

# **Title 8 – Building & Development Regulations**

## **Chapter 3**

### **EXCAVATIONS, ENCROACHMENTS AND STRUCTURES WITHIN RIGHTS OF WAY**

#### **8-3-1: COMPLIANCE, PERMIT REQUIRED:**

#### **8-3-2: EXCEPTION FOR EMERGENCY CONDITIONS:**

#### **8-3-3: WINTER SEASON:**

#### **8-3-4: APPLICATION FOR PERMIT:**

#### **8-3-5: TERM OF PERMIT:**

#### **8-3-6: FEES:**

#### **8-3-7: COMPLETION BOND:**

#### **8-3-8: ENGINEERING STANDARDS AND REQUIREMENTS:**

#### **8-3-9: SUPERVISION AND INSPECTION:**

#### **8-3-10: FAILURE TO COMPLY:**

#### **8-3-11: PENALTY:**

#### **8-3-1: COMPLIANCE, PERMIT REQUIRED:**

- A. It shall be unlawful for any person, firm, public utility or corporation to place, make, enlarge or change any excavation, driveway, encroachment or structure within the right of way of any town road without complying with the provisions of these regulations and obtaining a permit as provided for herein.
- B. It shall be unlawful, and punishable as provided for herein, to make any excavation or to place any encroachment or structure in any town right of way not described in the approved permit application or which exceeds in size the dimensions, or which does not conform to the conditions described in said application. (Ord. 07-014, 11-13-2007)

#### **8-3-2: EXCEPTION FOR EMERGENCY CONDITIONS:**

Emergency excavations and encroachments may be commenced without prior permit if the reason for the excavation or encroachment is to prevent loss of life or damage to property which appears to be imminent if the action is delayed by waiting to secure said permits. In such emergency situations, those making the excavation or encroachment must contact the Public Works Director's office and/or the town engineer's office at the earliest possible time, but in no case later than the first working day following the emergency work in order to secure a formal

permit. None of the provisions of these specifications are waived for emergency situations except for the prior permit requirement. (Ord. 07-014, 11-13-2007)

### **8-3-3: WINTER SEASON:**

No permits for road excavations or other excavations within ten feet (10') of the edge of a Town rights-of-way shall be issued during the winter season, except in emergency situations. For the purposes of this section, "winter season" begins October 15 each year and ends May 15 of the succeeding year, except in the following situations: (Ord. 07-014, 11-13-2007 amd. Ord. 20-012, 12-8-2020)

- A. The Public Works Director or his/her designee has issued an extension for work to continue beyond October 15. Extension will need to show a plan of work and a completion date. (Ord. 20-012, 12-8-2020)
- B. All permits (normal and extension) can be revoked if deemed necessary by the Public Works Director or his/her designee within a 24-hour notice to the contractor. (Ord. 20-012, 12-8-2020)

### **8-3-4: APPLICATION FOR PERMIT:**

Applications for all permits shall be made by the person, firm, public utility or corporation actually doing the work. Applications for all permits shall be made to the Public Works Director's office as provided, and shall describe the excavation, encroachment, structure or driveway, and shall have a drawing of the location of the intended excavation, encroachment, structure or driveway, the pertinent dimensions thereof, the purpose therefor, the person, firm, public utility or corporation doing the actual work, and the name of the person, firm, public utility or corporation for whom or by which the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws of the town and the state relating to the work to be done. A traffic control plan, conforming to the manual of uniform traffic control devices (MUTCD), shall be submitted with all applications which involve excavations within a town road right of way. The application shall also provide for an agreement that the applicant shall indemnify the town for any loss, liability or damage that may result from or because of the making, placement, existence or manner of guarding or constructing any such excavation, encroachment, structure or driveway. (Ord. 07-014, 11-13-2007)

### **8-3-5: TERM OF PERMIT:**

All permits issued pursuant to these regulations shall be valid for a period of sixty (60) days from issuance, except that no permit shall extend into the winter season as outlined in section [8-3-3](#) of this chapter. A copy of the permit issued shall be made available by the applicant at all times when work is under way. (Ord. 07-014, 11-13-2007)

### **8-3-6: FEES:**

A review fee, in the current amount as identified in the consolidated fee schedule, shall accompany each application for a permit, unless other fee payment arrangements have been approved by the Town. (Ord. 07-014, 11-13-2007)

### **8-3-7: COMPLETION BOND:**

- A. Required: Applicants shall provide a completion bond to the town in the amount as identified in the consolidated fee schedule at the time the permit is approved. This may be cash, a letter of credit from an FDIC insured financial institution, or a corporate surety bond. The bond shall be valid for a period of two (2) years from the date of the construction inspection to guarantee that the condition of any permit, together with any restorative works, is completed properly (the "guarantee period"). The bond will be released upon recommendation of the town engineer and/or the Public Works Director.
- B. Continual Annual Bond: Applicants for permits may secure a continual annual bond in lieu of separate bonds for each excavation. Applications for continual bonds shall be made before December 31 of each year and shall be valid for the next calendar year and be valid for a period of two (2) years.
- C. Exception: Those public entities which are regulated by the state public service commission are exempt from the bonding requirements of this section but shall still be required to obtain a permit prior to making any excavation. (Ord. 07-014, 11-13-2007)

### **8-3-8: ENGINEERING STANDARDS AND REQUIREMENTS:**

Specific engineering standards and requirements for the enforcement of these regulations are attached to ordinance 07-014 and on file in the town office. (Ord. 07-014, 11-13-2007; amd. 2010 Code)

### **8-3-9: SUPERVISION AND INSPECTION:**

- A. Required: The Public Works Director, or his designee, shall from time to time inspect, or cause to be inspected, all work done pursuant to permits to ensure compliance with the provisions of these regulations. Notification shall be given to the Public Works Director, or his designee, at least twenty-four (24) hours prior to the commencement of any work. The completion bond shall not be released until an inspection shows compliance with all applicable provisions of these regulations.
- B. Driveway Encroachments: Driveway encroachments require the following inspections to ensure compliance with the standards set out in these regulations:
  - 1. Staking Inspection: A stake or marker shall be placed at each corner of the encroachment as it intersects the road or street, and at each intersection of the driveway as it crosses the right of way or easement line. The front property corners shall also be set and marked with survey markers. This inspection is required prior to

the encroachment permit being approved. The Public Works Director's office must receive at least twenty-four (24) hours' notice prior to requested inspection.

2. Rough Grade Inspection: An inspection of the rough grade driveway is required prior to receiving a footing inspection by the building department. The driveway must be graded to a point that the inspector can determine compliance with these regulations and the land management code. The footing elevation/garage floor elevation must be established prior to requesting an inspection. The Public Works Director's office must receive at least twenty-four (24) hours' notice prior to requested inspections.
3. Pre-surfacing Inspection: An inspection of the driveway is required prior to surfacing (soft or hard) the driveway to determine compliance with these regulations and the land management code. In no case can a certificate of occupancy be issued without the pre-surfacing inspection, and the driveway being in compliance with this chapter and the land management code. (Ord. 07-014, 11-13-2007)

### **8-3-10: FAILURE TO COMPLY:**

In the event of failure on the part of any person, firm, public utility or corporation to comply fully with the provisions of these regulations, law enforcement authorities and/or the Public Works Director are authorized to:

- A. Initiate action by citation or information under section [8-3-11](#) of this chapter and/or proceed to forfeit the bond; or
- B. Remove such encroachment, driveway or structure from the right of way or require such person, firm or corporation to remove the same; or
- C. Give written notice to such person, firm, public utility or corporation to remove such encroachment, driveway or structure from the right of way. Such notice may be served either by personal service or by mailing the notice to the person, firm, public utility or corporation by registered mail and posting a copy thereof on such encroachment, driveway or structure for a period of ten (10) days. If such encroachment, driveway or structure is not removed within ten (10) days after the notice is complete, said authorities may remove the same at the expense of the person, firm or corporation and recover costs and expenses, and also the sum of one hundred dollars (\$100.00) for each day the same remained within the right of way after notice was complete, in an action for that purpose; or
- D. If such person, firm, public utility or corporation disputes or denies the existence of such encroachment, driveway or structure, or refuses to remove or permit its removal, said authorities may bring an action to abate the same as a nuisance, and if judgment is recovered by said authorities, there shall also be recovered, in addition to having the same abated, the costs of action and the sum of one hundred dollars (\$100.00) for every day such nuisance remained within the right of way after notice was given for its removal in the manner provided in subsection B of this Section; or
- E. Revoke, suspend, terminate, impose conditions on, or modify, in whole or in part, any permit issued to such person, firm, public utility or corporation. (Ord. 07-014, 11-13-2007)

**8-3-11: PENALTY:**

Any person who violates the provisions of this chapter is guilty of a class C misdemeanor and a one hundred dollar (\$100.00) fine per day. Each day of a continuing violation shall be deemed a separate offense. (Ord. 07-014, 11-13-2007)

