

# 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.

### Section

Sec. 13-1.	Excavations.
Sec. 13-2.	Obstructions or dumping generally.
Sec. 13-3.	Display or sale of goods on sidewalks.
Sec. 13-4.	Playing, etc., in public way.
Sec. 13-5.	Shooting missiles in public way.
Sec. 13-6.	Spilling contents of vehicle onto street.
Sec. 13-7.	Placement of materials in erecting, repairing or removing buildings.
Sec. 13-8.	Standing so as to obstruct passage.
Sec. 13-9.	Erection or maintenance of canopies, awnings, etc.
Sec. 13-10.	Parades and processions.
Sec. 13-11A.	Discharge of ground or roof water into the public way.
Sec. 13-11B.	Snow removal—From certain sidewalks.
Sec. 13-12.	Same—Deposit of snow on certain sidewalks or streets.
Sec. 13-13.	Printed Material Vending Machines.
Sec. 13-13.1	Definitions.
Sec. 13-13.2	Certificate of Compliance.
Sec. 13-13.3	Installation.
Sec. 13-13.4	Maintenance.
Sec. 13-13.5	Enforcement.
Sec. 13-13.6	Abandonment.
Sec. 13-13.7	Fees.
Sec. 13-13.8	Effect on other Laws.
Sec. 13-13.9	Severability.
Sec. 13-13.10	Initial Application Acceptance Date.
Sec. 13-13.11	Effective Date.
Sec. 13-14.	Temporary repairs for certain private ways.
Sec. 13-15.	Street Opening Bylaw.

Sec. 13-15.1	Introduction.
Sec. 13-15.2	Definitions.
Sec. 13-15.3	General.
Sec. 13-15.4	Application procedure.
Sec. 13-15.5	Refundable deposit and account.
Sec. 13-15.6	Fee and deposit changes; municipal exemption.
Sec. 13-15.7	Emergency Repair Procedure.
Sec. 13-15.8	Insurance.
Sec. 13-15.9	Licensed Contractors.
Sec. 13-15.10	Terms of the Street Opening Permit.
Sec. 13-15.11	Required Construction Techniques.
Sec. 13-15.12	Suspension and Revocation.
Sec. 13-15.13	Remedies.
Sec. 13-16	Contractors Construction License.
Sec. 13-16.1	Introduction.
Sec. 13-16.2	Definitions.
Sec. 13-16.3	General.
Sec. 13-16.4	Application Procedure.
Sec. 13-16.5	Insurance/Indemnification.
Sec. 13-16.6	Suspension and Revocation.

### **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. 13-11A. Discharge of ground or roof water into the public way.**

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. (**Editorial Note:** This section was previously found in Chapter 11A Stormwater as section 11A.3.4(c))

**Sec. 13-11B. 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 a 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**

### **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.