

## CHAPTER 11

### Streets, Sidewalks and Public Property

#### Article 1 Snow Removal

- Sec. 11-1-10 Snow removal required
- Sec. 11-1-20 Applicability of provisions
- Sec. 11-1-30 Legal remedy
- Sec. 11-1-40 Deposits on public ways prohibited
- Sec. 11-1-50 Snowplows

#### Article 2 Excavations

- Sec. 11-2-10 Permit required
- Sec. 11-2-20 Permit application
- Sec. 11-2-30 General regulations
- Sec. 11-2-40 Backfilling
- Sec. 11-2-50 Restoration of surface
- Sec. 11-2-60 Fees
- Sec. 11-2-70 Contractor's license required
- Sec. 11-2-80 Maps of underground facilities

#### Article 3 Encroachments and Obstructions

- Sec. 11-3-10 Encroachments and obstructions prohibited
- Sec. 11-3-20 Application for occupation of street
- Sec. 11-3-30 Term of permit; renewal and revocation
- Sec. 11-3-40 Surety bond required
- Sec. 11-3-50 Protection of pedestrian and vehicular traffic
- Sec. 11-3-60 Adequate drainage and access to fire hydrants required
- Sec. 11-3-70 Permittee liable in case of nonconformance
- Sec. 11-3-80 Permit application for encroachment
- Sec. 11-3-90 Investigation; fee; revocation of permit
- Sec. 11-3-100 Notice to remove encroachment
- Sec. 11-3-110 Noncompliance with notice
- Sec. 11-3-120 License agreements

## **ARTICLE 1**

### **Snow Removal**

#### **Sec. 11-1-10. Snow removal required.**

It is unlawful for any owner or occupant of any lot, block or parcel of ground within the Town, or for any agent in charge of such property, to allow any snow or ice to accumulate or remain upon any sidewalk or pathway alongside such property longer than twenty-four (24) hours from the time of the last accretion of such snow or ice. (Prior code 11-1)

#### **Sec. 11-1-20. Applicability of provisions.**

(a) The provisions of this Article shall be applicable to all sidewalks and public pathways within the Town.

(b) It is determined that the accumulation of snow and ice on the sidewalks and public pathways adjacent to the streets described in Subsection (a) above interferes with the free movement of pedestrian and vehicular traffic within the Town to a substantially greater degree than the accumulation of snow and ice on other sidewalks and public pathways within the Town. (Prior code 11-2)

#### **Sec. 11-1-30. Legal remedy.**

If any person allows snow or ice to accumulate or remain upon any sidewalk or public pathways, as provided in this Article, the Town may cause such snow or ice to be removed and may assess the cost thereof as a lien against the adjoining property or may bring an action in county court against the owner of such property to recover the cost thereof. (Prior code 11-3)

#### **Sec. 11-1-40. Deposits on public ways prohibited.**

(a) It is unlawful for any person to litter, track or deposit or cause to be littered, tracked or deposited, sand, gravel, rocks, mud, dirt, snow, ice or any other debris or material upon any street, sidewalk, alley or public place, or any portion thereof.

(b) The provisions of this Section shall not be applicable:

(1) Within the immediate area of any construction, maintenance or repair project of any street or alley or any water main, sewer main, electricity main, gas line, telephone line or any appurtenances thereto;

(2) To deposits of sand, dirt or material necessary for the protection of the public safety; and

(3) To public areas designated for the dumping or depositing of said materials. (Ord. 15-2008 §1)

**Sec. 11-1-50. Snowplows.**

Snowplow operators shall not deposit snow or ice on any private property without the written permission of the property owner to which the snow will be deposited and written approval from the Town. (Ord. 15-2008 §1)

**ARTICLE 2**

**Excavations**

**Sec. 11-2-10. Permit required.**

It is unlawful for any person, other than an officer or employee of the Town in the course of his or her employment, to make, cause or permit to be made any excavation or opening in or under the surface of any street, alley, sidewalk, road or other public place within the Town without first obtaining a permit therefor, or to make any such excavation in any manner which does not comply with the permit issued therefor. Each and every opening in a block of a street or sidewalk, as defined above, shall be considered an excavation, and each lateral from each original opening shall be considered an additional excavation for the purposes of this Article. (Prior code 11-21)

**Sec. 11-2-20. Permit application.**

Any person desiring a permit to excavate in any street, alley, sidewalk or road area shall make application therefor to the Public Works Director upon forms furnished for that purpose. Such application shall state the exact nature and location of the proposed work and the time required for its completion. No permit shall be issued except on order of the Town Administrator. (Prior code 11-22; Ord. 3-1996 §1; Ord. 7-2007 §1; Ord. 15-2008 §1)

**Sec. 11-2-30. General regulations.**

(a) The opening which may be made in a street at any one (1) time shall be no greater than will permit the reasonable use of such street by the public and will not cause substantial hazards in said use.

(b) All utility facilities shall be exposed sufficiently ahead of trench excavation work to avoid damage to those facilities and to permit their relocation, if necessary.

(c) Pipe drains, pipe culverts or other facilities encountered shall be protected by the permittee.

(d) Monuments of concrete, iron or other lasting material set for the purpose of locating or preserving the lines of any street or property subdivision, a precise survey reference point or a permanent survey bench mark within the Town shall not be removed, disturbed or caused to be removed or disturbed unless permission to do so is first obtained in writing from the Public Works Director. Permission shall be granted only upon condition that the permittee shall pay all expenses incident to the proper replacement of the monument.

(e) When work performed by the permittee interferes with the established drainage system of any street, provision shall be made by the permittee to provide proper drainage to the satisfaction of the Public Works Director.

(f) All excess excavated material shall be removed from the site by the permittee after the work has been completed. When any earth, gravel or other excavated material is caused to roll, flow or wash upon any street, the permittee shall cause the same to be removed from the street within four (4) hours after deposit. In the event the earth, gravel or other excavated material so deposited is not removed, the Public Works Director shall cause such removal and the cost incurred shall be paid by the permittee.

(g) Every permittee shall provide adequate warning lights for each opening during the night. Every permittee shall provide a suitable barricade for each opening. Additional safety regulations may be prescribed by the Public Works Director. Whenever any person fails to provide or maintain adequate safety devices, such devices may be installed and maintained by the Town and the amount of the cost thereof shall be paid by the holder of the permit. No person shall willfully move, remove, injure, destroy or extinguish any barrier, warning light, sign or notice erected, placed or posted in accordance with this Subsection.

(h) Access to private driveways shall be provided except during working hours when construction operations prohibit provision of such access. Free access must be provided at all times to fire hydrants.

(i) Excavated materials shall be laid compactly along the side of the trench in a manner so as to cause as little inconvenience as possible to public travel. In order to expedite flow of traffic or to abate a dirt or dust nuisance, the Public Works Director may require the permittee to provide toe boards or bins; and if the excavated area is muddy and causes inconvenience to pedestrians, temporary wooden plank walks shall be installed by the permittee as directed by the Public Works Director.

(j) Work authorized by a permit shall be performed between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless the permittee obtains written consent from the Building Official to do the work earlier or later than the stated hours or on a weekend. Except in the case of an emergency, no permit authorized in this Article shall be issued so as to allow a street opening or pavement cut between October 15 and April 15.

(k) In granting any permit, the Public Works Director may attach such other conditions as may be reasonably necessary to prevent damage to public or private property or to prevent the operation in a manner likely to create a nuisance. Such conditions may include, but shall not be limited to, the following:

- (1) Restrictions as to the size and type of equipment;
- (2) Designation of routes upon which materials may be transported;
- (3) The place and manner of disposal of excavated materials;

- (4) Requirements as to the cleaning of streets, prevention of noise and other results offensive or injurious to the neighborhood, the general public or any portion thereof;
- (5) Regulations as to the use of streets in the course of the work; and
- (6) Minimum depth of any service line shall be eighteen (18) inches below grade.

(1) Backhoes, cranes or other heavy equipment with outriggers must be equipped with rubber pads on the outrigger before it is allowed to dig on said street or public right-of-way. Special provisions can be made by the Public Works Director in the event of emergencies or where special circumstances exist. (Prior code 11-23)

**Sec. 11-2-40. Backfilling.**

All pavement cuts, openings and excavations shall be backfilled, surfaced and restored, as follows:

(1) Backfilling under paved streets shall be made in accordance with the following specifications:

a. Materials. Materials shall be granular, consisting essentially of sand, gravel, rock, slag, disintegrated granite or a combination of such materials. It shall be a well-graded mixture containing sufficient soil mortar, crusher dust or other binding material which, when placed and compacted, will result in a firm, stable foundation. Material composed of uniformly sized particles or which contains pockets of excessively fine or excessively coarse material will not be acceptable. The material shall meet the following gradation:

<i>Sieve Designation</i>	<i>Percent by Weight Passing</i>
2½-inch	100
2-inch	95—100
No. 4	30—60
No. 200	5—15

All material passing the No. 40 sieve shall have a liquid limit of not over thirty-five (35) and a plasticity index of not over six (6). Test for liquid limit and plasticity index shall be in accordance with A.A.S.H.O. designations T-89 and T-91, respectively.

b. Construction methods. The material shall be deposited in layers not exceeding eight (8) inches in thickness prior to compacting. Each layer shall be compacted with suitable mechanical tamping equipment. It shall be compacted sufficiently to obtain a field density which is at least ninety percent (90%) of theoretical density as determined by A.A.S.H.O. Method T-99. Field density shall be determined by A.A.S.H.O. Method T-147.

(2) Backfilling of unpaved streets shall be made in accordance with the following specifications:

a. Materials. The bottom six (6) inches and the top twelve (12) inches of backfill shall be the same type of material specified in Subparagraph (1)a above. The excavated material may be used for the remainder of the backfill, provided that no materials greater than six (6) inches in diameter shall be used for backfill.

b. Construction methods. The material shall be deposited in layers not exceeding eighteen (18) inches in thickness prior to compacting. Each layer shall be compacted with suitable mechanical tamping equipment. It shall be compacted sufficiently to obtain a field density which is at least ninety percent (90%) of theoretical density as determined by A.A.S.H.O. Method T-99. Field density shall be determined by A.A.S.H.O. Method T-147.

(3) Excavations in unpaved public places not used as vehicular ways may be backfilled with earth and shall be compacted in lifts not to exceed eighteen (18) inches in depth by loose measurement in a manner set forth by the Public Works Director. All landscaped areas shall be returned to their original condition. (Prior code 11-24; Ord. 15-2008 §1)

**Sec. 11-2-50. Restoration of surface.**

(a) The cut and restoration of oil and chip surfaces shall be made in the following manner:

(1) The initial pavement cut shall be made a minimum of one (1) foot wider than the trench on all sides of the trench, a minimum of three (3) feet wide, and the cut in the paving shall be made with a power circular saw or cutter.

(2) The oil and chip surface shall match the quality and appearance of the existing surface surrounding the excavation, and shall be sealed with a chemical as approved by the Public Works Director.

(b) If the Public Works Director finds that paving surfaces adjacent to the street opening may be damaged where trenches are made parallel to the street, where a number of cross trenches are laid in close proximity to one another, or where the equipment used may cause such damage, the permittee shall be required to pay the cost of resurfacing. The cost of resurfacing shall be charged on a time and materials basis and payment shall be made prior to the issuance of any other permit.

(c) If any settlement in a restored area occurs within a period of two (2) years from the date of completion of the permanent restoration, any expense incurred by the Town in correcting such settlement shall be paid by the permittee, unless proof is submitted by the permittee satisfactory to the Public Works Director that the settlement was not due to defective backfilling. Failure to backfill property may be grounds for revocation of the permittee's contractor's license.

(d) Upon approval by the Town Council, the Town may exercise the option of repairing street cuts and making backfills for the permittee, and requiring the permittee to pay the Town for said cost of restoration in an amount computed by the Public Works Director in accordance with the rates set forth in Section 11-2-60. (Prior code 11-25; Ord. 15-2008 §1)

**Sec. 11-2-60. Fees.**

(a) Upon receipt of a properly completed application, the Public Works Director shall determine the amount of the fee which shall be paid by the holder of any permit under this Article, which fee shall cover the cost of restoring the street involved in such work. The fees to be charged for permits shall be as follows:

(1) For replacement of paving with oil and chip surface, shall be as established by resolution of the Town Council;

(2) Permit fee for dirt cuts, shall be as established by resolution of the Town Council;

(3) Backfilling, if done by the Town, shall be charged time and material to the permittee;

(4) Saw cuts done by the Town, shall be as established by resolution of the Town Council; and

(5) Any rework done by the Town shall be charged at time and material.

(b) The fee shall be in the form of a certified treasurer's or cashier's check, cash or other, if approved by the Town Clerk.

(c) If any fee is less than sufficient to pay all costs, the holder of any permit shall, upon demand, pay to the Town an amount equal to the deficiency. If the permittee fails or refuses to pay such deficiency, the Town may institute an action to recover the same in any court of competent jurisdiction. Until such deficiency is paid in full, no additional permits shall be issued to such permittee.

(d) Whenever any person or company anticipates more than five (5) street openings or excavations per year, such person may post a single deposit for the entire year or part thereof to cover the cost of any and all such work. The amount of such deposit shall be determined by the Town Council. (Prior code 11-26; Ord. 15-2008 §1)

**Sec. 11-2-70. Contractor's license required.**

No contractor as defined in Chapter 6 of this Code shall be issued a permit under this Article without first obtaining a Town contractor's license from the Town pursuant to Chapter 6. (Prior code 11-27)

**Sec. 11-2-80. Maps of underground facilities.**

(a) By March 1 of each year, every person owning, using, controlling or having an interest in pipes, conduits, ducts or other structures under the surface of any street used for the purpose of supplying or conveying gas, electricity, communication impulses, water or steam to or from the Town, to or from its inhabitants, or for any other purpose, shall file with the Public Works Director a corrected map or set of maps, drawn to the designated scale, showing such installations, including all such installations made during the previous year; provided, however, that if no further installations have been made during the previous year, there may be filed with the Public Works Director a written statement to that effect.

(b) The owner agrees upon reasonable notice from the Town or any permittee to accurately locate its installations upon the ground as shown on said maps. (Prior code 11-28; Ord. 7-2007 §2; Ord. 15-2008 §1)

### **ARTICLE 3**

#### **Encroachments and Obstructions**

##### **Sec. 11-3-10. Encroachments and obstructions prohibited.**

No encroachment or obstruction whatever, other than that provided by law or by this Article or some other Town ordinance, shall be made or placed upon any street, alley or other public place within the Town. An *encroachment* includes any building, structure, stand, Dumpster, storage pod, portable toilet, cart, fence, sign, barrier, post, hedge or other material or substance. An *obstruction* includes any thing which prevents passage or renders passage unreasonably inconvenient or hazardous. (Ord. 4 §1, 2009)

##### **Sec. 11-3-20. Application for occupation of street.**

(a) Any person desiring to occupy any portion of a street, alley or other public place in connection with the erection, construction, remodeling or demolishing of any building or improvement on property abutting or adjacent thereto shall make written application to the Town Administrator on a form prepared and provided by the Town. The application shall give the following information:

- (1) The applicant's name, address and telephone number.
- (2) The street, alley or other public place affected and the amount thereof.
- (3) The address of the property on which the work is to be done.
- (4) The reason for occupying the street.
- (5) The amount of time the permit is needed.

(b) The applicant shall agree, in making the application, to be bound by all of the provisions of this Article. (Ord. 4 §1, 2009)

##### **Sec. 11-3-30. Term of permit; renewal and revocation.**

No permit required under this Article shall be issued for a period of more than ninety (90) days, provided that the Town Administrator may renew any such permit for additional ninety-day periods upon written application. Any permit issued under this Article may be revoked by the Town Administrator if the holder thereof violates any of the provisions of this Article, if the work allowed by the permit unduly interferes with pedestrian or vehicular traffic or for any other reason deemed sufficient by the Town Administrator. (Ord. 4 §1, 2009)

**Sec. 11-3-40. Surety bond required.**

Any person applying for a permit under this Article shall file with the Town an acceptable corporate surety bond conditioned for the faithful performance of the work in accordance with the rules, regulations and ordinances of the Town and the terms of the permit, and indemnifying and saving harmless the Town against and from any and all damages or claims for damages, loss, costs and charges or expenses that may be brought against it by any person for or on account of injury to persons or property resulting from or occasioned by reason of the occupation of the street, alley or public place. (Ord. 4 §1, 2009)

**Sec. 11-3-50. Protection of pedestrian and vehicular traffic.**

The holder of any permit issued under this Article shall provide whatever fencing the Town Administrator requires to protect pedestrian and vehicular traffic on the abutting public property. If required, the permit holder shall build and maintain a good and substantial protected walkway around the obstruction. The permit holder shall adequately light and mark the obstruction so as to protect pedestrian and vehicular traffic. (Ord. 4 §1, 2009)

**Sec. 11-3-60. Adequate drainage and access to fire hydrants required.**

Any person holding a permit issued under this Article shall take such measures as may be required to ensure that adequate drainage is maintained around the obstruction. All fire hydrants shall be kept clear of all building materials, rubbish and other obstructions, and easy access to such hydrants shall be provided and kept clear at all times. Upon completion of the work, the permit holder shall remove all obstructions, materials, debris and rubbish within ten (10) days. (Ord. 4 §1, 2009)

**Sec. 11-3-70. Permittee liable in case of nonconformance.**

In the event any permit holder fails to do anything required of him or her hereunder, the Town Administrator may cause the same to be done, and the cost of the same shall be charged to the holder of the permit and such holder shall be liable therefor. (Ord. 4 §1, 2009)

**Sec. 11-3-80. Permit application for encroachment.**

Any person desiring to erect a building, fence, barrier, post or other obstructions or encroachments upon any street, avenue, alley, sidewalk, highway, public right-of-way or other public ground within the Town shall file a written application for a permit therefor upon a form prepared and provided by the Town. Said application shall state therein the following:

- (1) The applicant's name, address and telephone number.
- (2) The location of the proposed encroachment, obstruction or structure.
- (3) The type of encroachment, obstruction or other structure.
- (4) The purpose of the proposed encroachment, obstruction or other structure.
- (5) That the applicant agrees to abide by the provisions of this Article. (Ord. 4 §1, 2009)

**Sec. 11-3-90. Investigation; fee, revocation of permit.**

(a) The application provided for in Section 11-3-80 above shall be made to the Town Administrator. The Town Administrator, or his or her authorized agent, shall make an investigation of the information contained in the application and, prior to the issuance of a permit, shall determine that the proposed encroachment, obstruction or other structure does not constitute a nuisance, destroy or impair the use of the right-of-way by the public or constitute a traffic hazard. The encroachment applicant shall provide overwhelming evidence that the requested encroachment cannot be reasonably accommodated on the applicant's own property and outside of the right-of-way. The requested encroachment shall not be the result of a situation created by the applicant or the applicant's agents. The applicant affirmatively shall demonstrate with evidence that a hardship exists necessitating the encroachment and that the hardship was not created by the applicant or his or her agents. No permit shall be issued where the above conditions are found to exist. At the time of issuance of a permit hereunder, the applicant shall pay a fee set by the Town. Any such permit so issued may be revoked by the Town Administrator at any time the conditions above referred to are found to exist, or when it is determined that the property upon which the encroachment, obstruction or structure exists is required for use by the public.

(b) The applicant shall execute an agreement, in a form acceptable to the Town, indemnifying the Town from any and all damages to property or persons resulting from the encroachment.

(c) The applicant shall obtain and provide the Town with a copy of an umbrella liability policy covering the encroachment area and in limits of no less than one million dollars (\$1,000,000.00). Such policy shall be renewed by the applicant for the life of the encroachment, and a copy of each new policy shall be furnished to the Town upon the anniversary date of the license to encroach. Failure to provide the policy as required shall automatically nullify the license to encroach without necessity of further notice and shall require the applicant's removal of the encroachment at the applicant's sole expense. Should the applicant fail to remove the encroachment within a reasonable time, the Town may declare the encroachment a public nuisance, undertake removal and attach a lien to the applicant's property for the costs of the removal. (Ord. 4 §1, 2009)

**Sec. 11-3-100. Notice to remove encroachment.**

(a) Whenever any encroachment, obstruction or structure is made or located contrary to the terms of the permit therefor or without a permit or at such time as the permit is revoked as above provided for, the Town Administrator or his or her authorized agent shall give notice to the person who made or located such encroachment, obstruction or structure or caused or permitted the same to be done, or who owns or controls the premises with which such encroachment, obstruction or structure is connected, to remove such encroachment, obstruction or other structure. The same shall be removed within ten (10) days after notice.

(b) It shall be unlawful for any person to continue any encroachment, obstruction or other structure for a period of ten (10) days after receipt of the notice provided for above. (Ord. 4 §1, 2009)

**Sec. 11-3-110. Noncompliance with notice.**

(a) In case any notice given under Section 11-3-100 above shall not be complied with, the Town Administrator or his or her authorized agent is hereby authorized and empowered to cause the removal of the encroachment, obstruction or structure.

(b) Upon completion of such removal, the Town Administrator or his or her authorized agent shall certify to the Town Clerk the cost of said removal, and the Town Clerk shall thereupon, by personal delivery or certified mail addressed to the owner of the premises with which the obstruction is connected, give notice of such removal and the cost incurred for such work, together with a statement that the cost of the work will be assessed against the owner's lot, tract or parcel of land if such cost is not paid to the Town within thirty (30) days after mailing of such notice.

(c) If such person fails to make payment within thirty (30) days, the Town shall make assessment by resolution against the lot, tract or parcel of land in connection with which the encroachment, obstruction or structure was made, and such assessment shall be certified to the County Treasurer for the purpose of having the same placed upon the tax rolls and collected in the same manner as general taxes are collected. (Ord. 4 §1, 2009)

**Sec. 11-3-120. License agreements.**

The Town Council, by ordinance, may enter into a long-term license agreement on a public right-of-way or a public easement for encroachments that are permanent in nature, upon a finding that the standards for a revocable permit set forth in this Article have been met, the indemnification and insurance provisions of Section 11-3-90 above are complied with, and there will be no public need for the permit area during the license period. The Town Council shall add any conditions and terms to the license agreement to ensure that the Town's real property interests are maintained and public improvements are fully restored upon revocation, termination or expiration of the license agreement. (Ord. 4 §1, 2009)