payable fifteen days after billing. In extraordinary situations where extensive installation or renewal of utility lines overburden the normal capacity of the municipal departments to conduct inspections, the Awarding Authority can, after notice to Permit Holder, or as a condition of the Permit, elect to treat all inspections as after-hours inspections and bill Permit Holder accordingly. Applicants which are municipal departments are exempt from payment of all fees and deposits hereunder. Public Utilities to the extent exempted as provided in Paragraph 5 above are exempt from payment of all fees except the Application Fee.

Sec. 13-15.7 Emergency Repair Procedure.

If the conditions for Emergency Repair Work exist, then an Applicant after giving oral, faxed or electronic notice to the Police and Department of Public Works may commence Street Opening Work. All such Emergency Repair Work shall be done in strict compliance with this Bylaw except for compliance with any notice provision inconsistent with such emergency action.

On the business day following the commencement of Emergency Repair Work, the Applicant shall file with the Awarding Authority (i) a written statement setting forth in detail the facts and circumstances constituting the conditions for Emergency Repair Work, (ii) an Application for a Street Opening Permit covering the Street Opening Work already commenced in accordance with Paragraph IV, (iii) the filing fee and required Refundable Deposit. If all of the materials such as plans, etc. are not then available to Applicant, Applicant shall supply them as soon as available. The Awarding Authority will promptly process the Application and grant, if Emergency Repair Work is required, the Street Opening Permit with such conditions and supplemental instructions as it may reasonably require.

Sec. 13-15.8 Insurance.

The Permit Holder and/or each Licensed Contractor shall acquire and continuously maintain while it possesses any Street Opening Permits liability insurance coverage on all personnel and equipment to be used in the Street Opening Work which insurance is to 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 street opening work, XCU hazards, broad form property damage and personal injury.

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

Automobile Liability Insurance - covers owned, non-owned and hired vehicles

Bodily Injury Liability	\$ 500,000 each person
	\$1,000,000 each accident
Property damage Liability	\$ 250,000 each accident

Worker's Compensation and Employer's Liability

As required by law.

A Certificate of Insurance shall be provided to the Awarding Authority prior to the commencement of any work pursuant hereto, upon any insurance renewal and as may otherwise be required by the Awarding Authority. The Certificate of Insurance shall have a thirty (30) day notice of cancellation or material change. The Town of Stoneham shall be listed as an additional insured on the Certificate of Insurance.

Sec. 13-15.9 Licensed Contractors.

Any Contractor or other person or entity that wishes to perform work on a Public Way and which is not either a municipality or a Public Utility (including their respective officers or employees) must be licensed by the Awarding Authority. Application for a Public Works Contractors Construction License must be made on a yearly basis.

Sec. 13-15.10 Terms of the Street Opening Permit.

10.1. *Term of Permit* - All Street Opening Permits shall be valid for thirty (30) days and, upon written request to the Awarding Authority, renewable for an additional thirty (30) days. Permits must be present at the work site. Permits can be revoked by the Awarding Authority if the Applicant is in Default.

10.2. *Inspections* - Inspections may take place at the following events:

- a. prior to backfilling the trench
- b. following completion of Temporary Patch placement
- c. during the Permanent Patch Window
- d. following completion of Permanent Patch placement

Permit Holder or Contractor shall notify the Awarding Authority when an inspection is desired and co-ordinate the timing of such inspection.

10.3. *Working Hours* - Except in emergency situations, Street Opening Work shall occur during Normal Working Hours. The Permit Holder must give notice of the intended Street Opening Work seventy-two hours in advance to the Superintendent of Public Works, and, unless the requirement for a police detail is waived by the Chief of Police or his designee, must arrange for and pay for a police detail to be present throughout the period of time that Street Opening Work is being conducted.

10.4. *Dig-Safe* - The Permit Holder shall, in accordance with all current laws of the Commonwealth of Massachusetts, notify all Public Utilities seventy-two hours in advance of making any excavation in a street. Such notification shall be made by means of obtaining a DIG-SAFE number. Said number shall be provided on the Street Opening Permit application.

The Permit shall not be issued until this information is provided.

10.5. *Existing Utilities* - Before starting any excavation, the Permit Holder or Contractor shall confer with all Public Utilities to obtain information from each as to the horizontal and vertical locations of existing utilities and other conditions that may affect the excavation. The Permit Holder or Contractor shall not interfere with any existing utility without the written consent of the Awarding Authority and the owner of the utility. If it becomes necessary to relocate an existing utility, this shall be done by its owner and the cost of such work shall be borne by the Permit Holder. The Permit Holder or Contractor shall inform itself as to the existence and location of all underground utilities and protect the same against damage.

10.6. *Protection of Existing Lines and Structures* - The Permit Holder or Contractor shall adequately support and protect by timbers, sheeting, etc. all pipes, conduits, poles, wires, cables or other appurtenances which may be in any way affected by the excavation work and shall do everything necessary to support, sustain and protect them under, over, along or across such work area. The excavation work shall be performed and conducted in such a manner that it shall not interfere with access to fire stations, fire hydrants, water gates, underground vaults, catch basins or any other public structure.

10.7. *Adjoining Property* - The Permit Holder or Contractor shall, at all times and at its own expense, preserve and protect from injury any adjoining property by providing proper foundations and shall take such other precautions as may be necessary for this purpose. The Permit Holder or Contractor shall at all times and at its own expense shore up and protect all buildings, walls, fences, trees and other property likely to be damaged during the progress of the Street Opening Work and shall be responsible for all damages to public or private property or streets resulting from its failure to properly protect and carry out said work. The Permit Holder or Contractor shall not remove, even temporarily, any trees or shrubs which exist in planting strip areas without first obtaining the consent of the Issuing Authority.

10.8. *Damaged trees* - In the event a tree is either accidentally destroyed by the Permit Holder or Contractor or is authorized for removal by the Awarding Authority, the Permit Holder or Contractor shall remove the tree, stump and debris from the work site, and replace the tree with an identical species with a minimum caliper of two inches in the identical location.

10.9. *Pedestrian Crossings, Open Trenches* - The Permit Holder or Contractor shall, where possible, maintain safe crossings for two lanes of vehicle traffic at all public intersections as well as safe crossings for pedestrians. If the Public Way is not wide enough to hold the excavated material for temporary storage, the material shall be immediately removed from the location.

10.10. *Traffic* - The Permit Holder or Contractor shall take appropriate measures to assure that during the performance of the Street Opening Work, so far as practicable, normal traffic conditions shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the adjoining property and to the general public. The Awarding Authority may permit the closing of streets and walks to all traffic for a period of time.

Unless the requirement for a police detail is waived by the Chief of Police or his designee, the Permit Holder shall engage a police detail to maintain traffic control and public safety at the project site while Street Opening Work is in progress. Warning signs shall be placed a sufficient distance from the project site in order to alert all traffic coming from both directions. Cones or other approved devices shall be placed to channel traffic. Warning signs, lights and such other precautions shall conform to the Manual on Uniform Traffic Control Devices. Construction materials and equipment on the site shall be limited in quantity and in the space they occupy so that they do not unduly hinder and block traffic.

10.11. Gutters and Basins - The Permit Holder or Contractor shall keep all gutters free and unobstructed for the full depth of the adjacent curb and for at least one (1) foot in width from the face of such curb at the gutter line. Catch basins shall be kept clear and serviceable.

10.12. Excavated Material - The Permit Holder or Contractor shall remove all excess excavated material, surplus water, muck, silt, residue or other ran-off pumped or removed from excavations from the site.

10.13. *Temporary Repairs* - At the end of each day, all trenches must be plated if repair work is not completed and/or back-filled, compacted and temporarily patched on the day repair work is completed. No open unplated trenches are permitted overnight and work in plated trenches must be continually prosecuted to completion to minimize the time trenches are plated.

10.14. *Noise* - The Permit Holder or Contractor shall perform the 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 10:00 p. m. to 7:30 a. m. the Permit Holder or Contractor shall not use, unless otherwise specifically permitted, in writing, by the Awarding Authority any tool, appliance or equipment producing noise of such volume as to disturb the sleep or repose of occupants of the neighboring property.

10.15. Debris and Litter - All debris and litter remaining from the Street Opening Work site shall be removed by the Permit Holder or Contractor in a timely manner.

10.16. Restoration of Pavement Markings - All permanent pavement Markings (crosswalks, center lines, fog lines) which are damaged during Street Opening Work shall be restored in kind by and at the expense of the Permit Holder.

10.17. Lawn Surfaces and Plantings - All lawn surfaces which are disturbed during Street Opening Work shall be replaced with sod or six (6) inches of screened loam, lime, fertilized and re-seeded with good quality lawn seed. Any areas containing plantings shall be restored to their original condition with the same or similar plantings.

10.18. Erosion Control - The Permit Holder shall be responsible for all erosion control and for obtaining any necessary permits from the Conservation Commission. The 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 Street Opening Work, the Permit Holder or Contractor shall clean the structure before completing the Temporary Patch.

Sec. 13-15.11 Required Construction Techniques.

All Street Opening Work and materials used therein must conform to the most recently published edition of the Massachusetts Highway Department's Standard Specifications for Highways and Bridges, with the federal OSHA requirements and with the Americans with Disabilities Act and the Architectural Access Board Regulations as then currently in effect. In addition, the following specific requirements also apply. Exceptions to these requirements may be made at the discretion of the Awarding Authority at the time the Street Opening Work is in progress.

11.1. *Excavation* - Existing pavement shall be cut in neat, true lines along the area of the proposed excavation. Unstable pavement shall be removed over cave-outs and breaks and the sub grade treated as the main trench. Pavement edges shall be trimmed to a vertical face and neatly aligned with the center line of the trench. Cut-outs beyond the limits of the trench lines must be normal or aligned parallel to the center line of the trench. Excavations shall be made in open cut. Trenches and excavations shall be braced and sheathed in accordance with the requirements of the Occupational Safety and Health Act (OSHA). Sections of bituminous or cement concrete sidewalks shall be removed to the nearest scoreline or approved cut edge.

11.2. *Back-Filling and Compaction* - Excavations shall be filled with approved backfill. Approved backfill consists of either Controlled Density Fill, suitable excavated material or gravel meeting M 1.03. 0 or M 1.03.1 of The Standard Specifications. The Permit Holder may select which of these three to use in the excavation. Suitable excavated material shall mean previously excavated granular material but which does not include blacktop, clay, silt, organic material, concrete, roots, boulders or stones larger than four inches in diameter. If the hole is to be filled with suitable excavated material, a backfill course shall be placed in approximately twelve (12) inch lifts of maximum compaction to four inches below asphalt grade (See Diagrams 1 and 2). A base course consisting of four inches of processed gravel or equivalent (i.e. suitable excavated material containing no stones larger than one and one half inch in diameter) shall then be placed on top of the backfill course. The backfill and base course shall be compacted to not less than ninety-five (95) percent of maximum dry density as determined by the modified Proctor Test in accordance with ASTM 1557 Method D. The Permit Holder, if directed by the Awarding Authority, shall retain at its expense, a professionally qualified geotechnical consultant to perform this test. The results of this test shall be given to the Superintendent of Public Works.

If Controlled Density Fill is used as back-fill material it must contain a minimum of 250 pounds of class F flyash or high air (25% plus) and be self-leveling. It must be Type 1E or 2E (very flowable). Flowable fill is to be batched at a ready mix plant and is to be used at a high or very high slump (1'-12"). In lieu of the slump test, a 6" long, 3" diameter tube

may be filled to the top and then slowly raised. The diameter of the resulting "pancake" may be measured and the range of the diameter shall be 9" to 14". It shall be flowable, require no vibration and after it is placed excavatable by hand tools and/or small machines. The ingredients shall comply with the following:

Portland cement	AASHTO M85
Fly Ash	AASHTO M 295 Class F
Sand	M 4.02.02- ASTM C33
Air	M 4.02.05

Type 1E and 2E must meet the following requirements:

Compressive	28 days	90 days
Strength	30-80 psi	100psi ma.
Slump	10-12inches	
Air	1-30%	

If Controlled Density Fill is used as back-fill material, it must fill the excavation to immediately below asphalt grade. The Contractor must then plate the excavation with a heavy duty steel plate adequate to carry heavy traffic and wait twenty-four hours for the CDF to cure prior to applying the Permanent Patch.

If an excavation is back-filled with Controlled Density Fill in accordance with this Bylaw, then a Temporary Patch need not be installed but a Permanent Patch may be installed immediately. Permanent Patches installed over Controlled Density Fill shall consist of four (4) inches of bituminous concrete applied in a two and one-half inch base course and a one and one-half inch top course of bituminous concrete all installed in accordance with this Bylaw. If an excavation in a cement concrete Public Way is filled with Controlled Density Fill, then the provisions of paragraph 5 (a) of this Bylaw may be omitted, but the provisions of paragraph 5(b) and 5(c) must be complied with.

11.3. *Temporary Patches -*

a. *Bituminous Concrete.* Following proper compaction, a temporary Patch which shall be the thickness of the existing asphalt pavement or a minimum of four inches whichever is greater shall be applied. It shall consist of either Cold Patch or bituminous concrete plant-mixed hot asphalt aggregate. (See Diagrams)

b. *Temporary Patch to be maintained for one year.* A Temporary Patch that has been back-filled and Compacted shall be maintained by the Permit Holder or Contractor so that the patched surface and the surrounding area remain a single smooth unbroken plane for a period of time no shorter than one year after placement of the Temporary Patch.

11.4. *Permanent Patches* - Except when installed over Controlled Density Fill as described in paragraph 2 above, Permanent Patches shall be installed not less than twelve nor more than eighteen months from the date of installation of the Temporary Patch. Upon request by the Permit Holder or Contractor, the Awarding Authority will inspect the Temporary Patch and determine if final settlement of the trench has occurred. The Awarding Authority will notify the Permit Holder or Contractor within seven days of the inspection whether the Permanent Patch can be installed. Public Utilities or municipal departments may schedule Permanent Patches to replace all Temporary Patches then within the Permanent Patch Window without receiving prior approval from the Awarding Authority but must give the Awarding Authority not less than seventy-two (72) hours prior notice.

A Permanent Patch shall consist of one of the following: a) cold planing the Temporary Patch to a depth of one and one-half inches and then installing a minimum of one and one half inches of top course of bituminous concrete, or b) the excavation of the Temporary Patch in a bituminous concrete Public Way and replacement of this material with any additional processed gravel needed and two and one half inches of base course and one and one-half inches of top course of bituminous concrete (See Diagrams 1 and 2) or c) application of the Infra-Red Process to the Temporary Patch, or d) the certification by the Awarding Authority made during the Permanent Patch Window that the Temporary Patch in his reasonable judgment meets fully the standard of a Permanent Patch and thus requires no further work.

a. *Cold Planing* - If the cold planing method is used, the area to be cold planed must extend at least twelve (12) inches beyond all sides of the existing Temporary Patch. (See Diagram 2) This area must be cold planed to a depth of one and one-half inches. 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 back from all edges of the existing pavement. The Permit Holder must provide a dust control system capable of complying with environmental air quality standards during cold planing and sweep the Public Way following completion of the cold planing work.

All abutting edges of the existing pavement will be painted with an asphalt emulsion immediately prior to the placement of the Permanent Patch. The Permanent Patch will consist of the application of a top course of a minimum of one and one-half inches of bituminous concrete plant-mixed hot asphalt aggregate. After raking and rolling, the grade of the Permanent Patch shall match the existing bituminous surface of adjacent pavement. The finished Permanent Patch shall be level having no depressions retaining water on any of the surface. All seams of the finished perimeter shall be sealed with penetrating asphalt emulsion.

b. *Excavation* - Any Temporary Patch that has been patched with Cold Patch must be excavated and replaced with a bituminous concrete base in accordance with this paragraph. If the excavation method is chosen and if additional cutting of the existing pavement is required, it shall be done in neat straight lines. 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 back from all edges of the existing pavement. (See Diagram 1). All abutting edges of the existing pavement shall be painted with an asphalt emulsion immediately prior to the placement of the Permanent Patch. The Permit Holder or Contractor shall remove and dispose of all excavated material and thoroughly compact the surface of the sub-base.

Following excavation the Permanent Patch shall consist of a bituminous concrete base and top laid and rolled in two (2) courses. The binder (base course) shall be a minimum of two and one half (2 1/2") inches in depth and the top course shall be one and one half (1 1/2") inches in depth. The minimum total thickness of both courses, measured after rolling, shall be four (4) inches or equal to the material that was previously excavated. If after compaction, more than four inches of Permanent Patch is needed in order to restore the excavated area to finish grade, additional bituminous concrete shall be used in the base course. The base course shall be placed and carefully raked and thoroughly rolled to the required thickness. The top course shall be placed to a grade that will match the existing bituminous surface after rolling. All seams of the finished perimeter shall be sealed with penetrating asphalt emulsion. The finished Permanent Patch shall be level having no depressions retaining water on any of the surface.

c. *Infra-Red Process* - If the Infra-Red Process is utilized to install the Permanent Patch, the area to be repaired shall be thoroughly cleaned to eliminate all potential contaminants. An infra-red heater shall be positioned over the area to be repaired for a period of time required to plasticize the existing pavement to a depth of one and one half inches. Oxidation of the pavement caused by improper heating techniques must be avoided. If this condition occurs, all oxidized material must be removed and replaced with Class I bituminous concrete meeting the Standard Specifications of the Mass. Highway Dept.

The softened area shall be inwardly reworked from approximately one foot beyond all sides of the original Temporary Patch. This designated area shall be treated with a penetrating asphalt emulsion, uniformly scarified and raked to a workable condition. For street crossings and/or trenches with jogs, the reworked area will be extended beyond the outermost jog in a straight line parallel with the opposite outermost jog. Under no circumstances may the infra-red heat treatable patching mix that is used register a temperature under 200 degrees F.

After the paving mixture has been properly admixed and raked to grade, compacting shall be obtained by use of a steel-wheeled roller of sufficient weight to establish a uniform density comparable to that of the surrounding pavement surface within the work area. The finished Permanent Patch shall be level having no depressions retaining water on any of the surface.

All seams of the finished perimeter shall be sealed with penetrating asphalt emulsion.

A petroleum resin sealant shall be applied consistently to the entire heated area by mechanical means or hand application at an approximate rate between .1 and .25 gallons

per square yard. Actual rate will be determined on site by an approved absorption test method. A mineral filler will then be broadcast over the newly sealed area to absorb any excess liquid and prevent tracking and the area immediately opened to traffic.

d. *Certification* - If a Permit Holder seeks to qualify a Temporary Patch as a Permanent Patch, it must make the application for inspection set out above and specify in it its request for certification. The Awarding Authority shall notify the Permit Holder within thirty (30) days of the request whether the Temporary Patch has been certified as a Permanent Patch. If it is not so certified, the Permit Holder shall forthwith cause a Permanent Patch utilizing one of the three remaining methods set out above to be utilized.

e. *Newly Paved Roads* - On Newly Paved Roads, the Awarding Authority may require in addition to the placement of the Permanent Patch, that the Permanent Patch shall be treated by a process (infra-red, microwave or equivalent) that will ensure that the Permanent Patch is integrated into the existing bituminous surface in a seamless manner.

f. *Final Inspection of Permanent Patch* - Following completion of the Permanent Patch, the Permit Holder or Contractor shall give notice thereof to the Awarding Authority who shall inspect the Permanent Patch. If the Awarding Authority is satisfied that the road has been restored to as good a condition as existed prior to the Street Opening Work, he shall so note on the Street Opening Permit and any Refundable Deposit securing that Street Opening Work shall be refunded promptly to Applicant. If the Awarding Authority determines that the Permit Holder is in Default, the Awarding Authority may proceed in accordance with Paragraph XIII, Remedies, of this Bylaw.

11.5. *Shoulders* - Suitable excavated material shall be placed in layers not to exceed six (6) inches in depth and Compacted. Shoulders shall be re-constructed to their existing condition and either loamed with six (6) inches of loam, limed, fertilized and seeded with roadside grass mix or covered with four (4) inches of wood chips as directed by the Awarding Authority.

11.6. *Sidewalks* - any excavation in a concrete or bituminous concrete sidewalk shall require that the entire sidewalk area containing the trench be replaced. Any concrete sidewalk section that is excavated or damaged by the excavation must be replaced in its entirety. Suitable excavated material or gravel shall be placed in layers not to exceed six (6) inches in depth and Compacted. All sidewalk areas will be installed by the Permit Holder or Contractor in conformance with the ADA and the Architectural Access Board Regulations currently in effect. Bituminous concrete sidewalks shall have two courses (two inches of binder and one inch of top) of bituminous concrete plant-mixed hot asphalt aggregate applied to and rolled to create a pavement surface consistent with the adjacent bituminous concrete surface. Concrete sidewalks shall have four inches of poured concrete applied to finish grade. The concrete shall be placed in alternate slabs 9 meters in length except as otherwise ordered. The slabs shall be separated by transverse pre-formed expansion joint filler 13 millimeters in thickness. Concrete driveway openings shall have six (6) inches of poured

concrete applied to finish grade. Pre-formed expansion joints will be installed against buildings, walls, steps, foundations or existing concrete block.

11.7. *Curb and Berm* - Any curbing or berm which is damaged or removed as part of the Street Opening Work shall be properly replaced in kind. The use of cast-in-place concrete curbing is prohibited. All salvageable granite curb that is removed from the Public Way and is excess is the property of the Town and shall be delivered to the Department of Public Works by the Permit Holder or Contractor.

11.8. *Wheelchair Ramps* - Existing wheelchair ramps which are damaged or removed under Street Opening Work shall be reconstructed in kind and in conformance with the ADA and the Architectural Access Board Regulations that are currently in effect.

11.9. *Curb Cuts* - Any curb cut within a Public Way cannot exceed the following dimensions unless specifically approved by the Awarding Authority:

Single Family Dwelling	16 feet
Multi- family Dwelling	18 feet
Two Family Dwelling	18 feet
Commercial Property	24 feet

Driveway entrances into Public Ways must butt into and not overlap the edge of the existing roadway hardened surface. The driveway must be graded in such a manner that no ponding of water occurs within the Public way and in accordance with the Architectural Access Board Regulations. Driveways shall not be located on small radius curves and shall be positioned as to provide maximum sight distance and safety.

Editor’s Note – Under Section 13.15.11, Sec. 11.5 was unintentionally omitted.

Sec. 13-15.12 Suspension and Revocation.

The Awarding Authority, if it believes a Default has occurred, can suspend immediately for up to 21 days a Street Opening Permit by communicating such suspension to any of the Permit Holder, Licensed Contractor, or any of their respective representatives at the job site.

The Awarding Authority may revoke a Street Opening Permit granted hereunder after notice and hearing if it shall reasonably determine that a Default has occurred. Permit Holder shall be given not less than five days prior written notice of the time and place of the hearing and shall have the opportunity at the hearing to present evidence. Any person aggrieved by the decision of the Awarding Authority may appeal such decision to the appropriate court of competent jurisdiction or to the extent applicable law provides, to the Department of Telecommunications and Energy.

Sec. 13-15.13 Remedies.

If a Permit Holder or Licensed Contractor shall be in Default as defined herein, the Awarding Authority may:

a. Suspend or revoke the Street Opening Permit as provided in 12 above. If the Street Opening Work has commenced but is not completed at the time of a suspension or revocation, the Awarding Authority can order the Street Opening Work to be completed by another Licensed Contractor the cost of which is paid for from the Permit Holders Refundable Deposit Account or by Permit Holder if the Refundable Deposit is insufficient or does not exist; and/or

b. Suspend or revoke the Licensed Contractor's Public Works Construction License pursuant to the Public works Construction Bylaw; and/or

c. Assert the Town's legal remedies.

Note: [A copy of Diagram No. 1 - Bituminous Concrete Trench Patch Detail Excavation Method and Diagram No. 2 - Bituminous Concrete Trench Patch Detail Cold Planing Method are incorporated by reference herein and are available for inspection at the Office of the Town Clerk, Stoneham Town Hall, 35 Central Street, Stoneham, Massachusetts.]

STREET OPENING BYLAW
ATTACHMENT- FEE SCHEDULE

Application Fee - \$50.00

Inspectional services after Normal Working Hours - \$50.00 per hour

Nominal Schedule of Refundable Deposits for Street Opening Work in Public Ways

To open to center of Public Way	\$ 300.00 each opening
To open across the Public Way	\$ 600.00 each opening
To open to center of state highway	\$ 1500.00 each opening
To open across a state highway	\$ 2000.00 each opening
To open trench in unpaved shoulder	\$10.00 per linear foot (parallel to street)
To open trench in paved Public Way	\$25.00 per linear foot (parallel to street)
Curb cut for a private driveway	\$ 200.00
Curb cut for a subdivision street	\$ 500.00
Newly Paved Roads (Infra-Red or equivalent)	
To center of Public Way	\$ 700.00
Across the Public Way	\$ 1400.00
To open a sidewalk (includes 3 sq. yds.)	
Bituminous concrete sidewalk	\$ 300.00
Concrete sidewalk	\$ 600.00
To excavate a sidewalk (over 3 sq. yds.)	
Bituminous concrete sidewalk	\$ 15.00 per sq. yd
Concrete sidewalk	\$ 25.00 per sq. yd.

Note: The actual amount of each Refundable Deposit shall be reasonably determined by the Awarding Authority to be sufficient to secure Applicant's performance under this By-law.

Sec. 13-16. Contractor's Construction License.**Sec. 13-16.1 Introduction.**

From time to time, it is necessary to excavate a Public Way in order to install, repair, or remove utilities or install or realign a driveway with the possibility of removing curbing and/or fencing. It is desirable that persons working in or under a Public Way have the necessary skills to perform this work in a competent manner so that Public Ways are maintained to protect the health and safety of all persons traveling on them. This Bylaw is adopted under authority granted by G.L. c. 40, Sec. 21.

Sec. 13-16.2 Definitions.

Awarding Authority - The Superintendent of Public Works or his designee(s) to whom the Superintendent has delegated specific authority in writing, so that the process of permit-granting, inspection, and administration will proceed expeditiously, is hereby granted the authority to exercise the powers granted by this Bylaw.

Department of Public Works - The municipal agency generally responsible for the repair and maintenance of Public ways within the municipality.

License Applicant - Any person or entity in the general contracting business, qualified to do business in the Commonwealth of Massachusetts who wishes to perform Street Opening Work in a Public Way either as a Permit Holder or as agent for one or more Permit Holders.

License Application Fee - An annual \$50.00 non-refundable fee payable in cash or by check made payable to the Awarding Authority each time a License Application or renewal is filed.

Licensed Contractor - A contractor who holds a current and valid Public Works Construction License issued by the Awarding Authority.

Permit Holder - An "Applicant" as defined in the Street Opening Bylaw to whom a Street Opening Permit has been granted.

Public Way - Any road, including such appurtenances as berms, curbs, drains, sewers, water mains, sidewalks and paved and unpaved shoulders within the public right-of-way to which the public has access and the Town is responsible for maintaining. Also referred to as a Street.

Public Works Contractors Construction License - That license required of certain persons or entities who wish to perform Street Opening Work in Public Ways.

Street Opening Permit - A permit granted pursuant to the Street Opening Bylaw conferring permission to do Street Opening Work in a Public Way.

Street Opening Work - Any cutting, excavating, compacting, construction, repair or other disturbance in or under a Public Way together with restoration of the Public Way in accordance with the 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 G.L. c. 166 Sec. 27.

Violation - The failure of the Licensed Contractor, its employees, agents and subcontractors to (i) comply fully with any or all provisions of this Bylaw, the Street Opening Bylaw, and any Street Opening Permits or supplemental instructions, the Town's General Bylaws or other applicable law, or (ii) to keep its Certificate of Insurance in full force and effect.

Sec. 13-16.3 General.

No person or entity may become a Licensed Contractor unless it shall:

- a. be in the general contracting business, and
- b. be qualified to do business in the Commonwealth, and
- c. be qualified, in the reasonable judgment of the Awarding Authority, by experience, training of personnel, financial resources, and previously demonstrated, satisfactory performance of the entity, and/or those individuals who control it, to perform Street Opening Work in Public Ways in the municipality, and
- d. have completed the licensing process described below.

A License Applicant may demonstrate its compliance with (3) above by presenting to the Awarding Authority evidence that it holds a current "Pre-Qualification Rating" issued by the Massachusetts Department of Public Works pursuant to 720 CMR 5.00 which, in the reasonable judgment of the Awarding Authority, is sufficient in terms of Class of Work, Maximum Capacity Rating and Single Capacity Rating (all as defined in 720 CMR 5.00) to demonstrate sufficient capacity to perform anticipated Street Opening Work. A License Applicant whose Public Works Contractors Construction License has been suspended or revoked in the three year period preceding the date of the current application may not demonstrate compliance with (3) above using this method.

Public Works Contractors Construction Licenses are valid from the date issued until December 31 of the year in which issued unless sooner suspended or revoked. A Public Works Contractors Construction License must be renewed each year.

Sec. 13-16.4 Application Procedure.

The License Applicant shall file on forms designated by the Awarding Authority a completed and signed application at the offices of the Awarding Authority (with a copy delivered to the Department of Public Works). The License Application shall be accompanied by any and all certificates, certificates of insurance demonstrating compliance

with (5) hereafter, and other items specified in the Application or reasonably requested by the Awarding Authority. It shall also be accompanied either by evidence that License Applicant is currently and appropriately "pre-qualified" pursuant to 720 CMR 5.00 or by such evidence of License Applicant's compliance with the provisions of (3), above, as Awarding Authority reasonably may require. The License Application shall also be accompanied by the License Application Fee.

The Awarding Authority shall make a prompt determination on the License Application in accordance with the standards set out in (b) above.

If the License Application is favorably considered, a Public Works Contractors Construction License shall be promptly issued. If the License Application is not favorably considered, the Awarding Authority shall communicate in writing to License Applicant the reasons its application was not favorably considered. The Awarding Authority may establish streamlined procedures for renewal applications.

Sec. 13-16.5 Insurance/Indemnification.

Each Licensed Contractor shall acquire and continually maintain while licensed hereunder liability insurance coverage on all personnel and equipment to be used in the Street Opening Work which insurance is to 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 operators, independent contractors, complete operations, XCU hazards, broad form property damage and personal injury.

General aggregate:	\$2,00,000
Products and complete operations:	
Aggregate	\$2,000,000
Each occurrence	\$1,000,000

Automobile Liability Insurance - Covers owned, non-owned and hired vehicles.

Bodily Injury Liability	\$ 500,000 each person
	\$1,000,000 each accident
Property Damage Liability	\$ 250,000. each accident

Each Licensed Contractor agrees to maintain at the Licensee's expense all insurance required by law for its employees, including disability, workers compensation and unemployment compensation.

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 Awarding Authority shall be listed as an additional insured on the Certificate of insurance to be

provided by the Applicant. Evidence of such insurance shall be supplied to the Town at least once in each calendar year and as may be otherwise required by the Awarding Authority. The Awarding Authority is not responsible for any loss or damage whatsoever to the property of the Licensee.

Applicant, by its signature in the Application For A Public Contractor Construction License, acknowledging the benefit conveyed to Applicant by the receipt of the Public Works Contractors Construction License, shall defend, indemnify and hold harmless the Town of Stoneham, its Board of Selectmen and all of its officers, employees and agents of and from any and all claims, demands, suits or other proceedings and from any and all liabilities arising or claimed to have arisen out of or to be in any way related to: (i) the Application, (ii) any Street Opening Work by the Applicant or (iii) any action or failure to act by Applicant, its officers, employees, agents or contractors in connection with any work performed or failed to be performed by or on behalf of Applicant in or under any public way in the Town of Stoneham.

Sec. 13-16.6 Suspension and Revocation.

The Awarding Authority, if it believes a Violation has occurred, can suspend immediately for up to 21 days a Public Works Contractors Construction License by communicating such suspension to Licensed Contractor or any of its representatives at the job site.

The Awarding Authority may revoke a Public Works Contractors Construction License granted hereunder after notice and hearing if it shall reasonably determine that a violation of this Bylaw has occurred. A Licensed Contractor shall be given not less than five days prior written notice of the time and place of the hearing and shall have the opportunity at the hearing to present evidence. No Public Works Contractor whose license has been revoked may re-apply for a Public Works Contractors Construction License during the twelve month period following a revocation. Any person aggrieved by the decision of the Awarding Authority may appeal such decision to the appropriate court of competent jurisdiction.