

**TOWN OF HARPSWELL
STREET OPENING ORDINANCE**

Enacted March 8, 2003

Section I. Purpose.

The purpose of this ordinance is to regulate the use of public right-of-ways owned or controlled by the Town in the interest of public safety and convenience and the operation and protection of public infrastructure. Excavation and restoration standards are required to preserve the integrity, operational safety and function of public right-of-ways owned or controlled by the Town.

Section II. Definitions.

The following words and phrases, when used in this ordinance, shall have the following meanings respectively ascribed to them:

Town shall mean the Town of Harpswell, Maine.

Applicant shall mean a person applying for a permit required by this ordinance.

Code Enforcement Officer shall mean the duly appointed Code Enforcement Officer of the Town or his/her designee.

Emergency shall mean any event that may threaten public health or safety where action is necessary to prevent personal injury, death or the loss or disruption of an existing vital service. The burden of proof of such emergency rests with the applicant.

Excavation shall mean any opening in the surface of a public place 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 pipe, pipeline, tube, main, service, trap, vent, vault, 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.

Newly constructed, reconstructed or repaved streets shall mean any street which has been newly constructed, reconstructed or repaved within the past five (5) years.

Permit Holder shall mean a person who has obtained a permit as required by this ordinance.

Person shall mean an individual, partnership, municipality, state, county, political subdivision, utility, joint venture or corporation and includes the employer of an individual.

Public place shall mean the entire width between the right of way lines of every street, way or place of whatever nature when any part thereof is owned or controlled by the Town and dedicated to public use for purposes of traffic. This term includes any state highway or state aid highway that is maintained by the Town.

Road Commissioner shall mean the duly elected Road Commissioner of the Town or his/her designee.

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

Utility shall mean a private company, corporation or quasi-municipal corporation under the direction and control of the Public Utilities Commission.

Section III. Street Opening Permit Required.

A. Permit Required. No person, except utilities performing emergency excavations, shall make any excavation in any public place or fill any excavation in any public place without first obtaining an opening permit from the Code Enforcement Officer. All such excavations are governed by 23 M.R.S.A. §§ 3351 through 3360-A, as may be amended from time to time, and this ordinance.

B. Excavation Site. Prior to any excavation, applicants shall pre-mark the proposed area of excavation in white paint, or as otherwise established by Dig Safe (*see* Maine's underground facility damage prevention statute, 23 M.R.S.A § 3360-A), prior to notifying Dig Safe.

C. Application Required. No opening permit shall be issued unless a written application on a form provided by the Town for the issuance of an opening permit is submitted to the Code Enforcement Officer. The written application shall state the name, address and 24 hour emergency phone number of the applicant; the name of the public place to be excavated and street number; the beginning date of proposed work; the type of work to be done; the purpose of the excavation; the method of excavation; signatures of utility approval; and a diagram of the location and size of the cuts to be made as part of the planned excavation on the form. The applicant must agree to comply with the Dig Safe law, 23 M.R.S.A. § 3360-A, as may be amended from time to time, and any separate State of Maine highway opening permit required by 23 M.R.S.A. § 54, as may be amended from time to time.

Utilities, although having to submit an application for a permit to the Code Enforcement Officer, may contact other utilities involved by phone and the authorized person doing so shall sign the application in the appropriate place. All applications shall be presented to the Code Enforcement Officer for the issuance of an opening permit within thirty (30) days from the date of the last utility approval. After the expiration of this thirty (30) day period, such application shall become null and void and shall have to be renewed.

D. Permit Fee/Deposit for Resurfacing. A fee as specified in the *Street Opening Fee Schedule* established by the Board of Selectmen shall be paid for each issuance and for each renewal of a street opening permit. The applicant shall deposit with the Town a resurfacing fee to cover the cost of the work to be performed. Any resurfacing fee shall not exceed the reasonable cost of replacement of the excavated pavement and base material. When any proposed excavation is to be made in any paved public place and the pavement is laid on a concrete base, the extra width of such excavation required under Section VII(A) of this ordinance shall be charged to the person applying for the permit.

All such fees paid to the Town must be regularly accounted for in the Town Treasurer's report to the Board of Selectmen and constitute a special fund for the repaving of excavations, repair of any roadway adjacent to the excavations and inspections. When such excavations are repaired by the Town, the cost must be charged to the special fund.

E. Proof of Insurance. Applicants for opening permits shall supply to the Code Enforcement Officer a certificate of insurance listing the Town of Harpswell as an additionally named insured. Coverage shall be for not less than \$400,000, which amount will be increased from time to time, but only if required to meet the minimum provisions of the Maine Tort Claims Act as it may be amended.

F. Proof of Right, Title or Interest. Applicants for opening permits shall supply to the Code Enforcement Officer written evidence in the form of an unqualified real estate title opinion from an attorney licensed to practice in Maine of the legal interest of the property owner to engage in the proposed work to be done in the public place. Such title opinion shall address not only the applicant's ownership rights but also the right of the applicant to install any facility in, upon, along, across, under, or over the public place. To the extent that the proposed work to be done in the public place is on property that is not owned in fee by the Town of Harpswell, the applicant shall provide written evidence from a person who is qualified by experience and training to opine on excavation matters to the Code Enforcement Officer that the excavation shall not unreasonably interfere with any Town obligation to keep the public place safe and convenient for travel. The Code Enforcement Officer shall submit all such evidence to the Town Attorney for review and approval.

To the extent that such legal review indicates that the proposed work to be done requires that the applicant have an easement in perpetuity from the Town of Harpswell for the construction, operation, replacement and maintenance of the facility, the applicant must first seek and obtain the required easement from Town meeting. Factors that may be considered by Town meeting in determining whether to grant such an easement include, but are not limited to, the following:

- (i) the proposed work to be done;
- (ii) the proposed method of excavation;
- (iii) the proposed method of installation of the facility;
- (iv) the proposed method of maintenance of the facility;
- (v) the life span of the facility;
- (vi) the number of users of the facility;
- (vii) the financial and technical ability of the person on whose behalf the facility is being installed;
- (viii) the willingness of the person on whose behalf the facility is being installed to maintain adequate insurance against loss or damage to the facility;
- (ix) the willingness of the person on whose behalf the facility is being installed to defend, indemnify and hold harmless the Town, its officers, agents and employees, against any and all claims arising from any claims of such liability; and
- (x) the willingness of the person on whose behalf the facility is being installed to provide the Town with the right, but not the obligation, to enter the premises and have any malfunction adequately remedied and to provide for the Town to recover any actual and direct expenses, including reasonable attorney's fees, incurred by the Town to remedy the malfunction by either a civil action against the person on whose behalf the facility is being installed or the assessment of a special tax against the real estate of the person on whose behalf the facility is being installed.

G. Permit Issuance. Opening permits shall only be issued from April 1 to November 15, unless an emergency or special circumstance exists. An explanation shall be given to both the Code Enforcement Officer and the Road Commissioner explaining the emergency or special situation prior to the issuance of a permit during the time period November 16th through March 31st of the following year. Any oral explanation shall be followed up by a written explanation within two (2) working days.

After an excavation is commenced, the Permit Holder shall prosecute with diligence and expedite all excavation work covered by the opening permit and shall promptly complete such work and restore the public place as specified in this ordinance. Any permit issued shall specify the time period within which the Permit Holder must complete the work and restore the public place as specified in this ordinance. The Permit

Holder shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel by foot or vehicle.

Section IV. Excavation.

Excavation work must be started no later than thirty (30) days from the date of issue of the opening permit. After the expiration of this thirty (30) day period, such permit shall become null and void and shall have to be renewed. Notification shall be made to both the Code Enforcement Officer and the Road Commissioner on the actual day the work will begin. No work shall be done under the permit on Saturdays, Sundays or legal holidays, unless approved by both the Code Enforcement Officer and the Road Commissioner. During all excavations, one-way traffic shall be maintained for emergency vehicles. Temporary exceptions may be made only by the area Fire Chief after consultation with the Road Commissioner and only when another means of access is available.

Section V. Relocation and Protection of Utilities.

The Permit Holder shall not interfere with any existing facility without the written consent of the Code Enforcement Officer, Road Commissioner, and the owner of the facility. If it becomes necessary to relocate an existing facility, this shall be done by its owner. No facility owned by the Town shall be moved to accommodate the Permit Holder unless the cost of such work is borne by the Permit Holder and covered in full in advance. The cost of moving privately owned facilities shall be similarly borne by the Permit Holder unless it makes other arrangements with the person owning the facility. The Permit Holder shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them under, over, along or across the work. The Permit Holder shall secure approval of method of support and protection from the owner of the facility. In case any of the pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure, the Permit Holder shall promptly notify the owner thereof. All damaged facilities shall be repaired by the person owning them and the expense of such repairs shall be charged to the Permit Holder. It is the intent of this section that the Permit Holder shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the Permit Holder. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The Town shall not be made a party to any action because of this section. The Permit Holder shall inform itself as to the existence and location of all underground facilities and protect the same against damage.

Section VI. Protection of Public Property.

The Permit Holder shall not remove, even temporarily, any trees or shrubs which exist in the public place without first obtaining the written consent of the appropriate Town department or Town official having control of such property.

Section VII. Pavement Breaking in Public Places.

A. All excavations on paved public place surfaces shall be pre-cut in a neat straight line with pavement saws or asphalt cutters. When any excavation is made in any paved public place and the pavement is laid on a concrete base, the excavation must have the pavement and concrete cut back on each side of the excavation ditch a distance of 8 inches, and in issuing the permits for cutting the pavement, this extra width must be charged to the person applying for the permits.

B. The use of pavement breakers is prohibited.

C. Cutouts of the trench lines must be normal or parallel to the trench line.

D. Pavement edges shall be trimmed to a vertical face and neatly aligned with the center line of the trench.

E. Unstable pavement shall be removed over cave-outs and overbreaks and the subgrade shall be treated as the main trench.

F. The Permit Holder shall not be required to pay for repair of pavement damage existing prior to the excavation unless his or her cut results in small floating sections that may be unstable, in which case the Permit Holder shall remove the unstable portion and the area shall be treated as part of the excavation.

G. When three (3) or more street openings are made in sequence (fifteen (15) feet or less, center to center, between each adjacent opening), the Permit Holder shall neatly cut and remove the area of pavement between these adjacent openings and shall patch as one trench.

H. On concrete sidewalks, all cuts shall be made from the nearest joint or score line on one side of the excavation to the nearest joint or score line on the other side of the excavation.

Section VIII. Care of Excavated Material.

A. All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as

possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the Road Commissioner shall have the authority to require that the Permit Holder haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling.

B. It shall be the Permit Holder's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

C. All material excavated shall be laid compactly along the side of the trench and kept trimmed so as to cause as little inconvenience as reasonably possible to vehicular and pedestrian traffic, or as specified by the Road Commissioner. 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 Road Commissioner to prevent the spreading of dirt into traffic lanes.

Section IX. Backfilling of Excavation.

Crushed stone or sand shall be used to bed and backfill all underground utilities and shall be thoroughly compacted under, around and to a minimum of 6 inches above the structure. After being properly bedded, the backfill material for all other substructures shall be of a fine material, free from lumps, frozen materials and no stones larger than four (4) inches in diameter. All backfill materials shall be placed in eight (8) to ten (10) inch lifts and thoroughly compacted with approved mechanical compactors. Within eighteen (18) inches of the subgrade of the pavement, backfill shall meet MDOT specification Type B and be left four (4) inches below the surface. Within twenty-four (24) hours after the trench has been backfilled, four (4) inches of cold bituminous concrete shall be placed over the gravel and compacted, or permanent repairs completed pursuant to Section XII of this ordinance. The Road Commissioner may require soil tests to be furnished by a recognized soil testing laboratory or registered professional engineer specializing in soil mechanics when, in his/her opinion, backfill for any excavation is not being adequately compacted. In order for the resurfacing to be permitted, such tests must show that the backfill material meets the minimum requirements as prescribed by the Road Commissioner. The expense of such tests shall be borne by the Permit Holder.

Section X. Trenches.

The maximum length of open trench in an excavation 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 Road Commissioner.

Section XI. Excavations in Reconstructed Streets.

Whenever the Town has developed plans to reconstruct a public place, the Town or its representative shall give written notice thereof to all abutting property owners, to the Town departments, and to all utilities that have or may wish to lay pipes, wires or other facilities in or under the public place. Upon receipt of such written notice, such person shall have sixty (60) days in which to install or lay any such facility. If an extension of time is needed by a person for the installation of such facilities, the person shall make a written application to both the Code Enforcement Officer and the Road Commissioner explaining fully the reasons for requesting such an extension of time. At the expiration of the time fixed and after such public place has been reconstructed, no permit shall be granted to open such public place for a period of five (5) years unless an emergency condition exists or unless the necessity for making such installation could not reasonably have been foreseen at the time such notice was given.

If the Town issues a permit to open a public place within five (5) years after that public place was paved or substantially repaired, the Town may require the Permit Holder to relay the full width of the road surface on both sides of the cut for a distance of 20 feet from the furthest outside edges of the cut. If that repair overlaps the edge of a repair from a previous opening, the Road Commissioner may require the Permit Holder to relay the full width of the road to the furthest edge of that previous repair. The Road Commissioner may prescribe the depth and method of restoring the pavement based upon the class of the street under the Town's Road Ordinance, except that in no case may the depth of the restored pavement be less than 1½ inches. If the Town relays the pavement, the cost of relaying the pavement, including materials, labor and inspection, must be paid out of any money in the municipal treasury standing to the credit of the regular fund for this purpose.

Section XII. Resurfacing of Public Places.

Prior to issuance of any permit under this ordinance, the Code Enforcement Officer shall specify who shall perform the permanent resurfacing of the public place.

A. Temporary resurfacing by the Permit Holder. The top surface of backfill shall be covered with four (4) inches compacted depth of bituminous temporary resurfacing material by the Permit Holder. Such temporary paving material shall be cold mix, except that the Permit Holder may use or the Road Commissioner may require hot mix. All temporary paving material shall be compacted so that it is hard enough and smooth enough to be safe for pedestrian travel over it, as well as for vehicular traffic to pass safely over it at a legal rate of speed. The Permit Holder shall maintain the temporary paving and shall keep the same safe for pedestrian and vehicular traffic until the excavation has been resurfaced with permanent paving by the Town, except if it is not

possible to maintain the surface of the temporary paving in a safe condition for pedestrian and vehicular traffic, then the Permit Holder shall maintain barriers and lights.

B. Permanent resurfacing by the Town. Permanent resurfacing of excavations in public places shall be made by the Town. Actual square yards opened or disturbed will be measured by the Road Commissioner or Code Enforcement Officer and the Permit Holder will be billed for the difference between the estimated fee paid and the final fee as determined by the measurement of the opening. Additional costs will be billed as set forth in Section XV of the ordinance.

C. Permanent resurfacing by the Permit Holder. The Town, at its option, may allow the Permit Holder to permanently resurface that portion of the street surface damaged by the Permit Holder's excavation. In such event, permanent resurfacing shall be done in a manner and under specifications prescribed by the Town and subject to inspection by the Town and shall be completed within a period of ninety (90) days after such authorization to complete final resurfacing. If such permanent resurfacing is satisfactory to the Town, all resurfacing fees (excluding any permit fee or inspection fees) will be refunded to the Permit Holder. The Permit Holder shall, for a period of three (3) years thereafter, be fully liable for all defects in materials and workmanship relating to such resurfacing and shall promptly repair or replace the same upon notice of the Road Commissioner and to the satisfaction thereof.

Section XIII. Incurred Expenses Through Repairing and Backfilling by Town.

If the work or any part thereof mentioned in this ordinance for repairing or backfilling the trenches or excavations 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 case such person shall pay the Town an amount equal to the whole of the expense incurred by the Town with an additional amount of fifty (50) percent. Thereafter, upon completion of the work and the determination of the costs thereof, the Town shall issue no further or new permits to such person until it shall receive payment of such amount.

Section XIV. Inspection.

The Road Commissioner or Code Enforcement Officer shall make such inspections as are reasonably necessary in the enforcement of this ordinance. In the event the Town provides an on-the-job inspector to supervise excavation, backfilling of temporary or permanent repairs or resurfacing, the Permit Holder shall be charged an inspection fee equal to the appropriate hourly rate of the inspector, plus twenty-five (25) percent overhead for the services of such inspector.

Section XV. Billing Procedures.

For any amounts due under Section IX, XII, XIII or XIV of this ordinance, a bill will be mailed to the Permit Holder. Bills rendered in accordance with this section shall be due and payable by the Permit Holder immediately upon receipt thereof. If a Permit Holder does not pay any such bill within thirty (30) days after receipt, the Town shall issue no further permits to any such Permit Holder until it receives payment of such outstanding bill.

Section XVI. Violations.

Any person failing to comply with or violating any provision of this ordinance shall be served by the Code Enforcement Officer (who shall first consult with the Road Commissioner prior to issuing any written notice under this paragraph) with written notice stating the nature of the failure or violation and providing a reasonable time limit for the necessary corrective actions. Such person shall, within the period of time stated in such notice, permanently cease or correct all failures or violations.

In order to ensure public safety, both the Code Enforcement Officer and the Road Commissioner shall have the right to verbally notify and require immediate corrective actions of any person whose failure to comply with this ordinance could cause a safety hazard. Any person who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this ordinance shall be in violation of this ordinance.

Any person violating any of the provisions of this ordinance shall be liable to the Town for any expense, loss or damage occasioned by the Town by reason of such violation. The Town may institute any and all actions or proceedings either legal or equitable that may be appropriate or necessary for the enforcement of the provisions of this ordinance, the same to be brought in the name of the Town.

Any violation of this ordinance that is also a violation of 35-A M.R.S.A. §§ 2509 or 2511 or a violation of 23 M.R.S.A. §§ 3353 or 3355 shall subject the person to a fine as provided in said statutes, as said statutes may be amended from time to time. Any violation of this ordinance other than the violations of state law prescribed in the preceding sentence shall subject the person to a \$50 fine per day for each day that a violation continues. Each day that a violation is permitted to exist after notification thereof shall constitute a separate offense.

Any person who continues to violate any section of this ordinance shall receive no further permits until such time as the Town is satisfied that the person shall comply with the terms of this ordinance.

Section XVII. Appeals Process.

Whenever a person shall deem themselves aggrieved by an order made by the Code Enforcement Officer or the Road Commissioner, the person may file an appeal to the Board of Selectmen within ten (10) days of the date of the order, and the person shall be afforded a hearing on the matter before the Board of Selectmen or its designee, and unless by its authority the aggrieved order is revoked, such order shall remain in force and be forthwith complied with by the person.

The Board of Selectmen shall consider the appeal and determine whether the Code Enforcement Officer or the Road Commissioner erred in the interpretation or application of the ordinance. In considering an appeal, the Board of Selectmen shall give due consideration to the purposes of the ordinance in preserving public safety and convenience, integrity of public infrastructure and the operational safety and function of public right-of-ways.

The Board of Selectmen shall inform the person in writing of its decision and the reasons thereof. Any decision of the Board of Selectmen under this section may be appealed to Superior Court within thirty (30) days of the decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

Section XVIII. Conflict with Other Enactments.

In the event that this ordinance conflicts with any other law, ordinance, rule or regulation, the provision of the law, ordinance, rule or regulation that imposes the greater restriction shall prevail.