

Section 12. Street Openings 16-12

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Subsection 1. Introduction From time to time, it is necessary to excavate in a Public Way in order, for example, to install, repair, or remove utilities or install or realign a driveway including the possible removal or re-alignment of curbing and/or fencing. Excluded from the operation of this By-Law is the general reconstruction or repair of Public Ways by the municipal or state agency responsible for the maintenance and repair of such Public Ways. This Street Opening By-Law is necessary to protect the health and safety of all persons traveling on public ways and is adopted in accordance with the authority granted, inter alia, by Art. 89, section 6 of the Amendments to the Massachusetts Constitution, MGL Chapter 40, section 21, MGL Chapter 165 section 20, MGL Chapter 166 section 25 and MGL Chapter 166A.

Subsection 2. Definitions 1 ADA – The Americans with Disabilities Act of 1990, as amended (42 USC 12101-12213), and the Accessibility Guidelines for Buildings and Facilities (Appendix to Part 1191) of the U.S. Architectural and Transportation Barriers Compliance Board, as amended.

Applicant – Any Public Utility, municipal department, person or entity who owns or exercises general responsibility and control over: (i) utility or other pipes, ducts, lines or other thing buried in or under a Public Way, or (ii) real property abutting a Public Way, or (iii) real property served by the Public Way or by items of the type specified in (i) above and who wishes to perform Street Opening Work.

Application Fee – A non-refundable processing fee, as provided in the Fee Schedule which is appended hereto, shall accompany each application for a Street Opening Permit.

Architectural Access Board Regulations – The Rules and Regulations of the Architectural Access Board, Mass. Executive Office of Public Safety (521 CMR), as amended.

Awarding Authority – The Select Board of the Town of Canton is hereby granted the authority to exercise the powers granted by this By-Law.

Awarding Authority Representative – That municipal officer or employee to whom the Awarding Authority in a writing has delegated some of its powers hereunder so that the process of permit-granting, inspection, and administration will proceed expeditiously.

Cold Patch – A dense graded or open graded mix with cutback asphalt as the binder with 1% of the mix being hydrated lime based on the total weight of the

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aggregate. The mineral aggregates and bitumen shall be proportioned and combined to meet the limits specified in Table A, Subsection M 3.11.03 and M 3.11.04 of The Standard Specifications. Bituminous material shall be either cutback asphalt, Grade MC-250 or MC800 conforming to Section M3.02.0 of the Standard Specifications.

Compaction – Compressing of suitable material and gravel that has been used to backfill a trench by means of mechanical tamping to within 95% of maximum dry density as determined by the modified Proctor Test in accordance with ASTM 1557 method D.

Contractor – All officers or employees of Applicant performing Street Opening Work or any person or entity engaged by or on behalf of Applicant to perform Street Opening Work. The Contractor for purposes of this By-Law and for all questions of liability in connection with any Street Opening work shall be conclusively deemed agents of Applicant for whom Applicant is fully responsible.

Controlled Density Fill – Also called flowable fill, CDF is a mixture of portland cement, flyash, sand and water. It shall contain a minimum of 250 pounds of class F flyash or high air (25%) and will be self-leveling. It is hand-tool excavatable.

Default – The failure of the Permit Holder (including all Contractors or other agents of Permit Holder) to (i) comply fully with provisions of applicable laws and regulations, (ii) comply fully with all of the applicable provisions of this By-Law and the Street Opening Permit including written supplemental instructions, the municipality's General By-Laws or other applicable law, and (ii) keep its Certificate of Insurance in full force and effect.

Department of Public Works – The municipal agency generally responsible for the repair and maintenance of Public Ways within the municipality.

Emergency Repair Work – Street Opening Work which must be commenced immediately to correct (i) a hazardous condition which could reasonably be expected to result in injury, loss of life, property damage or (ii) a condition which has resulted in the catastrophic failure of a utility transmission trunk line.

Gas Company – A Public Utility to which C. 164 section 70 of the MGL applies.

Infra-Red Process – That restorative procedure whereby an infra-red heater softens existing pavement to a depth of one and one half inches, the softened area is treated with a penetrating asphalt emulsion, uniformly scarified and raked to a workable condition, and the treated surface then compacted by use of a steel-wheeled roller for the purpose of creating a smooth driving surface consistent with adjacent pavement.

Licensed Contractor – A contractor who holds a current and valid Public Works Contractors Construction License issued by the Awarding Authority. 99

Newly Paved Road – A road that has been re-paved within the past five years.

Normal Working Hours – 7:30 am to 3:30 pm Monday through Friday excluding holidays.

Permit Holder – An applicant to whom a Street Opening Permit has been granted.

Permanent Patch – A final repair of Street Opening Work to be performed in accordance with this By-Law.

Permanent Patch Window – That period of time commencing twelve months after and up to eighteen months from the date of installation of the Temporary Patch.

Processed Gravel – Inert material that consists of hard, durable stone and coarse sand, free from loam and clay, surface coatings and deleterious materials and which meets MI 03.1 of The Standard Specifications.

Public Utility – Includes a Gas and Electric company as defined in MGL C. 164 section 1, telephone and telegraph company subject to Chapter 159 section 12, and cable TV companies or other telecommunication providers regulated by the Dept. of Telecommunications and Energy.

Public Way – Any road, including such appurtenances as berms, curbs, drains, sewers, water mains, sidewalks and paved and unpaved shoulders within the public right-of-way lay-out to which the public has access and the Town is responsible for maintaining. Also referred to as a street.

Public Works Contractors Construction License – A license required of all Contractors who are not officers or employees of a Public Utility or municipal department who wish to perform work including Street Opening Work on Public Ways.

Refundable Deposit – That amount of cash or money represented by a certified bank check deposited by Applicant with its Application to secure Applicant's performance of Street Opening Work in accordance with this By-Law.

Standard Specifications – The Mass. Department of Public Work’s Standard Specifications for Highways and Bridges, latest edition.

Street Opening Permit – A permit granted by the Awarding Authority to an Applicant for permission to do Street Opening Work in a Public Way.

Street Opening Work – Any cutting, excavating, compacting, construction, repair or other disturbance in or under a Public way together with restoration of the Public Way in accordance with this By-law following such disturbance but 100

excluding the location or relocation of utility poles for which a grant of location has been obtained pursuant to MGL Chapter 166 section 27.

Temporary Patch – The application of either Cold Patch or two separate gradations of bituminous concrete consisting of binder and top layers and compaction to achieve a density equal to that of the surrounding pavement following excavation and compaction.

Winter Preparation Patch – The application of (a) a leveling course of hot mix asphalt applied by a paving machine not less than 2 feet on each side and ends of any Street Opening Work, or 8 feet wide, whichever is greater in width, along the entire length of the Street Opening Work, including but not limited to any trenches parallel to the street and any lateral trenches that cross the street as part of that project in preparation of a Spring curb-to-curb cold planing and paving job; (b) any of the patch styles listed in the second paragraph of Subsection 11.4 - Permanent Patches along all sides and each end of the Street Opening Work for the entire length of the of the Street Opening Work, including but not limited to any trenches parallel to the street and any and all lateral trenches that cross the street as part of that project; or (c) a combination of (a) and (b) above, as may be approved in advance by the Awarding Authority Representative.

Subsection 3. General No work (except the commencement of Emergency Repair Work in accordance with paragraph 7 hereof) in or under a Public Way shall commence until the Applicant shall have applied for in accordance with Paragraph 4, and obtained from the Awarding Authority, a Street Opening Permit. All work contemplated by this By-Law shall be done in a good and workmanlike manner using best engineering and construction practices and shall be done in accordance with (i) all applicable laws and regulations, (ii) all of the provisions of this By-Law, (iii) any conditions contained in the Street Opening Permit, and (iv) such reasonable supplemental instructions not inconsistent with the foregoing as the Awarding Authority or its Representative may from time to time issue. A Permit Holder shall cause to be restored those portions of a Public Way disturbed by the Permit Holder to as good a permanent condition, in the reasonable judgment of Awarding Authority or its Representative, as they were in when

Permit Holder made application thereunder.

No person or entity may perform any work (including Street Opening Work or Emergency Repair Work) in or under a Public Way unless it is a Permit Holder and (i) is a municipal department or Public Utility or their respective officers or employees (ii) is the holder of a current and valid Public Works Contractors Construction License, or (iii) has engaged such a holder and such holder performs all such Street Opening Work or Emergency Repair Work as agent of Permit Holder.

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Subsection 4. Application Procedure The applicant shall file on forms designated by the Awarding Authority a completed and signed application at the office of the Awarding Authority (with a copy delivered simultaneously to the Department of Public Works) each time it desires to perform Street Opening Work. The application shall be accompanied by any and all plans, certifications, certificates of insurance and other items specified in the Application or reasonable requested by the Awarding Authority. If the Applicant does not intend to perform the Street Opening Work itself it must in the Application designate a Licensed Contractor to perform the work as its agent. The Application shall also be accompanied by the Application Fee and the Refundable Deposit.

The Department of Public Works shall promptly review the Application and make written recommendations concerning approval to the Awarding Authority and, if appropriate, shall include recommendations concerning permit conditions and supplemental instructions.

The Awarding Authority shall make a prompt determination on the Application taking into account the following and such other facts as it may reasonably consider:

1) the recommendation of the Department of Public Works 2) the reason for the Street Opening Work 3) whether the street is recently constructed or repaved 4) whether there are other reasonable means adequate to accomplish the purpose for which the Street Opening Permit is sought.

If the application is considered favorably, a Street Opening Permit containing such conditions and supplemental instructions as the Awarding Authority reasonable deems appropriate shall promptly issue. If the Application is not favorably considered, the Awarding Authority shall communicate in writing to Applicant the reasons its application was not favorably considered.

Subsection 5. Refundable Deposit and Account The Amount of the Refundable Deposit to secure proper restoration of a Public Way after Street Opening Work is determined in the reasonable judgment of the Awarding Authority based on the extent of the Work. (A current schedule of deposits for standard work is attached.)

Following notice given by Permit Holder that final permanent repairs to the Public Way have been completed, the Awarding Authority or Representative will make a final inspection. Once the Awarding Authority or Representative has concluded that permanent repair work has been satisfactorily completed and that Applicant has no other uncured defaults under Street Opening Permits, it shall release the unexpended balance of the deposit serving as security for the Street Opening Permit related to the inspected work.

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All Refundable Deposits that an Applicant submits for Street Opening Permits shall be held by the Awarding Authority in one Account which shall be designated as the Applicant's Refundable Deposit Accounts. Applicants upon request may receive periodic reports as to the balance standing within this account. Should a deposit associated with a specific permit be insufficient to secure the proper repair of a Public Way following a Default by the Permit Holder, the Awarding Authority without limitation to other remedies available to it can deduct the cost of the proper repair from Applicant's Refundable Deposit Account for the purpose of funding the proper repairs. To the extent required by C. 164 of the General Laws applicable to Gas Companies, the provisions of this section and Section 6 hereafter shall not be applied to Gas Companies which in their application for Street Opening Permits claim the exemption set out herein.

Subsection 6. Fee and Deposit Changes; Municipal Exemption From time to time hereafter the Awarding Authority, after public notice and hearing, may amend the schedule of deposits, the application fee, the hourly after-hours inspection charges or any other amounts due under this By-law. A reasonable hourly charge for inspectional services which must be performed outside of Normal Working Hours in accordance with a posted schedule established by the Awarding Authority will be billed to Permit Holder and due and payable fifteen days after billing. In extraordinary situations where extensive installation or renewal of utility lines overburden the normal capacity of the municipal departments to conduct inspections, the Awarding Authority can, after notice to Permit Holder, or as a condition of the Permit, elect to treat all inspections as after-hours inspections and bill Permit Holder accordingly. Applicants which are municipal departments are exempt from payment of all fees and deposits hereunder. Public Utilities to the extent exempted as provided in Paragraph 5 above are exempt

from payment of all fees except the Application Fee.

Subsection 7. Emergency Repair Procedure If the conditions for Emergency Repair Work exist, then an applicant after given oral, faxed or electronic notice to the Police and Department of Public Works may commence Street Opening Work. All such Emergency Repair Work shall be done in strict compliance with this By-Law except for compliance with any notice provision inconsistent with such emergency action.

On the business day following the commencement of Emergency Repair Work, the Applicant shall file with the Awarding Authority (i) a written statement setting forth in detail the facts and circumstances constituting the conditions for Emergency Repair Work, (ii) an Application for a Street Opening Permit covering the Street Opening Work already commenced in accordance with Paragraph IV, (iii) the filing fee and required Refundable Deposit. If all of the materials such as plans, etc, are not then available to Applicant, Applicant will supply them as soon as available. Awarding Authority will promptly process the Application and grant the Street Opening Permit with such conditions and supplemental instructions as it may reasonable require.

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Subsection 8. Insurance 16-12-8 The Permit Holder and/or each Licenses Contractor shall acquire and continuously maintain while it possesses any Street Opening Permits liability insurance coverage on all personnel and equipment to be used in the Street Opening Work which insurance is to be with companies licensed to do business in this commonwealth and shall contain the following coverages in such amounts as may from time to time may be promulgated for such purposes by the Select Board:

Commercial General Liability Insurance - including operation, independent contractors, complete operations for a period of one year from completing the street opening work, XCU hazards, broad form property damage and personal injury.

Automobile Liability Insurance - covering owned, non-owned and leased or otherwise hired vehicles.

Worker's Compensation and Employer's Liability Insurance

Subsection 9. Licensed Contractors Any Contractor or other person or entity that wishes to perform work on a Public Way and which is not either a municipality or a Public Utility (including their respective officers or employees) must be licensed by the Awarding Authority. Application for a Public Works Contractors Construction License must be made on a yearly basis. (See appropriate sections of the General By-Laws.)

Subsection 10. Terms of the Street Opening Permit

Independent reference excerpt. Consult the official town PDF for authoritative formatting and subsequent amendments.

Source: <https://www.town.canton.ma.us/DocumentCenter/View/13507/GENERAL-BY-LAWS-2025#page=98>