

# CHAPTER 19 RIGHT-OF-WAYS

(ORD 01-11)

## ARTICLE 19-1 RIGHT-OF-WAYS

19-1-1	Permit Required; Exceptions
19-1-2	Permit Application
19-1-3	Bond
19-1-4	Insurance
19-1-5	Liability
19-1-6	Fees (Res 03-02)
19-1-7	Work Begun Without Permit
19-1-8	Emergencies
19-1-9	Construction
19-1-10	Sight Visibility (09-21)

### Section 19-1-1 Permit Required; Exceptions

(A) *Permit required.* It is unlawful for any person to work, build, construct, reconstruct, repair, alter, or grade, including the placement of any structures, including utility lines and poles, pipelines, signs, and plantings, within the public rights-of-ways or within a public utility easement of the Town without first obtaining a permit from the Town, obtaining approval for the planned work, and having the work supervised and inspected by the Town.

(B) *Exceptions.*

- (1) (a) Plantings by residents of property abutting the right-of-way are exempt from this permit requirement so long as such planting:
  1. Does not interfere with travel on the public street or the visibility of traffic signs;
  2. Is on that portion of the right-of-way abutting the resident's property; and
  3. Is more than 25 feet from an intersection.
- (b) The Town shall immediately remove any plantings in the right-of-way if the Town Engineer determines that the requirements of this division (1) are not met. The Town shall have no obligations to provide reimbursement for the plantings removed.
- (2) Utilities which have been granted franchises to utilize public streets and other public areas in the Town are exempt from the permit fees specified in Section 6.

### Section 19-1-2 Permit Application

An applicant for a permit hereunder shall file with the Town an application showing:

- (A) The name, address, and license number of the party doing the work.
- (B) The location of the work area.
- (C) Plans (attached to the application) showing details of the proposed work. Said plans shall be prepared and sealed by an engineer duly registered and licensed in the state unless this requirement is waived in writing by the Town.
- (D) The estimated cost of alteration.
- (E) Such other information as the Town Engineer shall find reasonably necessary to determine whether a permit should be issued hereunder.

**Section 19-1-3 Bond**

- (A) Each applicant with a project that the Town Engineer determines has a cost of work of \$25,000.00 or more must deposit with the Town an amount in cash or a performance bond of 100% of the amount of the cost of work proposed in the application, as determined by the Town Engineer, as a guarantee that the work will be completed in accordance with the permit and the Town's adopted or approved details and specifications. If the Applications solely for the placement of a structure in the right-of-way which will require disturbance of the roadway or other public facilities, the amount of the cash deposit or bond shall be 100% of the estimated cost of restoration of the roadway or public facility.
- (B) The bond required under Section 3(A) shall be joint and several in form and made payable to the Town. The bond shall be signed by the applicant, or the property owner if he or she is not the applicant, and a qualified surety company authorized to transact business in the state. The condition shall be that the applicant will faithfully complete the work described in the application in accordance with the plans, specification, and conditions thereof.
- (C) The bond required under Section 3(A) shall be released upon satisfactory completion and acceptance of the work, or may be cancelled after the applicant has provided other security satisfactory to the Town which will cover obligations that remain.
- (D) No deposit shall be less than \$50.00 on work done under this subchapter.
- (E) The bond required under Section 3(A) is subject to cancellation as noted above, or may be terminated after all obligations are fulfilled which were "permitted" prior to the Town Engineer receiving cancellation notice from the surety. The surety shall not cancel, change, or amend any bond without ten-days prior written notice having been served on the Town Engineer.

**Section 19-1-4 Insurance**

- (A) No applicant with a project that the Town Engineer determines has a cost of work of \$25,000.00 or more shall be entitled to a permit unless and until he or she shall have filed and maintained on file with the Town a certificate certifying that he or she or his or her company or business firm carries public liability and property damage insurance issued by an insurance carrier authorized to do business in the state insuring the applicant and the Town and its agents against loss by reason of injuries to, or death of, persons, or damages to property arising out of or related to work performed by the applicant, its agents, or its employees while performing any work under such permit. Such insurance shall be primary and provide coverage for all liability assumed by the applicant under this section, and shall be provided by any permittee in the following minimum amounts:
  - (1) \$500,000 for death of, or injury to, any one person in any one accident;
  - (2) \$1,000,000 for death of, or injuries to, more than one person in any one accident;
  - (3) \$500,000 for damages to property.
- (B) Failure by the applicant to provide the Town with such a certificate as required under Section 4(A), and failure by the Town to demand the filing by the permittee of such a certificate before such a permit is issued, shall not be deemed to waive the permittee's obligation to provide the insurance specified herein. Such insurance certificate shall remain in effect and be kept on file with the Town Engineer until all work to be performed by the permittee under the permit has been completed. Where an encroachment involves a permanent obstruction, such insurance certificate requirements and other resolution stipulations shall remain in effect until such construction is removed. The insurance certificate shall provide that coverage cannot be cancelled or expire without providing 15-days written notice of such action to the Town also noting the permit number.
- (C) This insurance requirement under Section 4(A) may be waived by the Town if the Town Engineer determines the financial resources of the applicant are sufficient to indemnify the Town pursuant to Section 5.
- (D) No evidence of liability insurance or surety bond shall be required as condition precedent to the issuance of a permit to a federal, state, county, or political subdivision.

**Section 19-1-5 Liability**

The permittee shall be responsible for all liability imposed by law for personal injury or property damage arising out of or related to work performed by the permittee under the permit, or arising out of the failure on the permittee's part to perform its work under the permit. If any claim of such liability is made against the Town, its officers, agents, boards, or employees, the permittee shall defend, indemnify, and hold them, and each

of them, harmless from such claim, including claims alleging the joint negligence of the Town, its officers and employees, and the permittee, except to the extent actual negligence of the Town has been established.

**Section 19-1-6 Fees** (Res 03-02)

The Town Council shall, by resolution, establish a schedule of fees for the application processing and plan checking and for plan reviews and inspection permits required by this subchapter.

- 1) Utility Companies serving the general public, including electricity, natural gas, cable T.V. and telephone companies. Annual one time permit fee of \$1,000.00 for blanket encroachment permit covering all work for a 12 month period anywhere in the town.
- 2) Single Family Residential encroachment permit fee of \$25.00 for each individual encroachment permit.
- 3) Multi-Family Residential encroachment permit fee of \$40.00 for each individual encroachment permit.
- 4) Commercial and Industrial Projects fee of \$100.00 for each individual encroachment permit.
- 5) Recreational Vehicle and Mobile Home Parks fee of \$50.00 for each individual encroachment permit.
- 6) Permits issued after work is begun fee is DOUBLE normal permit fee.

**Section 19-1-7 Work Begun Without Permit**

If any work is undertaken prior to securing a permit therefore, the Town Engineer may require the road right-of-way to be restored to its original condition prior to granting a permit, or may charge a reasonable fee not to exceed \$500.00 in addition to the normal fee schedule for inspection and examination of the work done prior to issuance of a permit. All work shall cease until the town Engineer determines whether the public road should be restored to its original condition or to grant a permit in accordance with this subchapter.

**Section 19-1-8 Emergencies**

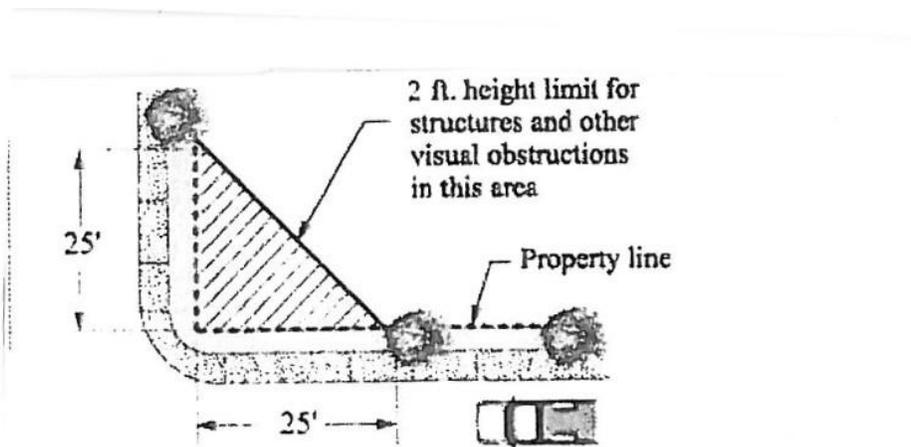
This subchapter shall not prevent any person from maintaining any pipe or conduit lawfully on or under any public street, or from making excavation as may be necessary for the preservation of life or property when an urgent necessity therefore arises during the hours the offices of the Town Engineer are closed, except that those making emergency use shall apply for a permit within one calendar day after the offices are again opened.

**Section 19-1-9 Construction**

- (A) All work done in public roads, streets, alleys, or ways shall be done in accordance with the permit and specifications of the Town for such installation. The Town Engineer may require, in the public interest, such structures as designated by him or her to properly control traffic, provide access to adjoining property, and maintain other facilities in the area.
- (B) Any person, corporation, association, or political subdivision doing work under any permit as set forth in this subchapter shall notify the Town Engineer at least one full working day in advance of the time and place the work will begin.

**Section 19-1-10 Sight Visibility (Ord 09-21)**

A. *Corner Cutback Area.* Corner parcels shall be developed in a manner that ensures visibility across the corners of the intersecting streets, alleys, and private driveways. The corner cutback area shall be described as a triangular shaped area on a corner parcel formed by measuring 25 feet from the intersection of the front and street side property lines, or an intersecting alley or driveway, and connecting the lines diagonally across the property making a 90-degree triangle, as shown in the following diagram:



B. *Height of Obstructions.* The maximum height of any object (e.g., fence, landscaping, signs, walls, and the like) located in the corner cutback area shall be 2 feet, measured from the adjoining top of curb. The 2-foot height limit shall not apply to traffic safety devices, trees trimmed to 8 feet about the adjacent top of curb, utility poles, and other government of utility installed devices.