

Section 15(A): Street Opening And Public Works Construction License By-Law ²

I. Street Opening

A. Introduction

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

B. Definitions

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

Applicant: Any public utility, municipal department, person or entity who owns or exercises general responsibility and control over: (i) utility or other pipes, ducts, lines or other thing buried in or under a public way, or (ii) real property abutting a public way, or (iii) real property served by the public way or by items of the type specified in (i) above and who wishes to perform street opening work.

Application Fee: 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.³

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

Awarding Authority: The board of selectmen of the Town of Foxborough has authority to exercise the powers granted by this by-law.

Awarding Authority Representative: That 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.

¹ STM December 15, 2008, Article #13, deleted sentence, inserted new sentence.

² ATM May 11, 1998 - Article #21 - deleted original text and inserted new text.

³ STM December 15, 2008, Article #13, deleted definition, inserted new definition.

Cold Patch: A dense graded or open graded mix with cutback asphalt as the binder with 1% of the mix being hydrated lime based on the total weight of the aggregate. The mineral aggregates and bitumen shall be proportioned and combined to meet the limits specified in Table A, Subsection M 3.11.03 and M 3.11.04 of The Standard Specifications. Bituminous material shall be either cutback asphalt, Grade MC-250 or MC800 conforming to Section M3.02.0 of the Standard Specifications.

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

Contractor: All officers or employees of applicant performing street opening work or any person or entity engaged by or on behalf of applicant to perform street opening work. The contractor for purposes of this by-law and for all questions of liability in connection with any street opening work shall be conclusively deemed agents of applicant for whom applicant is fully responsible.

Controlled Density Fill: Also called flowable fill, CDF is a mixture of portland cement, flyash, sand and water. It shall contain a minimum of 250 pounds of class F flyash or high air (25%) and will be self-leveling. It is hand-tool excavatable.

Default: The failure of the permit holder (including all contractors or other agents of permit holder) to (i) comply fully with provisions of applicable laws and regulations, (ii) comply fully with all of the applicable provisions of this by-law and the street opening permit including written supplemental instructions, the municipality's General By-Laws or other applicable law, and (ii) keep its certificate of insurance in full force and effect.

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

Gas Company: A public utility to which Chapter 164 section 70 of the M.G.L. applies.

Highway Department: The municipal agency generally responsible for the repair and maintenance of public ways within the municipality.

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

License Applicant: Any person or entity in the general contracting business, qualified to do business in the Commonwealth of Massachusetts who wishes to perform street opening work in a public way either as a permit holder or as agent for one or more permit holders.

License Application Fee: Such annual fee as may from time to time be established pursuant to chapter 40, Section 22F of the General Laws and which shall be paid to the awarding authority each time a License application or renewal is filed.¹

¹ STM December 15, 2008, Article #13, deleted definition, inserted new definition.

Licensed Contractor: A contractor who holds a current and valid public works construction license issued by the awarding authority.

Newly Paved Road: A road that has been re-paved (binder and top) within the past five (5) years.

Normal Working Hours: 7:30 am to 3:30 pm Monday through Friday excluding holidays.

Permit Holder: An applicant to whom a street opening permit has been granted.

Permanent Patch: A final repair of street opening work to be performed in accordance with this by-law and intended to return permanently the opened portion of the roadway to as good a condition as it was in prior to the performance of the street opening work.

Permanent Patch Window: That period of time commencing twelve (12) months and up to eighteen (18) months from the date of installation of the temporary patch.

Processed Gravel: Inert material that is hard, durable stone and coarse sand, free from loam and clay, surface coatings and deleterious materials and which meets M1.03.1 of The Standard Specifications.

Public Utility: Includes a gas and electric company as defined in M.G.L. Chapter 164 section 1, telephone and telegraph company subject to Chapter 159 section 12, and cable TV companies or other telecommunication providers regulated by the Dept. of Telecommunications and Energy.

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

Public Works Construction License: A license required of all contractors who are not officers or employees of a public utility or municipal department who wish to perform work including street opening work on public ways.

Refundable Deposit: That amount of cash or money represented by a certified bank check deposited by applicant with its application to secure applicant's performance of street opening work in accordance with this by-law.

Standard Specifications: The Mass. Highway Department's Standard Specifications for Highways and Bridges, 1995 Metric Edition.

Street Opening Permit: A permit granted by the awarding authority to an applicant for permission to do street opening work in a public way.

Street Opening Work: Any cutting, excavating, compacting, construction, repair or other disturbance in or under a public way together with restoration of the public way in accordance with this by-law following such disturbance but excluding the location or re-location of utility poles for which a grant of location has been obtained pursuant to M.G.L. Chapter 166 section 27.

Surety: A deposit of \$5,000 cash, check or an irrevocable letter of credit will be required of each licensed contractor for surety against him due to default on the warranty. Additionally, if an irrevocable letter of credit is used, the format must be

placed on the lending institution letterhead and it must be signed by an authorized bank agent.¹

Temporary Patch: The application of either cold patch or two separate gradations of bituminous concrete consisting of binder and top layers and compaction to achieve a density equal to that of the surrounding pavement following excavation and compaction. Street Opening Permit: A permit granted pursuant to the street opening by-law conferring permission to do street opening work in a public way.

Violation: The failure of the licensed contractor, its employees, agents and subcontractors to (i) comply fully with any or all provisions of this by-law and any street opening permits or supplemental instructions, the Town's General By-Laws or other applicable law, or (ii) to keep its certificate of insurance in full force and effect.

Warranty: The period of one calendar year beginning after the installation of the permanent patch. During this period the licensed contractor shall be responsible to make any necessary repairs as requested by the awarding authority representative.²

C. General

No work (except the commencement of emergency repair work in accordance with paragraph VII hereof) in or under a public way shall commence until the applicant shall have applied for in accordance with paragraph IV, and obtained from the awarding authority, a street opening permit. All work contemplated by this by-law shall be done in a good and workmanlike manner using best engineering and construction practices and shall be done in accordance with (i) all applicable laws and regulations, (ii) all of the provisions of this by-law, (iii) any conditions contained in the street opening permit, and (iv) such reasonable supplemental instructions not inconsistent with the foregoing as the awarding authority or its representative may from time to time issue. A permit holder shall cause to be restored those portions of a public way disturbed by the permit holder to as good a permanent condition, in the reasonable judgment of awarding authority or its representative, as they were in when permit holder made application thereunder.

No person or entity may perform any work (including street opening work or emergency repair work) in or under a public way unless it is a permit holder and (i) is a municipal department or public utility or their respective officers or employees (ii) is the holder of a current and valid public works construction license, or (iii) has engaged such a holder and such holder performs all such street opening work or emergency repair work as agent of permit holder.

In accordance with the Town's Five-year Street Cut Moratorium policy, except as may otherwise be provided by federal or state law, no street opening work in or under a public way shall be allowed before the date that is five years from the date that such way or any portion thereof is paved or re-paved. Appeals of this five-year moratorium shall be through a written request to the Board of Selectmen. The Board of Selectmen in their decision on any such appeals shall consider economic hardships, the applicants potential use of trenchless "no-dig" installation technology, the size of the proposed street cut, the location of the proposed street cut and whether the affected portion of the way is paved, the applicant's proposed method of pavement restoration, including pavement grinding and overlay fifty-feet on both sides of the trench, inared

¹ ATM May 14, 2001, Article #18.

² ATM May 14, 2001, Article #18.

treatment of the trench pavement, and any other economic or technical considerations presented by the applicant or Superintendent.¹

D. Application Procedure

The applicant shall file on forms designated by the awarding authority a completed and signed application at the office of the awarding authority (with a copy delivered simultaneously to the highway department) each time it desires to perform street opening work. The application shall be accompanied by any and all plans, certifications, certificates of insurance and other items specified in the application or reasonably requested by the awarding authority. If the applicant does not intend to perform the street opening work itself, it must in the application designate a licensed contractor to perform the work as its agent. The application shall also be accompanied by the application fee and the refundable deposit.

The highway department shall promptly review the application and make written recommendations concerning approval to the awarding authority and, if appropriate, shall include recommendations concerning permit conditions and supplemental instructions.

The awarding authority shall make a prompt determination on the application taking into account the following and such other facts as it may reasonably consider:

- 1) the recommendation of the highway department
- 2) the reason for the street opening work
- 3) whether the street is recently constructed or re-paved
- 4) whether there are other reasonable means adequate to accomplish the purpose for which the street opening permit is sought.

If the application is considered favorably, a street opening permit containing such conditions and supplemental instructions as the awarding authority reasonably deems appropriate shall promptly issue. If the application is not favorably considered, the awarding authority shall communicate in writing to applicant the reasons its application was not favorably considered.

E. Refundable Deposit and Account, Warranty and Surety²

1. Refundable Deposit and Account:³ The amount of the refundable deposit to secure proper restoration of a public way after street opening work is determined in the reasonable judgment of the awarding authority based on the extent of the work. (A current schedule of deposits for standard work is attached.)

Following notice given by permit holder that final permanent repairs to the public way have been completed, the awarding authority or representative will make a final inspection. Once the awarding authority or representative has concluded that permanent repair work has been satisfactorily concluded and that applicant has no other uncured defaults under street opening permits, it shall release the unexpended balance of the deposit serving as security for the street opening permit related to the inspected work.

All refundable deposits that an applicant submits for street opening permits shall be held by the awarding authority in one account which shall be designated as the applicant's refundable deposit account. Applicants upon request may receive periodic

¹ ATM May 11, 2009, Article #18.

² ATM May 14, 2001, Article #18.

³ ATM May 14, 2001, Article #18.

reports as to the balance standing within this account. Should a deposit associated with a specific permit be insufficient to secure the proper repair of a public way following a default by the permit holder, the awarding authority without limitation to other remedies available to it can deduct the cost of the proper repair from applicant's refundable deposit account for the purpose of funding the proper repairs. To the extent required by Chapter 164 of the General Laws applicable to gas companies, the provisions of this section and section VI hereafter shall not apply to gas companies which affirmatively claim exemption in their application for street opening permits.

F. Fee and Deposit Changes; Municipal Exemption

From time to time hereafter the awarding authority, after public notice and hearing, may amend the schedule of deposits, the application fee, the hourly after-hours inspection charges or any other amounts due under this by-law. A reasonable hourly charge for inspectional services which must be performed outside of normal working hours in accordance with a posted schedule established by the awarding authority will be billed to permit holder and due and payable fifteen (15) days after billing. In extraordinary situations where extensive installation or renewal of utility lines overburden the normal capacity of the municipal departments to conduct inspections, the awarding authority can, after notice to permit holder, or as a condition of the permit, elect to treat all inspections as after-hours inspections and bill permit holder accordingly. Applicants which are municipal departments are exempt from payment of all fees and deposits hereunder. Public Utilities to the extent exempted as provided in Paragraph V above are exempt from payment of all fees except the application fee.

G. Emergency Repair Procedure

If the conditions for emergency repair work exist, then an applicant after giving oral, faxed or electronic notice to the police and highway departments may commence street opening work. All such emergency repair work shall be done in strict compliance with this by-law except for compliance with any notice provision inconsistent with such emergency action.

On the business day following the commencement of emergency repair work, the applicant shall file with the awarding authority (i) a written statement setting forth in detail the facts and circumstances constituting the conditions for emergency repair work, (ii) an application for a street opening permit covering the street opening work already commenced in accordance with Paragraph IV, (iii) the filing fee and required refundable deposit. If all of the materials such as plans, etc. are not then available to applicant, applicant will supply them as soon as available. Awarding authority will promptly process the application and grant the street opening permit with such conditions and supplemental instructions as it may reasonably require.

H. Insurance¹

The permit holder and/or each licensed contractor shall acquire and continuously maintain while it possesses any street opening permits liability insurance coverage on all personnel and equipment to be used in the street opening work which insurance is to be with insurance companies licensed to do business in the Commonwealth of Massachusetts and shall contain the following coverages and be in the following minimum amounts:

Commercial General Liability Insurance including operators, independent contractors, complete operations, XCU hazards, broad form property damage and personal injury.

¹ ATM May 10, 1999, Article #13.

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| General Aggregate: | * ¹ |
| Products and complete operations: | |
| Aggregate | * |
| Each occurrence | * |
| Personal & Advertising Injury | * |
| Automobile Liability Insurance – covers owned, non-owned and hired vehicles | |
| Combined Single Limit | * |
| Or | |
| Bodily Injury Liability | |
| Each Person | * |
| Each Accident | * |
| Property Damage Liability | * |
| Worker’s Compensation and Employer’s Liability | |
| Bodily Injury by accident | * each accident |
| Bodily Injury by disease | * policy limit |
| Bodily Injury by disease | * each employee |

*in an amount to be set by the Board of Selectmen.

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

I. Licensed Contractors

Any contractor or other person or entity that wishes to perform work on a public way and which is not either a municipality or a public utility (including their respective officers or employees) must be licensed by the awarding authority, pursuant to Section II, below. Application for a public works construction license must be made on a yearly basis.

J. Terms of the Street Opening Permit

1. Term of Permit. All street opening permits shall be valid for thirty (30) days and, upon written request to the awarding authority, renewable for an additional thirty (30) days. Permits must be present at the work site. Permits can be revoked by the awarding authority if the applicant is in default.

2. Inspections may take place at the following events:

- a. prior to backfilling the trench
- b. following completion of temporary patch placement
- c. during the permanent patch window
- d. following completion of permanent patch placement

Permit holder or contractor will notify awarding authority representative when an inspection is desired and co-ordinate the timing of such inspection.

¹ ATM May 11, 2009, Article #21, delete specific dollar amounts and replace with language set forth.

3. Working Hours. Except in emergency situations, street opening work will occur during normal working hours. The permit holder must give notice of the intended street opening work seventy-two (72) hours in advance to the highway superintendent, and, unless the requirement for a police detail is waived by the police chief of the municipality, must arrange for and pay for a police detail to be present throughout the period of time that street opening work is being conducted.

4. Dig-Safe. The permit holder shall, in accordance with all current laws of the Commonwealth of Massachusetts, notify all public utilities seventy-two (72) hours in advance of making any excavation in a street. Such notification shall be made by means of obtaining a DIG-SAFE number. Said number shall be provided on the street opening permit application. The permit shall not be issued until this information is provided.

5. Existing Utilities. Before starting any excavation, the permit holder or contractor must confer with all public utilities to obtain information from each as to the horizontal and vertical locations of existing utilities and other conditions that may affect the excavation. The permit holder or contractor shall not interfere with any existing utility without the written consent of the awarding authority representative and the owner of the utility. If it becomes necessary to relocate an existing utility, this shall be done by its owner and the cost of such work shall be borne by the permit holder. The permit holder or contractor shall inform itself as to the existence and location of all underground utilities and protect the same against damage.

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

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

8. Damaged trees. In the event a tree is either accidentally destroyed by the permit holder or contractor or is authorized for removal by the awarding authority representative, the permit holder or contractor shall remove the tree, stump and debris from the work site, and replace the tree with an identical species with a minimum caliper of two inches in the identical location.

9. Pedestrian Crossings, Open Trenches. The permit holder or contractor shall, where possible, maintain safe crossings for two lanes of vehicle traffic at all public intersections as well as safe crossings for pedestrians at intervals of not more than three hundred (300') feet. If any excavation is made across a public way, it shall be made in sections to assure maximum safe crossing for vehicles and pedestrians. An open trench may not exceed three hundred (300') feet unless specifically permitted by the awarding

