

Chapter ***. Utilities

ARTICLE I Utility Companies

§ ***-1. Permit. All utility companies, including but not limited to cable television, water, sewer, telephone, gas, internet or power, must comply with the application process pursuant to 35-A M.R.S. Public Utilities, Part 2, Public Utilities, and shall also be required to obtain a permit for excavation or new construction within the rights-of-way of the Town.

§ ***-2. A utility company, including but not limited to cable television, water, sewer, telephone, gas, internet or power, performing a major opening may obtain permission from the Public Works Director to perform its own repairs in excess of 100 linear feet in accordance with the specifications established in this Article. The Public Works Director may require a utility to have repairs to pavement fixed with bituminous concrete. Any utility company performing its own repairs may be required to provide a secure guarantee such as a job bond, insurance certificate and/or escrow account for three years from the date of completion of the work and shall be responsible for correcting any defects in or repairs to such work. The utility shall notify the Public Works Director or his/her appointed representative prior to correcting any problems or making any repairs to the street opening during this three-year period.

§ ***-3. After an excavation is commenced, the permittee shall carry out with diligence and expedition all excavation work covered by the permit and shall promptly complete such work and restore the street or sidewalk as specified in this Article. The permittee shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel.

§ ***-4. All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property.

§ ***-5. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the Town shall have the

authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling.

§ ***-6. Backfilling and compaction of roadway and sidewalk subgrade materials shall conform to Maine DOT Standard Specification 304.03 in order to prevent future settling of roadway materials. Additionally, common borrow materials shall conform to Maine DOT Standard Specification 703.18 preventing frozen materials, perishable rubbish, peat and other unsuitable materials from being present in excavation backfill.

§ ***-7. After completing the placement, replacement or removal of a pole or an underground facility pursuant to this Article, the public utility or contractor to the public utility shall remove from the right-of-way any debris created by the placement or excavation for such utility within five business days.

§ ***-8. Whenever the use of a substructure is abandoned, except the abandonment of service lines designed to serve single properties, the person or utility owning, using, controlling, or having an interest therein, shall within 30 days after such abandonment, file with the Town a statement in writing giving in detail the location of the substructure so abandoned. If such abandoned substructure is in the way, or subsequently becomes in the way, of an installation of the Town or any other public body, the owner of such substructure, after having been contacted by the excavator, shall establish if the substructure is abandoned and make the first cut or tap before allowing the substructure to be removed by the excavator.

§ ***-9. Whenever the last utility line has been removed from a pole designating the pole as abandoned, the person or utility owning, using, controlling, or having an interest therein, shall, within 30 days after such abandonment, remove said pole and repair according to this Article.

§ ***-10. Repaving.

- A. Except as otherwise provided in this Article, the Town shall pave all street openings subject to this Article.
- B. When an excavation made in any highway subject to this Article has been back-filled in accordance with this Article, and upon the direction of the

Public Works Director or the Public Works Director's appointed representative(s), the Town shall cause the excavation trench to be patched with premixed bituminous material on those highways which had been previously paved. In those instances where the highway surface is gravel, the excavator shall grade and maintain a level travel surface.

C. Violations and penalties; enforcement.

Violations of this Article may result in the imposition of any one or more of the following provisions.

- 1) Any person who causes an excavation of any highway subject to this Article in violation of the requirements of this Article may be punished by a fine of \$50 for each offense. Each day of each such violation shall constitute a separate offense.
- 2) If the backfilling or repair of any excavation permitted in accordance with this Article is improperly executed under the provisions of this Article and the permittee fails or refuses to correct such work after oral notification by the Town, the Town shall cause such work to be corrected. The permittee shall reimburse the Town for 150% of the costs incurred by the Town in undertaking such corrective work. The Town shall not issue any excavation permits to any person who owes the Town any sums under this section.
- 3) The Public Works Director or the Public Works Director's appointed representative shall enforce this Article. Once the Public Works Director has determined that a violation of any provision of this Article has occurred, the Public Works Director or the Public Works Director's appointed representative may take any one or more of the following actions:
 - (a) Refer the matter to the Town Manager for legal action.
 - (b) Issue a stop-work and corrective action order.
 - (c) Take any corrective action necessary to remedy any defect or danger created by the unauthorized or improperly executed excavation when the permittee fails to correct such defect or

danger upon notice from the Town.

- 4) In any enforcement action under this Article brought in a court of competent jurisdiction within this state in which the Town is the prevailing party, the Town shall be entitled, in addition to any equitable relief, to all costs and expenses incurred in the enforcement action, including but not limited to reasonable attorney fees, fines and such other relief as the court deems proper under 30-A M.R.S. § 4452.

ARTICLE II

Replaced and Abandoned Joint Use-Utility Poles

§ ***-11. Replaced Poles.

All attaching entities with attachments above the communications space on a replaced joint-use utility pole must move their attachments to the new pole within 30 calendar days of the setting of the new pole. All attaching entities with attachments in the communications space of a replaced joint-use utility pole must move their attachments to the new pole in a sequential manner. The move process must begin:

- A. In the case of a pole with attachments above the communications space, within 30 calendar days of the completion of the move of those attachments to the new pole; or
- B. In the case of a pole without attachments above the communications space, within 30 calendar days of the setting of the new pole.

Once an attachment is moved, that attacher must so indicate in the joint-use software system, or, in the absence of a joint-use software system, notify the pole owner who in turn must notify the next attacher. Each subsequent attacher must move its attachment within 15 calendar days of notification.

§ ***-12. Abandoned Poles. The owner responsible for the maintenance of an abandoned joint-use utility pole must remove the abandoned pole within 90 calendar days of the removal of the last communications or electric attachment (whichever is removed last) from the pole. Pole owners must remove poles that were abandoned before the effective date of this Chapter within 180 calendar days

of the effective date of this Chapter. If the owner of a pole cannot be determined, the responsibility for removal of the pole lies with the utility responsible for maintenance of the pole.

§ ***-13. Deviation from Time Periods. A pole owner or attaching entity may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the pole owner or attaching entity to complete the make-ready work within the prescribed time frame. A pole owner or attaching entity that so deviates must immediately notify, in writing, the Code Enforcement Officer, the requesting party and other affected attaching entities, and must include the reason for and date and duration of the deviation. The pole owner or attaching entity may deviate from the time limits specified in this section for a period no longer than necessary and must resume make-ready performance without discrimination when it returns to routine operations. For pole replacements, a pole owner may add 45 calendar days to the make-ready periods for orders requiring the replacement of 10 or fewer poles, or 90 calendar days for orders requiring the replacement of more than 10 but less than 25 poles. For orders requiring the replacement of 25 poles or more, the pole owner and the attaching entity may deviate from the time limits specified in this section for a period no longer than reasonably necessary to perform the pole replacements and with the written approval of the Code Enforcement Officer.

§ ***-14. Enforcement of Violations and Penalties.

- A. The Code Enforcement Officer shall act in all cases of violations of this Article by notifying, in writing, the owner or lessor of the development and the Selectpersons of the nature of the violation and the correction of the same, if possible. Notification shall be deemed to have been made when sent to the owner or lessor by certified mail with return receipt requested and by USPS with Certificate of Mailing.
- B. The Selectpersons are charged with the prosecution for all violations of the provisions of this Article. In cases where such notices referred to in Subsection A above are not promptly complied with after receipt of said notices, the Selectpersons shall make, or cause to be made, such complaints to the courts as, in their judgement, are proper, or may institute such actions or proceedings at law or in equity as are proper to restrain,

correct, remove or punish such violations.

- C. Any individual or entity who or which shall violate any of the provisions of this Article or fail to comply with any of the requirements thereof shall be fined not less than \$100 nor more than \$2,500 as provided by state law. Each day on which the violation shall continue shall constitute a separate offense. In addition, in the event of legal action being instituted, the violator shall also be responsible for the legal fees and costs of the Town for the prosecution of the violation(s)
- D. Consent agreements. The Board of Selectpersons, or its authorized agent, is hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Article and recovering fines and attorneys' fees of the Town without court action. Such agreements, however, shall not allow violations to continue.