

# **STREET OPENING ORDINANCE TOWN OF KENNEBUNKPORT KENNEBUNKPORT, MAINE**

**\*APPROVED: MARCH 28, 1987\***

**\*AMENDED: 6/12/04\***

## **SECTION 1: SHORT TITLE**

This Ordinance shall be known as and may be cited as the “Kennebunkport Street Opening Ordinance” and will be referred to herein as “this Ordinance”.

## **SECTION 2: AUTHORITY**

This Ordinance is adopted pursuant to 23 M.R.S.A. Sections 3351 through 3360-A., 35-A M.R.S.A. Sections 2507 through 2512, 30-A M.R.S.A. Section 3001 and the Home Rule provisions of the Maine Constitution.

## **SECTION 3: CONFLICT WITH OTHER ORDINANCES AND LAWS**

Where there is conflict between this Ordinance and any other federal, state or local rule, regulation, ordinance or statute, the more restrictive provision shall control. Compliance with this Ordinance does not relieve any person, firm or corporation from complying with the notification provision of 23 M.R.S.A. Section 3360-A or with the provisions of any other state law.

## **SECTION 4: VALIDITY AND SEVERABILITY**

The invalidity of any section or provision of this Ordinance shall not affect the validity of any other section or provision of this Ordinance.

## **SECTION 5: DEFINITIONS**

Emergency excavation means immediate excavation necessary to prevent injury, death or loss of an existing vital service.

Excavation means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced, by means of hand digging, power tools, power equipment or explosives and including grading, trenching and digging.

Highway Director means the Director of the Town Highway Department.

Selectmen means the Board of Selectmen of the Town.

Street means any street, road, alley or other public way in the Town except state, state aid or federal aid highways.

Town means the Town of Kennebunkport, Maine.

Underground facility means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas or other substances and including, but not limited to pipes, sewers, culverts, conduits, cables, valves, lines, wires, manholes, attachments, appurtenances and those parts of poles below ground.

## **SECTION 6: PERMIT REQUIRED**

No person, firm or corporation, including utility companies, may make any excavation for the construction, repair or replacement of any underground facility in any street, sidewalk or public parking lot without having first obtained a permit as herein required. Every permit granted shall specify the time during which the excavation may remain open, the place where the excavation may be made, and the approximate number of square yards that may be disturbed. This section shall not apply to the State of Maine.

## **SECTION 7: EMERGENCY EXCAVATIONS**

Notwithstanding the provisions of section 6, emergency excavation for the construction, repair or maintenance of an underground facility in any street, sidewalk or public parking lot may be undertaken provided that a permit is applied for on the first working day after such excavation is commenced.

## **SECTION 8: PERMIT APPLICATIONS**

Permit applications may be obtained at the Town office.

The permit application shall be completed by the owner of the property to be benefited by the work which necessitates the permit or by the owner's authorized representative. Where the excavation is undertaken by a utility company on its own behalf, the application shall be completed by such company.

A completed application together with an application fee of \$25.00 shall be submitted to the Highway Director. The party applying for a permit must also file a map or sketch with the Highway Director, showing the location and size of any cuts to be made. After review, the Highway Director shall forward the application to the Selectmen along with his recommendations. The Selectmen, applying the standards of this Ordinance, may approve, approve with conditions, or deny the application. After approval or approval with conditions by the Selectmen, the Highway Director shall issue a permit conditioned as required by the Selectmen.

## **SECTION 9: BOND**

No such permit shall be issued unless and until the permittee has filed with the Town Clerk a performance bond in accordance with the following schedule:

- a) \$2,000.00 for cross-cut openings;
- b) \$2,000.00 for parallel openings not exceeding one hundred (100) feet in length; or
- c) \$20.00 per foot for parallel openings in excess of one hundred (100) feet in length.

Such bond shall have as surety a corporation licensed to do business in the State of Maine as a surety company, and shall extend for a term of at least two years after completion of the project. An equivalent amount of cash or certified funds payable to the Town may be deposited for the same purpose in lieu of the surety bond required by this section.

The Selectmen may, in their discretion, require surety in an amount greater than those set forth in the preceding schedule or for a term in excess of two years in projects where they determine that the project, because of its nature, magnitude, or unusual circumstances warrants such additional security.

Notwithstanding any of the above requirements the Selectmen is hereby given the authority to allow utility companies, in lieu of posting any other surety or performance bond required by this section, to instead post an annual bond of \$15,000.00 for the purposes set forth in this section.

Applicants other than utility companies may post an aggregate bond in January of each year to secure a designated number of cuts during that year. The terms of that bond and per-cut amount shall be as provided herein for single-cut bonds. Any portion of such an aggregate bond not used by December 31 of the year it was posted may not, without approval of the Board of Selectmen, be carried over to the following year.

## **SECTION 10: INSURANCE**

A certificate of insurance shall be required with limits of public liability coverage deemed by the Selectmen to be sufficient to provide adequate protection to the Town, its citizens and the general public.

## **SECTION 11: EXCAVATION – CARE REQUIRED**

Prior to excavation work, notice shall be given to the persons maintaining any underground facility, or to the municipal department or officer charged with the care thereof, which may be injured or affected by the making of any such excavation. Such notice shall be made in accordance with state law, as described in 23 M.R.S.A. Section 3360-A.

Every excavation must be done in a skillful manner. Each permittee shall obtain information as to the existence and location of all underground facilities and protect the same against damage.

No injury may be done to any underground facility in the making of excavations. In order to avoid such injury, an excavator may not use mechanical means of excavation when excavating within eighteen (18) inches of any unmarked underground facilities until such facilities have been exposed. Notwithstanding this limitation, mechanical means are permitted, as reasonably necessary, for initial penetration and removal of pavement, rock, or other materials requiring the use of mechanical means of excavation.

No damage may be done to any tree or shrub or the roots thereof in the making of any such excavation. The owner of such tree or shrub shall be compensated by the permittee for any damage done.

Except by permission of the Highway Director, an excavator may not leave open at any time a trench or excavation of a greater length than two hundred (200) feet.

## **SECTION 12: RESTORING SURFACE – MINIMUM STANDARDS**

Any person, firm or corporation making any excavation in or under any street, sidewalk or public parking lot shall restore the surface to its original condition or better, in accordance with the minimum standards contained herein.

Excavation work, including procedures and materials, shall conform to said minimum standards, and to such other standards of the Highway Director as may be adopted by the Selectmen as a condition of permit approval.

Minimum standards shall include the following:

In all cases, replaced bituminous asphalt shall include a grinded joint where it joins existing unimproved bituminous asphalt.

Parallel, diagonal, cross or right angle street openings up to five feet in width or ten feet in length shall include new bituminous asphalt consisting of 2.5 inches of binder or base mix, or thickness equivalent to the existing bituminous asphalt, whichever is greater and 1 inch of surface mix confined within the limit of the opening.

Parallel, diagonal, cross or right angle street openings in excess of five feet in width, but less than ten feet in width, or up to ten feet in length, but less than twenty feet in length, shall include new bituminous asphalt consisting of 2.5 inches of binder or base mix, or thickness equivalent to the existing bituminous asphalt, whichever is greater confined within the limit of the opening. The full width of the paved street or sidewalk shall be paved five feet beyond the end of the opening and five feet prior to the beginning of the opening with not less than 1 inch of surface mix.

Parallel, diagonal, cross or right angle street openings in excess of ten feet in width or twenty feet in length shall include new bituminous asphalt consisting of 2.5 inches of binder or base mix, or thickness equivalent to the existing bituminous asphalt, whichever is greater confined within the limit of the opening. The full width of the paved street or sidewalk shall be paved twenty feet beyond the end of the opening and twenty feet prior to the beginning of the opening with not less than 1 inch of surface mix.

### **SECTION 13: SIDEWALKS**

If any sidewalk is blocked by any excavation work, a temporary sidewalk shall be constructed or provided which shall be safe for travel and convenient for users. The temporary sidewalk is subject to inspection by the Highway Director and shall not be open for use until approved by the Highway Director.

### **SECTION 14: SEASONAL LIMITS**

No excavation, except an emergency excavation, shall be allowed from November 15 to April 15. The Selectmen may waive these limits on a case by case basis only upon a finding that the need exists for an emergency excavation.

All cuts in existence in streets prior to November 15 shall be resurfaced before December 10 to the Highway Director's satisfaction.

### **SECTION 15: PROTECTIVE MEASURES AND ROUTING OF TRAFFIC**

It shall be the duty of every person, firm or corporation cutting or making an excavation in or upon any street, sidewalks or public parking lot, to place and maintain barriers and

warning devices necessary for the safety of the general public. The Selectmen may restrict the use of lanterns or open flame devices in fire hazard areas.

The permittee shall take appropriate measures to assure that during the performance of excavation work, traffic conditions as near to normal as possible shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public. The permittee shall employ “flagmen” when necessary to assure traffic safety.

When traffic conditions permit, the Selectmen may by written approval permit the closing of streets and alleys to all traffic for a period of time prescribed by them. Such written approval may require that the permittee give notification to various public agencies and to the general public. In such cases, such written approval shall not be valid until such notice is given.

Warning signs shall be placed far enough in advance of the excavation operation to alert traffic within a public street and cones or other approved devices shall be placed to channel traffic, all in accordance with the instructions of the Highway Director.

## **SECTION 16: RELOCATION AND PROTECTION OF UTILITIES**

The permittee shall not move or otherwise interfere with any underground facility without the written consent of the Selectmen and the owner of the facility. In case any underground facility is damaged, the permittee shall promptly notify the Town and the owners thereof. All damaged facilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee, unless the owner of said damaged facilities consents otherwise. As a condition of being granted a permit, the permittee assumes all liability for damage to underground facilities and any resulting damage or injury to any person because of such facility damage.

## **SECTION 17: ABANDONMENT**

Whenever the use of an underground facility is abandoned, except the abandonment of service lines designed to serve single properties, the person owning such facility shall, within 30 days after such abandonment, file with the Highway Director a written statement giving the location of the facility. If such abandoned facility is in the way, or subsequently becomes in the way, of an installation of the Town or any other public body, which installation is pursuant to a governmental function, the owners shall remove such facility or pay the cost of its removal.

## **SECTION 18: PROMPT COMPLETION OF WORK**

After an excavation is commenced, the permittee shall promptly complete work covered by the permit and restore the area to its original condition.

## **SECTION 19: TWENTY-FOUR HOUR WORK CREWS**

When traffic conditions, the safety or convenience of the traveling public or the public interest require that excavation work be performed as emergency work, the Selectmen shall have authority to order that a crew of men and adequate facilities be employed by the permittee twenty-four hours a day to the end that such excavation work may be completed as soon as possible.

## **SECTION 20: NOISE, DUST AND DEBRIS**

Each permittee shall conduct and carry out excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work noise, dust and unsightly debris and, between the hours of 10 p.m. and 7 a.m., shall not use, except in case of emergency excavation, any tool appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

## **SECTION 21: SUPERVISION**

The Highway Director shall from time to time inspect or cause to be inspected all excavations of any street, sidewalk or public parking lot in the Town to ensure the enforcement of the provisions of this Ordinance. Notice shall be given to the Highway Director at least ten hours before the work of refilling any such tunnel or excavation commences.

## **SECTION 22: HANDBOOK OF PROCEDURES**

The Highway Director shall compile a handbook on the use of proper procedures and materials in the excavation of streets, sidewalks and public parking lots. Such handbook shall be available for public inspection and may be referred to, in whole or in part, by the Selectmen when imposing permit conditions.

## **SECTION 23: PENALTY**

Any person, firm or corporation, including utility companies, which excavates any street, sidewalk or public parking lot without a required permit or in violation of the terms or conditions of any permit shall be subject to a civil penalty of \$25.00 for each offence and shall be required to obtain the necessary permits.

Any person, firm, or corporation, including utility companies, which violates section 11 herein shall be subject to a civil penalty of \$50.00 for each offense. In addition, in the event that the work or any part of the work done in connection with filling trenches or

excavation is unskillfully or improperly done, the Highway Director may immediately cease the work or any part of the work to be skillfully and properly done. The Highway Director shall keep an account of the expenses incurred and the party in default shall forfeit and pay a penalty equal to the whole of the expense incurred by the Town plus an addition of fifty percent (50%).

For purposes of this section, each day of a continuing offense constitutes a separate offense.

This Ordinance shall be enforced under the provisions of 30-A M.R.S.A. Section 4452.

#### **SECTION 24: EFFECTIVE DATE**

This Ordinance and any amendments shall be effective immediately upon approval of the voters of the Town at the annual Town Meeting.