

Street Opening and Culvert Ordinance



Town of York, Maine

Most Recently Amended: November 8, 2016

Dates of Past Amendments: May 16, 2015

November 5, 2013

November 6, 2012

Date of Original Enactment: November 2, 2010

ENACTMENT BY THE LEGISLATIVE BODY

Date of the vote to amend this Ordinance: November 8, 2016.

Certified by the Town Clerk: May Anne Jernigan on 11/14/16
(signature) (date)

STREET OPENING AND CULVERT ORDINANCE

SECTION 1: PURPOSE

The purpose of this Ordinance is to protect the safety of the traveling public, and to protect public infrastructure from undue adverse impacts by ensuring all work in Town streets and rights-of-way are properly constructed.

SECTION 2: APPLICABILITY

The provisions of this Ordinance apply to any excavation, construction, filling or culvert installation work which occurs in a public street, sidewalk, right-of-way or drainage way, except as follows:

- A. Town Projects.** Work undertaken by the Town, or by others working under the direction of the Town, shall not be required to obtain a permit, but shall be required to meet or exceed the general provisions and the construction specifications contained in this Ordinance.
- B. Work in Advance of Road Repaving or Reconstruction.** Before a Town road is repaved or reconstructed, it is desired that any utility repairs, improvements, extensions or upgrades be completed in advance to minimize the future need to cut into the road afterwards. The Town shall provide a minimum of 60 days advanced notice to all utilities which are known to have underground infrastructure within the right-of-way. Upon receipt of such notice, the utility shall be authorized to prepare its infrastructure without being required to obtain a permit. All such work shall be required to meet or exceed the construction specifications contained in this Ordinance, but paving by the utility shall not be required.
- C. Work on Utility Service Lines.** Except along State roads within the Urban Compact where State rules must be followed, utility providers may work on underground service lines between their mains and buildings served without being required to obtain a permit provided no such work disturbs the surface or sub-surface of a public road or sidewalk, or impacts any Town drainage infrastructure. All work shall be required to meet or exceed any applicable specifications contained in this Ordinance. At least 3 days prior to commencement of such work, the utility provider shall provide to the Superintendent a completed application form as advance notification of the proposed project. Approval of the permit shall not be required except when the Superintendent determines there is an unusual situation that requires a permit.

SECTION 3: DEFINITIONS

PUBLIC – In the context of a public street, sidewalk, right-of-way or drainage way, public means that the facility or property which the Town of York either owns or holds an easement for use and/or maintenance.

SUPERINTENDENT – The Superintendent of Public Works.

SECTION 4: ADMINISTRATION

The Superintendent shall administer this Ordinance.

SECTION 5: STREET OPENINGS

5.1. General Provisions.

- A. Permit Required.** A Street Opening Permit shall be obtained from the Superintendent prior to creating any opening in any public street, sidewalk or right-of-way.
- B. Winter Permits.** No Street Opening Permit will be issued for work between December 1st in any one year and March 15th of the following year. The Superintendent may make exceptions to accommodate emergencies, and to accommodate projects which are scheduled to avoid summertime construction and traffic disruption.
- C. Utility Emergencies.** In the case of an emergency situation involving a utility, the utility may excavate without a Street Opening Permit. However, the utility shall be responsible for obtaining a Street Opening Permit as soon as possible after the emergency and, in any case, before the excavation is permanently resurfaced.
- D. Dig Safe.** Compliance with 23 MRSA §3360-A shall be required.
- E. Reserved.**
- F. Financial Security.** The Superintendent shall require the applicant to post in advance a bond, secured letter of credit, or cash for a project which will cost \$50,000 or more, or when blasting is proposed. The Town and quasi-municipal water or sewer districts shall be exempt from this requirement. The amount of the security shall be equal to 125% of the cost of all work which would be necessary for the Town to completely repair the infrastructure in the event the applicant fails to fulfill their responsibilities at any point in the project. The purpose of the financial security shall be to guarantee proper completion of all work and protection of the Town infrastructure. When posted, the value of the security may be reduced once during the course of the project, but never such that it is less than 125% of the cost of remaining work. The balance shall be retained until the final inspection of all work pursuant to §5.2.B.4. The Board of

Selectmen shall be solely responsible for reductions and releases of all financial securities.

- G. Traffic Control.** All work zone traffic control applications and traffic control devices shall conform to the latest edition adopted by the State of Maine of the Manual on Uniform Traffic Control Devices (MUTCD), Part 6, when used on any street or highway open to public travel. Only traffic control devices including signs, barricades, vertical panels, drums, warning lights, arrow boards, changeable message signs, cones and tubular markers that meet the requirements of American Traffic Safety Services Association (ATSSA), “Quality Standard for Work Zone Traffic Control Devices-2006” shall be used.
- H. State Laws.** Actions pursuant to this Ordinance shall be consistent with provisions of State law. In particular, the following sections of Title 23 are applicable: §3351-9, and §3351.

5.2. Standards.

A. Responsibilities of the Applicant.

1. The applicant shall be responsible for preparing and submitting to the Superintendent an application for the proposed street opening. This application shall:
 - a. Be on a form provided by the Public Works Department;
 - b. State the purpose of the street opening;
 - c. Show the physical extent of excavation;
 - d. Include a \$100 application fee. This fee shall not apply to public water or public sewer providers.
 - e. Provide a plan and materials specifications for filling and resurfacing the street opening to demonstrate compliance with the construction specifications of this Ordinance;
 - f. Specify the timeframe for work;
 - g. Detail the plan for traffic control and protection of public safety during the project;
 - h. Obtaining any other required permits;
 - i. Provide the financial security, if required (see §5.1.F); and
 - j. Provide other information relevant to the application.
2. The applicant shall be responsible for all completing all work in accordance with the Street Opening Permit obtained pursuant to this Ordinance. All costs are the responsibility of the applicant.
3. The applicant shall be responsible for maintaining the temporary surface and keeping it safe for travel until permanent resurfacing is completed. If it is not

possible to maintain the temporary surface in a condition safe for all modes of travel, the applicant shall establish and maintain barriers and warning devices.

4. The applicant shall notify the Superintendent at least 2 business days prior to the installation of the permanent pavement. The Superintendent may allow less advance notice on a case by case basis, particularly following emergency utility repairs.
5. The applicant shall be fully responsible to correct any deficiencies identified by Town inspection. All costs are the responsibility of the applicant.
6. The applicant shall guarantee the quality of their work and materials for two years following completion of the original repair work, or until the Superintendent issues a written acceptance of the repairs, whichever occurs earlier. At any time during this guarantee period, the applicant shall re-excavate, re-fill and/or re-surface the area as directed by the Superintendent to remedy the defects. The applicant shall be given a reasonable amount of time to perform this work, and if they fail then it shall be performed by the Department of Public Works. The applicant shall be responsible for the full cost of such repair work, plus a surcharge if completed by the Department of Public Works.

B. Responsibilities of the Superintendent.

1. The Superintendent, or his or her designee, shall be responsible for reviewing and deciding on each Street Opening Permit application received within 10 business days of receipt. The Superintendent shall have authority to apply engineering expertise and judgment in determining the most appropriate standards and conditions in order to protect the integrity of the public street. Each decision regarding a Street Opening Permit application shall be made in writing, and shall detail the requirements to be met by the applicant. Only written requirements specified as part of the Permit shall be binding on the applicant.
2. The Superintendent, or his or her designee, shall be responsible for obtaining independent expert technical assistance when he or she believes it is necessary to protect the public interest, and for obtaining reimbursement from the applicant for the Town's costs in obtaining such independent expert assistance prior to issuance of a Street Opening Permit.
3. The Superintendent, or his or her designee, shall be responsible for inspecting and approving all work completed pursuant to a Street Opening Permit.
4. If permanent resurfacing is not completed by the applicant within 6 months of backfilling the excavation, the Superintendent may initiate the permanent repairs and assess the applicant for 125% of the cost of such work. Before such deadline, however, the applicant may request a time extension for good cause.

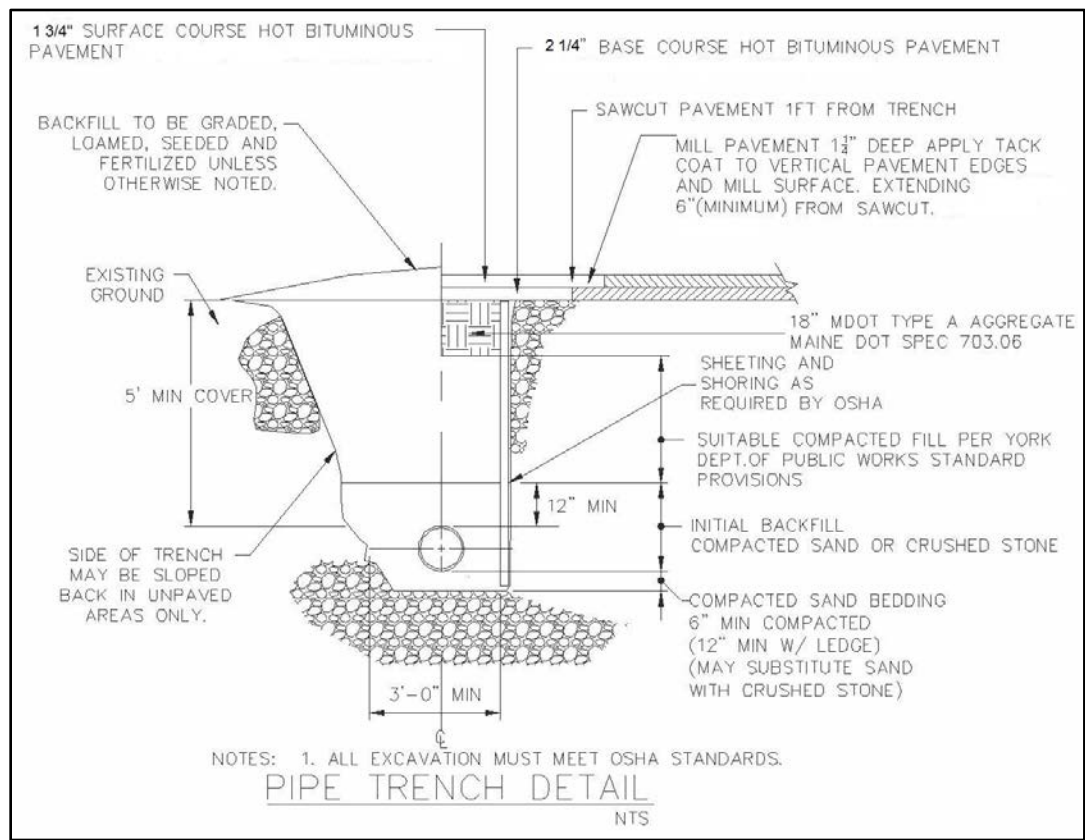
5. The Superintendent is responsible for ensuring the long-term acceptability of repairs. The Superintendent may inspect the repairs at any time, and shall inspect the repairs between one and 2 years of completion of the original repairs. The Superintendent shall take action in accordance with the following:
 - a. If at any inspection the Superintendent deems the repairs inadequate, she/he shall specify work required to fix the deficiencies and shall specify a reasonable amount of time for the applicant to fix the deficiencies. Lacking a sufficient response by the applicant, the Superintendent shall be authorized to undertake the work and to bill the applicant for 125% of the full cost of such work.
 - b. Between one and 2 years, the Superintendent shall inspect the repairs and make a final determination about adequacy. If the repairs are not acceptable, the Superintendent shall follow subsection “a” above. If the repairs are acceptable, the Superintendent shall issue a written acceptance of the repairs. Failure to issue this acceptance within 2 years shall constitute acceptance by default. Acceptance by either means shall terminate the applicant’s responsibilities for guaranteeing the repair work.

C. Construction Specifications.

The Superintendent shall ensure that construction pursuant to this Ordinance complies with the following 3 standards plus the trench detail. Exceptions to these standards may be allowed by the Superintendent for good cause, consistent with the need to exercise good engineering practice and judgment.

1. Excavation. The following standards shall apply:
 - a. Existing pavement in Trench area to be excavated shall be neatly cut with pavement saw before pavement is excavated.
 - b. Disturbed non paved shoulder areas shall be restored with ¾ inch crushed gravel compacted to a depth of 8-inches and two feet wide with a vibratory compactor.
 - c. Materials excavated from trench will be used whenever possible to back fill trench up to 18 inches below the pavement or six inches below surface in vegetated areas.
 - d. Disturbed grass areas will be restored with loam placed 6 inches deep and compacted with 100 pound roller and seeded.
 - e. Disturbed roadway areas will be restored with a crushed gravel base placed 18 inches deep and compacted in two lifts with a vibratory compactor.
2. Paving. The following standards shall apply:
 - a. Excavated trench pavement may be patched temporarily with 4-inches of cold patch until a permanent surface is in place.
 - b. Prior to paving the pavement around the excavated trench shall be cut back an additional 12 inches on all sides. The edges of the trench shall be tack coated prior to paving.

- c. Roadway pavement joints will not be stacked. Existing pavement surface will be milled to a depth of 1¼ inches roughly 6 inches from the base joint and paved with hot mix “surface” asphalt. Tack coat shall be used on all exposed pavement edges.
 - d. The excavated pavement surface will be paved with a minimum of 4-inch hot mix asphalt placed and compacted in two lifts. Tack coat shall be used on all exposed pavement edges.
 - e. Removed shoulder and sidewalk pavement areas shall be paved with at least 2-inches of hot mix asphalt placed and compacted in two lifts. Tack coat shall be used on all exposed pavement edges.
 - f. The applicant shall notify the Superintendent at least 2 business days, or as soon as possible during emergency repairs, prior to the installation of the permanent pavement. This ensures the Superintendent has the opportunity to see the work before permanent paving begins.
3. Accounting for Existing Road Conditions. Many older public roads were not constructed to standards now in effect or are in poor condition. Standards may be varied on a case by case basis to account for local conditions, as when working in a road which was built to lesser standards or which is in poor repair, or when other unusual conditions are encountered (actual York examples include roads with pavement thickness as thin as 2” or as thick as 20”). It is also important to avoid aligning paving patch seams with wheel ruts, and other such factors.



SECTION 6: CULVERTS

6.1. General Provisions.

- A. Permit Required.** A Culvert Installation Permit shall be obtained from the Superintendent prior to installing a culvert in or adjacent to any public street, public sidewalk, public right-of-way, or public drainage easement. If the culvert installation requires excavation through a public street or sidewalk, a Street Opening Permit shall also be required. All permits will be acted upon in accordance with the provisions of MRSA Title 23, Sections 2701 through 3707.
- B. Failure to Provide Proper Culvert.** In instances where a public street, right-of-way or drainage ditch has been filled for the purpose of entry to private property without the installation of a culvert, or the installation of an inadequate size culvert, the Superintendent is hereby empowered to require a culvert of the proper specifications to be installed by the involved property's owner in order to accommodate proper storm water management.
- C. Inadequate Performance.** Any culvert installed pursuant to a Culvert Installation Permit which contradicts the standards, terms and conditions of the Permit shall be removed by the property owner if so ordered by the Superintendent.
- D. Culvert Size.** The minimum required diameter of a culvert is 15" if under a driveway, or 18" if under a road, but the Superintendent shall have the authority to vary these minimums for good cause.
- E. Dig Safe.** Compliance with 23 MRSA §3360-A shall be required.

6.2. Standards.

- A. Responsibilities of the Applicant.**
 - 1. The applicant shall be responsible for preparing and submitting to the Superintendent an application for the proposed street opening. This application shall:
 - a. Be on a form provided by the Public Works Department;
 - b. Specify the diameter, length, type and location of the proposed culvert;
 - c. Providing a drainage analysis from a Maine-licensed Professional Engineer if, in the opinion of the Superintendent, such analysis is warranted to ensure culvert size, placement, and installation are sufficient;
 - d. Specify the expected timeframe for installation;

- e. Describe the plan for traffic control and protection of public safety during installation;
 - f. Obtaining any other required permits; and
 - g. Provide other information relevant to the application.
2. The applicant shall be responsible for all completing all work in accordance with the Culvert Installation Permit obtained pursuant to this Ordinance. All costs are the responsibility of the applicant.
 3. The applicant shall be fully responsible to correct any damage caused to Town property identified by Town inspection. All costs are the responsibility of the applicant.

C. Responsibilities of the Superintendent of Public Works.

1. The Superintendent, or his or her designee, shall be responsible for reviewing and deciding on each Culvert Installation Permit application received. The Superintendent shall have authority to apply engineering expertise and judgment in determining the most appropriate standards and conditions in order to protect the integrity of the public street. Each decision regarding a Culvert Installation Permit application shall be made in writing, and shall detail the requirements to be met by the applicant. Only written requirements specified as part of the Permit shall be binding on the applicant.
2. The Superintendent, or his or her designee, shall be responsible for obtaining independent expert technical assistance when he or she believes it is necessary to protect the public interest, and for obtaining reimbursement from the applicant for the Town's costs in obtaining such independent expert assistance prior to issuance of a Street Opening Permit.
3. The Superintendent, or his or her designee, shall be responsible for inspecting all work completed pursuant to a Culvert Installation Permit, and for identifying and ordering correction of any damage to Town property which may have occurred as a result of the installation.

SECTION 7: VIOLATIONS

7.1. Violations. The Superintendent shall be responsible for determining whether or not there is a violation of this Ordinance. Any time the Superintendent determines a violation exists, it shall be their responsibility to notify the responsible party and attempt to cooperatively obtain corrective action. If this fails, or if the violation poses an immediate threat to public health or safety, the Superintendent may issue a written Notice of Violation.

- 7.2. Duration.** Once the Notice of Violation is received by the person or firm violating the code, hereafter the violator, each day which the violation continues to exist shall constitute a separate offense.
- 7.3. Fine.** Any person who violates this ordinance shall be subject to a civil penalty of \$100.00 for each offense.
- 7.4. Waiver/Payment of Fines.** Any person charged with a violation of this section, shall be allowed to waive such violation and tender to the Town of York the fine amount if paid within 20 days of issuance of the summons. If the waiver fine is paid, no appearance before a District Court Judge or other judicial officer shall be required. If the offender pays the waiver fine, the matter will be closed in the York Police Records system and listed as a subsequent offense for future violations.

If the offender chooses not to pay the waiver fine, he/she shall appear in court on the specified date to answer for the ordinance violation. If the offender is found to have committed the offense in court, fines, applicable court fees, attorney's fees, and prosecution costs may apply.

- 7.5. Limitation on Future Permits.** Any party which has failed to comply with a Notice of Violation, or failed to pay a fine associated with a violation of this Ordinance shall be prohibited from obtaining any Permit pursuant to this Ordinance until compliance is obtained and/or such fine and any interest due the Town is fully paid.
- 7.6. Enforcement.** When a Notice of Violation has been issued and has not resulted in compliance, the Superintendent may notify the Board of Selectmen of the problem. Upon receipt of such notification, the Board is hereby authorized to institute any and all actions and proceedings necessary to enforce the provisions of this Ordinance on behalf of the Town.

SECTION 8: APPEALS

Any action by the Town pursuant to this Ordinance may be appealed to the Board of Appeals. Necessary forms, submittal requirements, and fees shall be specified by the Board of Appeals. The application for an appeal must be submitted within 30 days, subject to the following exception: once physical work commences pursuant to a Street Opening Permit or Culvert Installation Permit, the applicant foregoes their right to appeal the standards, terms and conditions imposed as part of that Permit.

SECTION 9: SAVING CLAUSE

In the event any provision of this Ordinance is found by a court of competent jurisdiction to be invalid, this finding shall not affect the remainder of this Ordinance.

SECTION 10: EFFECTIVE DATE

This Ordinance and amendments thereto, shall take effect immediately upon passage by the voters of the Town of York.

SECTION 11: NOTE ABOUT LEGISLATIVE HISTORY

It is not clear exactly when the earlier Street Opening and Culvert Regulations were adopted [prior to the November 2, 2010 version], and for this reason those standards were repealed and replaced with this Ordinance. Because the prior code referred to the Superintendent of Public Works, the code must have been adopted after the Town changed the position from an elected Road Commissioner to an appointed Superintendent of Public Works.