

**Amendment #4**  
*Amend Street Opening Standards*

**Ballot Language:** The following language would appear on the ballot:

Article 4

The Town hereby ordains amendment of the **Street Opening and Culvert Ordinance** to amend the Purpose, Applicability, and Street Opening sections.

Statement of Fact: The purpose of this amendment is to substantively change the manner in which work within public streets and rights-of-way are permitted. The proposed change establishes physical standards for work, particularly with respect to paving and the qualification of pavers. The proposal would allow those who cut into roads to repair their own trenches and openings rather than requiring payment for the Town to perform this work. The proposal also has a new provision to help ensure advanced coordination between the Town and utility districts.

**Recommendations:**

Recommended by the Board of Selectmen:

**Amendment:** Amend the Ordinance as follows:

## **STREET OPENING AND CULVERT ORDINANCE**

### **SECTION 1: PURPOSE**

The purpose of this Ordinance is to protect public transportation and drainage infrastructure, and public property in general, from undue impacts caused by non-municipal action.

*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: ~~where such work is conducted by employees of the Town of York, or others working under contract to the Town of York.~~

- 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.*

### **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. ~~All permits will be acted upon in accordance with the provisions of MRSA Title 23, Sections 2701 through 3707.~~
- B. Winter Permits.** No Street Opening Permit will be issued between December 1<sup>st</sup> in any one year and March 15<sup>th</sup> of the following year, ~~except for an emergency as determined by the Superintendent.~~ *The Superintendent may make exceptions to accommodate emergencies, and to accommodate long-duration 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 backfilled.**
- D. Dig Safe.** Compliance with 23 MRSA §3360-A shall be required.
- E. Permanent Resurfacing.** ~~Permanent resurfacing of a street opening shall be made by the Town of York at the applicant's expense. The Superintendent may, for good reason, permit the applicant to permanently resurface the street opening, and in such cases shall mandate specifications for such work. The Town shall establish minimum qualifications for paving contractors. The applicant shall hire a paving contractor which meets or exceeds these standards to complete the permanent resurfacing of the opening, and all work shall comply with the construction specifications of this Ordinance.~~
- 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*. ~~check made payable to “Town of York” for the cost of permanent resurfacing of the street or sidewalk. The amount shall be determined by the Superintendent prior to submittal of the application.~~
  - 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 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 to provide a temporary resurfacing of the street opening. The top surface of the backfill shall be covered with 3 inches compacted depth of bituminous temporary resurfacing material by the applicant. Cold mix shall be used, but the applicant may use or the Superintendent may require hot mix. All temporary paving material shall conform closely enough to the level of the adjoining paved surfaces and shall be compacted so that it is hard enough and smooth enough to be safe for pedestrian and bicycle travel over it, and well as for~~

~~vehicular traffic to pass safely over it at a legal rate of speed.~~ The applicant shall be responsible for maintaining the temporary ~~surface paving~~ and keeping it safe for travel until ~~permanent resurfacing is completed. the Town permanently resurfaces the street, or for 6 months, whichever occurs first.~~ 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 be fully responsible to correct any deficiencies identified by Town inspection. All costs are the responsibility of the applicant.
5. The applicant shall be responsible to guarantee the quality of their work and materials. If any backfill and/or permanent surface of an excavation prove to be unsatisfactory within ~~2 years one year~~ after the permanent surface on the trench has been completed, the area involved shall be re-excavated, re-filled and re-surfaced by the Department of Public Works, and the applicant shall be responsible for the full cost of such repair work.

**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. The Public Works Department shall be responsible for permanent resurfacing associated with any Street Opening Permit, utilizing funds provided by the applicant for this purpose. If permanent resurfacing is not completed within 6 months of completion of the backfilling of the excavation, the Department shall assume~~

responsibility for maintaining the temporary resurfacing of the excavation until permanent resurfacing occurs.

5. The Superintendent, or his or her designee, shall be responsible for inspecting the street opening within one year of issuance of the Permit to ensure the work has proven to be satisfactory. To ensure the long-term acceptability of repairs, the Superintendent shall inspect the street opening any time within 2 years following completion of the permanent resurfacing by the applicant. Acceptance or rejection of the work shall be made in writing, and failure to provide a written decision by the end of the 2 year period shall constitute approval by default.

**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:

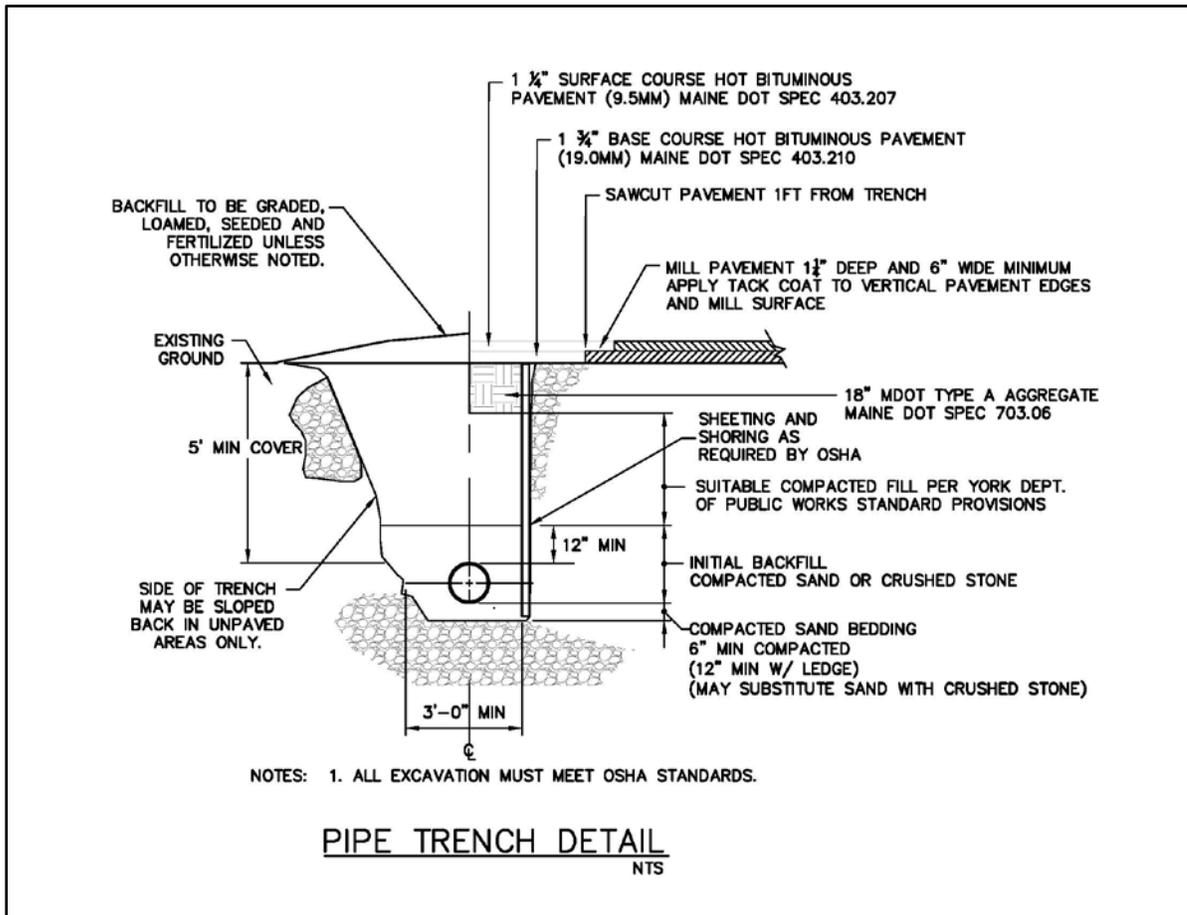
- a. Existing pavement in Trench area to be excavated shall be neatly cut with pavement saw before pavement is excavated.
- b. Disturbed non paved shoulder areas shall be restored with  $\frac{3}{4}$  inch crushed gravel compacted to a depth of 8-inches and two feet wide with a vibratory compactor.
- 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 1  $\frac{1}{4}$  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.

3. Accounting for Existing Road Conditions. Many older public roads were not constructed to standards now in effect. 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 (for example, a stretch of road with 20" pavement thickness).



## 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.** The violator shall pay a fine of \$100 for each offense.
- 7.4. 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.
- 7.5. 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, 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.