

**PUBLIC RIGHT-OF-WAY ORDINANCE  
TOWN OF MOUNT DESERT**

**EFFECTIVE MARCH 5, 1990**

**AMENDED MARCH 7-8, 1994**

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(Repeal and replace Street Opening Ordinance)**

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<b>Section</b>	<b>Title</b>	<b>Page</b>
<b>I</b>	<b>General Information</b>	<b>2</b>
	<b>A. Purpose</b>	<b>2</b>
	<b>B. Definitions</b>	<b>2</b>
	<b>C. Regulations</b>	<b>3</b>
	<b>D. Permits</b>	<b>3</b>
	<b>E. Prohibitions</b>	<b>4</b>
	<b>F. Violations</b>	<b>4</b>
<b>II</b>	<b>Permit Application</b>	<b>4</b>
<b>III</b>	<b>Administration</b>	<b>5</b>
<b>IV</b>	<b>Permit General Conditions</b>	<b>6</b>
<b>V</b>	<b>Opening Location Conditions</b>	<b>8</b>
<b>VI</b>	<b>Technical Specifications</b>	<b>9</b>
<b>VII</b>	<b>Abandoned Structures</b>	<b>13</b>
<b>VIII</b>	<b>Relocating Existing Utilities</b>	<b>13</b>
<b>IX</b>	<b>Public Right-of-Way Opening Permit Fee</b>	<b>13</b>
<b>X</b>	<b>Warranty Terms</b>	<b>13</b>

## I. GENERAL INFORMATION

### A. Purpose

This Ordinance has been enacted by the Town of Mount Desert to regulate the use of public rights-of-way in the interest of public safety and convenience, and to protect public infrastructure. It is applicable under the terms of a Right-of-way Opening Permit issued for an intended use; it is also applicable in the absence of a Right-of-way Opening Permit regardless of if one is required or not for an intended use. This Ordinance is necessary to preserve the integrity, operational safety, and function of the right-of-way, which includes the public traveled way.

**B. Definitions:** The following definitions pertain to both this Ordinance and the Application for Public Right-of-way Opening Permit.

1. Town shall mean the Town of Mount Desert.
2. Director shall mean the Director or Designee.
3. Contractor shall mean anyone working in the right-of-way under a Town Right-of-way Opening Permit.
4. Emergency shall mean any event, which may threaten public health or safety, where action is necessary to prevent personal injury, death or the loss or disruption of a private or public utility or service. The burden of proof of such emergency rests with the applicant.
5. Excavation shall mean any operation in which earth, rock, paving or like material, on, or below the surface of the ground, is moved, displaced, dug, trenched, tunneled or in any similar manner disturbed, except the agricultural tilling of soil or gardening.
6. Applicant shall mean a person applying for a permit required by this Ordinance.
7. Permittee shall mean a person who has obtained a permit as required by this Ordinance. A An applicant may be any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
8. Right-of-way shall mean the entire width of every way and place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of traffic, except for private roads and private ways. The definition shall include the area on, above and below the right-of-way, dedicated to public use, and any dedicated, but unaccepted street or way. The definition shall also include any publicly owned space or park. A right-of-way does not include the airwaves above a right-of-way relative to cellular or other non-wire telecommunications or broadcast service. The specific right-of-way will be as is described in the Town's Road Book on file at the town office and/or as established by the Board of Selectmen and/or as established by State Statute, as applicable.
9. Public Right-of-way shall mean the right-of-way.

10. Entrance shall mean direct vehicular access to property abutting the right-of-way.
11. M.D.O.T shall mean the Maine Department of Transportation.
12. Technical and Design Standards shall mean the standards cited herein and adopted by the Town including the Maine Department of Transportation (MDOT) Standards and Specifications for Highways and Bridges, latest edition.
13. Utility shall mean a public utility, as defined in 35-A M.R.S.A. § 102 as it may be hereinafter amended and shall specifically include the non-regulated activities of such a utility.
14. Traveled way shall mean the portion of the right-of-way that is typically paved and is used for vehicular traffic.
15. Pavement, paving, paved, pave, etc. shall refer to asphalt based hot mix bituminous concrete.
16. Designee shall mean an individual authorized by the Director to act temporarily in the Director's capacity.

### **C. Regulations**

Pursuant to the authority contained in the appropriate and applicable Statutes of the State of Maine, the following items, terms, instructions, and conditions shall be and are hereby adopted to regulate and control the application and issuance of Right-of-way Opening Permits granted by the Town, its agents and authorized employees, and the excavation, use and repair of rights-of-way by holders of Right-of-way Opening Permits.

### **D. Permits**

A site visit by the Director to the proposed work area is required for any and all work proposed to be performed in the right-of-way and/or for any work located within 10-feet of the edge of the respective traveled way located in the right-of-way. A Right-of-way Opening Permit shall be obtained before any work is conducted within the aforementioned areas, except for emergency maintenance of an existing facility. If an opening is made for emergency purposes a written permit shall be obtained on the first business day thereafter. Work requiring a permit includes, but is not limited to:

- Potable water, sanitary sewer and electrical, telephone and internet utility work
- Storm water management measures
- Landscaping including earthen berms, shrubbery, pavers,
- Fencing,
- Any work within the right-of-way.

Issuance of a Right-of-way Opening Permit does not constitute an approval by any other Local, State or Federal entity. The Permittee is responsible for obtaining any and all other permits and approvals related to the proposed right-of-way opening. The Permittee shall bear, and be responsible for, all costs associated with the permits addressed herein.

## **E. Prohibitions**

1. Private Utilities: New aboveground or belowground private utilities are to be constructed primarily on private property. Any utility construction that is parallel to the public right-of-way shall be on private property to the maximum extent possible, such extent to be determined by the Director and in conformance with this ordinance. Any construction parallel to the centerline of the traveled way shall be on the Permittee's property to the extent possible and feasible. Construction inside the public right-of-way and parallel to the centerline of the traveled way shall be approved on a case-by-case basis by the Director. Crossings of the traveled way shall be at a ninety-degree angle wherever possible and will be reviewed by the Director and Permittee or on a case-by-case basis. The Director shall evaluate each proposed crossing and make a determination based on information available at the time. Private utilities are not allowed to be placed or constructed in any Town-owned and maintained structures e.g., roadway stone drains, roadway culverts, driveway culverts, open ditches, etc.

2. Public Utilities: The Town will review any construction proposed by a public entity, such as the Mount Desert Water District or Versant Power, with representatives of the public entity and a mutual location for the new construction shall be agreed upon. New construction of said public entity's assets, be they aboveground or belowground, will be prohibited from inside any Town-owned and maintained structures e.g., roadway stone drains, roadway culverts, driveway culverts, etc.

3. Reconstruction of existing aboveground or belowground utilities, be they public or private, will not be allowed inside any Town-owned and maintained structures e.g., roadway stone drains, roadway culverts, driveway culverts, etc. Any existing utilities inside said structures at the time of utility reconstruction are to be relocated outside of the Town-owned and maintained structures e.g., roadway stone drains, roadway culverts, driveway culverts, etc. and are to be constructed in conformance with this ordinance.

## **F. Violations**

Any person, firm, corporation, or entity that violates, disobeys, refuses to comply with or resists enforcement of any provision of this ordinance shall be fined not less than \$100.00 or more than \$2,500.00 for each offense. Each day in which a violation is proved to exist shall constitute a separate offense under this ordinance.

## **II. PERMIT APPLICATION**

A. All applications shall be made on appropriate forms supplied by the Town. Instructions for completing the application are included on the application itself. If an opening requires a Town Location Permit, it must be applied for or obtained before the Opening Permit will be authorized. The Location Permit application can also be obtained from the Town.

B. All applications shall be made and signed by and in the name of the person, persons, firm, corporation, or district for whom the work is to be done (i.e., the owner of the proposed facility) or the authorized agent for the same.

C. Every application shall contain:

- a) The name and address of the applicant or applicants,
- b) The type of work requiring the opening,
- c) An estimated schedule of when construction will begin and be completed.
- d) A sketch plan showing the location and size of the cuts to be made,
- e) An agreement that the applicant shall comply with all applicable rules, regulations and statutes of this State which pertain to highway and right-of-way openings; such agreements to be joint and several with multiple applicants,
- f) An estimate of the square yards of roadway and shoulder area to be opened,
- g) An estimated cost to replace the impacted areas of the right-of-way, based on the schedule included as part of the application. This amount shall be known as the “Total Permit Fee”, and
- h) Every application shall be accompanied by a check ~~or cash~~ in the amount of the estimated Total Permit Fee. This application fee is non-refundable. The Permittee shall be responsible for all final restoration of the affected area to the satisfaction of the Town. Upon satisfactory completion of the repairs, the permit shall be deemed complete. If satisfactory repairs are not done in a timely fashion and upon reasonable notice to the Permittee to do the same, the Town will accomplish the final restoration and bill the Permittee for the cost.

### **III. ADMINISTRATION**

A. Issuance. The Director shall review the completed Right-of-way Opening Permit application on behalf of the Town. If found to be in order, the Director shall initial and date the application and provide it to the code enforcement officer for review and consideration of issuing the permit if the application is found to be in conformance with all applicable local, state, and federal requirements.

B. Limitation. Permits for any portion of the right-of-way, the paved construction (shim or higher type construction) of which was completed within five (5) years prior to the date of the permit, must be referred to the Director before the permit is granted. Except in the case of an emergency, no work shall be done on any such section of the right-of-way until the Director has approved the permit. If the applicant can show that

the need for an opening permit could not have been reasonably anticipated before that portion of the right-of-way was paved and has investigated alternate installation procedures, an "emergency" permit may be issued. For any Right-of-way Opening Permit issued within the 5-year period mentioned above, the Town may attach special conditions to the opening permit for which the Permittee will bear all associated costs.

C. Location. In no case shall a Right-of-way Opening Permit be issued to an applicant who does not hold a Location Permit, if one is required, for the same installation. Regulations and conditions pertaining to Location Permits will be provided in another agreement.

#### **IV. PERMIT GENERAL CONDITIONS**

1. Compliance with the terms and conditions of this permit shall be the responsibility of the Permittee. Costs associated with the terms and conditions of compliance will be borne in whole by the Permittee. The Town will not assume any liability for damages arising out of or resulting from a violation of the permit terms nor will the Town be responsible for any costs associated with the Permittee's compliance with this ordinance.

2. All costs associated with any and all portions of the construction related to this permit shall be borne by the Permittee.

3. The Town reserves the right to limit the permit by setting the time within which the work must be accomplished and may also prohibit work on Saturdays, Sundays, and holidays.

4. All work will conform to the most recent edition of the State of Maine DOT Standard Specifications Highways and Bridges, unless otherwise stated.

5. The Right-of-way Opening Permit will be applicable from the time the Town lifts the winter posting of its roads to the end of the first full week in November of each year. A Winter Right-of-way Opening Permit will be applicable the rest of the year. The latter will only be issued in an emergency or on a case-by-case basis upon recommendation by the Director to the Code Enforcement officer of the Town. If the Code Enforcement Officer disagrees with the recommendation of the Director, a Winter Right-of-Way Opening Permit may or may not be issued. If a permit is not issued, this decision by the Code Enforcement Officer may be appealed to the Selectboard with a request to make an exception to the time period and dates specified above. The appeal shall be accompanied by supporting data adequate to show why an exception should be granted. The Town may consider the appeal and the supporting data, may make an exception to the applicable date, and may specify the terms and conditions of the exception or, deny the appeal.

If a Winter Right-of-way Opening Permit is issued, the Director, at his/her discretion may require the Permittee to provide temporary paving and to maintain the trench until the frost is out of the ground.

6. Permit conditions may include, but not be limited to, the following:

- a) For right-of-way openings parallel to the centerline of the traveled way, a paved shim and overlay of the affected travel lane extending from the edge of the existing pavement to the centerline of the traveled way may be required. A butt joint, minimum depth of 1-inch and 12-inches in width, adjacent to the center of the traveled way the entire length of the project area prior to paving will be required in this instance.
- b) In addition, if, as determined by the Director, the area to the opposite side of the centerline from the work lane has been damaged, a shim and overlay of the entire width and length of the roadway in the construction area will be required. e.g., if blasting lifts a section of the roadway; if there are excessive excavator\_bucket teeth marks in the pavement or if there are track marks in the pavement from the metal tracks of construction equipment and activities.
- c) The final decision related to roadway repair and scheduling of said repairs, will be at the discretion of the Director.

7. In general, there is no opening fee if an installation is made completely within the area of and during Town initiated construction of portions of the right-of-way. Although an opening fee may not be charged, the Permittee will be billed for any damage to Town assets located in the right-of-way.

If traffic is to pass over the location, the trench shall be capped with 2-inches (2") of cold mix bituminous pavement for openings made before construction of the Town project commences and shall be subject to the highway contract specifications in effect during construction of the Town project. The Permittee shall be responsible for maintaining the trench area until such time that the roadway falls under jurisdiction of the Town\_construction project.

8. Installations to be made under paved areas shall be designed to use the shortest possible distance under the pavement consistent with the particular installation involved. The Town may require, or the Permittee may propose, a method of installation (such as tunneling or jacking) that will not cause damage to or opening of the pavement. When such method is required or proposed, the method to be used shall be developed by the Permittee for review and approved by the Town. Approval by the Town will not relieve the Permittee of their responsibility for performing the work in a satisfactory manner.

9. The Permittee shall give due consideration to the installation of a conduit or sleeve of adequate design to permit the operating facility to be removed for repair or replacement without opening the right-of-way in the future.
10. Private electric power and cable/internet/television crossings shall be placed in a suitable pipe sleeve extending not less than two-feet past the edge-of-pavement.
11. All installations under pavement and shoulders shall have not less than 24 inches of soil cover. Elsewhere cover shall be not less than 12 inches. Installations subject to freezing shall be sufficiently deep so that it will not be damaged by frost penetration.
12. All curb and sidewalk construction/restoration addressed with this permit shall comply with the Americans with Disabilities Act.
13. If the work covered by this permit disturbs or removes any existing property or right-of-way monumentation, the Permittee shall retain the services of a professional land surveyor licensed to practice in the State of Maine to reset the same.

## **V. OPENING LOCATION CONDITIONS**

1. Public or privately owned existing installations may be adjusted in place upon approval from the Director to clear Permittee construction within the right-of-way, except when replacement of a substantial portion of the existing installation is required, or when prohibited from adjusting it because of specific regulations or physical constraints e.g., ledge or slope of a pipe.
2. New installations, unless otherwise clearly indicated, shall mean proposed new installations or replacement of existing installations.
3. New installation under the normal paved traveled way will be permitted only where the applicant can show that a similar installation under or outside the shoulder (or outside the travel lane if there is no shoulder) is not practical and upon approval of the Director.
4. If portions of the infrastructure located within the right-of-way might be reconstructed in the foreseeable future, new installations shall be made at locations agreed upon between the Director and the Applicant in consideration of the proposed future construction. The location of the Applicant's proposed assets shall be identified by the Applicant for discussion purposes.
5. The Director shall consider the condition of the road, the type of installation, the size of trench, the proposed methods of construction, etc. and the experience of the Applicant's proposed contractor when reviewing the application for a permit to open the road.



6. New installations will not be permitted under and parallel to Town sidewalks. Crossings perpendicular to sidewalks are required.

7. Exceptions to the above locations may be made on a case-by-case basis upon approval of the Director.

## **VI. TECHNICAL SPECIFICATIONS**

1. The traveling public shall be adequately protected.

a) At least one-way traffic shall be maintained at all times during any work conducted in the right-of-way.

b) Work shall be signed, lighted and traffic control flaggers will be supplied when necessary. The Town will have final say when traffic control flaggers are needed. All traffic controls shall be in accordance with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, as issued by the Federal Highway Administration.

c) All Town signs that are removed or disturbed as a result of the work covered by this permit shall be temporarily relocated and shall remain in service until work is complete, as applicable. They will then be returned to their original locations.

2. Construction methods shall be such that excessive excavation and excessive destruction of pavement will be avoided. Pavements shall be cut in advance along the proposed edges of excavation and a second time prior to final paving of trenches or the roadway, full depth of the pavement. The Permittee shall reestablish the original lines and grades of the right-of-way to preconstruction conditions.

3. The backfill material shall be as follows:

a) General: Materials shall be natural soil or rock. All materials shall be free of organic or other weak or compressible materials, rubbish, trash, clay, vegetation, building rubble or frozen matter and other deleterious matter. The Director shall have final determination of what is suitable backfill material.

b) Aggregate Subbase Material (the layer from seven-to-18 inches below the bottom of the pavement) shall be sand or gravel consisting of hard durable particles as described in a) above, one hundred percent of which will pass a four-inch (4") square mesh sieve. The gradation of the portion that will pass a three-inch (3") square mesh sieve shall meet the requirements of the following table:

<u>Sieve Size</u>	<u>Percent Passing by Weight</u>
¼-inch	25-70
No. 40	0-30
No. 200	0-7

c) Aggregate Base Material (the six-inch (6”) thick layer just below the bottom of the pavement) shall be sand or gravel consisting of hard durable particles as described in a) above, one hundred percent (100%) of which will pass a two-inch (2”) square mesh sieve. The gradation shall meet the requirements of the following table:

<u>Sieve Size</u>	<u>Percent Passing by Weight</u>
2-inch	100
½-inch	45-70
¼-inch	30-55
No. 40	0-20
No. 200	0-5

d) All other backfill shall be equivalent to material removed, except that special backfill of suitable material may be used immediately around pipe, cable, conduit, etc. or to replace material that cannot be compacted to the required compaction specifications.

4. Backfill material shall be uniformly distributed in layers of not more than nine-inches (9”) and thoroughly compacted to the required compaction specifications by use of approved mechanical compactors before successive layers are placed.

5. Restoration of all curb and sidewalk areas disturbed during construction construction/restoration shall match preconstruction conditions unless otherwise directed by the Director.

6. Surplus material shall be removed from the site and the area shall be left in a clean, presentable condition.

7. The edges of the proposed trench are to be cut full depth of the existing pavement prior to commencing any excavation work and prior to trench repair and final paving. Cuts are to be made parallel and/or perpendicular to the centerline of the traveled

way. Angled cuts will not be accepted. Permanent pavement shall be replaced to the full depth and extent of the existing pavement removed or as directed by the Director.

8. Pavement (hot bituminous concrete) for repairs is to conform to the following specifications:

If the repair is made with a mechanical paving machine or by handwork:

- a) Binder course (Base pavement): One 1.5-inch (1.5”) thick layer of 9.5 mm coarse hot mix.
  - b) Surface course: One 1.5-inch (1.5”) thick layer of 9.5 mm hot mix.
  - c) Sidewalks: As in a) and b) above or as directed by Director.
9. a) All openings of any kind made in the pavement of any Town public way under this opening permit,
- shall be temporarily repaired with a minimum ~~two~~ of one 2-inch (2”) thick layer of cold patch within 24 hours of the opening being made unless other arrangements are agreed upon in advance with the Director and
  - permanently repaired with pavement within 14 calendar days of the opening being made provided the nearest pavement plant is in operation. If it is not, the cold patch trench repair will suffice until the plant is open. The cold patch shall be replaced with pavement within 14 calendar days after the nearest ~~hot mix~~ plant is open for business.
  - All work is to be performed in conformance with the Town of Mount Desert’s Public Right-of-Way Opening Ordinance in affect at the time of issue of the Public Right-of-Way Opening Permit.
- b) Heavy equipment with metal tracks, including but not limited to, excavators and bulldozers, of any size:
- Shall not be unloaded directly from e.g., a trailer onto pavement surfaces owned and maintained by the Town, including but not limited to, roadways and parking lots. The pavement must be protected by rubber tracks on the equipment plywood or other means to prevent scarring or other damage to the pavement.
  - Shall not be driven or “walked” on the pavement surfaces owned and maintained by the Town, including but not limited to, roadways and parking lots. The pavement must be protected by rubber tracks on the equipment plywood or other means to prevent scarring or other damage to the pavement.

10. The Town reserves the right, after due notice in writing to the Permittee:

- a) To provide such supervision and inspection as it may deem necessary.
- b) To re-excavate and backfill as may be necessary.
- c) To clean up the area if the area is improperly and unsatisfactorily cleaned up.
- d) To charge the holder of the permit the cost of all work performed under reservations (a, b, and c above); which charge will be in addition to the normal fee for opening the right-of-way and said charge will be included in an invoice to the Permittee from the Town.

11. After the excavation has been made and backfilled, the actual square yardage of disturbed area, including any areas adjacent to the installation disturbed by blasting or other similar cause, will be measured by a representative of the Town. If the final permit fee based upon actual measurements differs from the estimated permit fee, an adjustment will be made either in the form of a refund or bill showing the additional amount due.

12. All disturbed areas located in the right-of-way shall be repaired to preconstruction or better condition. This includes, but is not limited to, lawns, curbing, sidewalks, drainage conditions, sight distances and roadway surfaces. The Director shall determine the acceptability of the repairs.

13. The Permittee shall on a regular basis, or after notice by the Director, remove and sweep clean any dirt, mud, silt, or any other debris that accumulates on the pavement in the area of the project. Such action by the Permittee shall be done to the satisfaction of the Director and whenever deemed necessary by the Director.

14. The Permittee shall conduct all operations and maintain the area of all activities, including sweeping and implementing generally accepted dust control measures in streets and at the construction site, as necessary, to minimize the creation and suppression of dust. The Permittee shall control dust through periodic sweeping and wetting of project area or through the use of straw mulch in some cases, as applicable.

15. The Permittee shall maintain services of any and all private or public entities during the course of the work. Required interruptions shall be scheduled in advance with the affected parties and the work performed continuously so as to minimize the duration of interruption.

16. No gutters or ditches shall be obstructed that interfere with surface drainage. Temporary measures for runoff control shall be put in place to prevent sediment from discharging into the storm drainage system and from leaving the construction site. Such measures shall conform to the most recent edition of "Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices" as prepared by the

Cumberland Country SWCD. Such measures may include, but not be limited to, straw bale or stone dikes, silt fencing, temporary swales, and sediment traps.

17. All existing paved edges and existing paved underlying layers are to be tacked prior to the construction of any new pavement against them or on top of them.

## **VII. ABANDONED STRUCTURES**

In general, private structures located in the right-of-way that are no longer in use shall be removed to minimum eighteen-inches (18") below the adjacent ground surface. The structure, if applicable, shall be filled with backfill material described elsewhere in this ordinance.

## **VIII. RELOCATING EXISTING UTILITIES**

Any replacement of existing private assets and infrastructure shall be done in accordance with this ordinance as described in Section I.E above.

## **IX. PUBLIC RIGHT-OF-WAY OPENING PERMIT FEE**

The total Public Right-of-way Opening Permit Fee will be as calculated on the "Application for a Right-of-way Opening Permit". After completion of the work described in the permit and the excavation has been made and backfilled, the actual square yardage of disturbed area, including any areas adjacent to the installation disturbed by blasting or other similar cause, will be measured by the Director of the Town. If the final permit fee based upon actual measurements differs from the estimated permit fee, an adjustment will be made either in the form of a refund or bill showing the additional amount due.

EXCEPTION: The Mount Desert Water District, a tax-exempt, quasi-municipal corporation doing business in the Town is exempt from the fees described herein. The water district customers are also taxpayers in the Town. As such, the cost of any fees imposed on the water district would likely be reflected in higher water rates to the users (ratepayers a.k.a. taxpayers). This exception does not absolve the water district from conforming with all other requirements of this ordinance e.g., they must conform to all other requirements of this ordinance.

## **X. WARRANTY TERMS**

The Permittee is responsible for and agrees to guarantee all work to be free from defects in workmanship and material for a period of two (2) years from the completion of the work. The completion date for the work shall be agreed upon between the Director and the Applicant. The Permittee is responsible for contacting the Director to establish the effective completion date for the work; otherwise, it will be established by the Director.

If any settlement, cracking, pavement deterioration or similar problem occurs the Permittee shall promptly repair such defect at no expense to the Town. If the Permittee fails to repair a defect upon notice from the Director that such a repair is required, the Town reserves the right to cause the repairs to be made with all costs incurred to be the responsibility of the Permittee.