

SOUTH PORTLAND CODE OF ORDINANCES

STREETS AND SIDEWALKS\*

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**SOUTH PORTLAND CODE OF ORDINANCES**

Chapter 23

**STREETS AND SIDEWALKS\***

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\* **Cross reference(s)**--Department of public works to construct, repair and maintain streets and sidewalks, § 2-11; department of public works, director of public works, generally, § 2-11 et seq.; poles and wires, generally, §§ 7-2, 7-3; transportation of garbage and refuse over streets regulated, § 9-38; licenses, permits and business regulations generally, Ch. 14; removal of gravel, soil, materials from streets, § 17-7; carrying, carting night soil through streets, § 17-8; sliding in streets and sidewalks, § 17-11; playing ball, throwing stones, etc., in streets prohibited, § 17-12; littering streets with posters, handbills, cards, samples, § 17-39; placing explosives in streets, § 26-10.

**State law reference(s)**--Authority to set off portions of public ways for sidewalks and regulate their use, 30 M.R.S.A. § 2151(2).  
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- Art. I. In General, §§ 23-1--23-24
- Art. II. Numbering of Buildings, §§ 23-25--23-34
- Art. III. Entrances to Public Ways, §§ 23-35--23-40
- Art. IV. Excavations in Public Places, §§ 23-41--23-79
- Art. V. Design and Construction Standards, § 23-80
- Art. VI. Utilities, § 23-81



**ARTICLE I. IN GENERAL**

**Sec. 23-1. Permit required to construct concrete sidewalk.**

No person shall construct a concrete sidewalk in the city without first obtaining a permit to do so from the director of public works. The fee for such a permit shall be five dollars (\$5.00).

(Ord. No. 6-84/85, 9-17-84)

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**Cross reference(s)**--Permit schedule, § 14-3.  
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**Sec. 23-2. Where permit application obtainable.**

An applicant for a permit to construct a concrete sidewalk shall obtain an application for such purpose from the director of public works.

(Code 1966, § 7-3-6.1)

**Sec. 23-3. Reimbursement to applicant for sidewalk construction.**

Upon the presentation of a receipted invoice showing that the contractor has been paid in full, upon the approval of the director of public works and providing funds are available, the applicant for a permit to construct a concrete sidewalk may be reimbursed by the city in an amount not exceeding two dollars (\$2.00) for each square yard of sidewalk constructed.

(Code 1966, § 7-36.2)

**Sec. 23-4. Altering sidewalks.**

No person shall make any alteration in any sidewalk in the city without first obtaining the consent of the council or the consent of some person authorized by the council.

(Code 1966, § 6-6-1.10)

**Sec. 23-5. Council to designate street names.**

When new streets, whether public or private, are added to the city, the council shall designate the names of such streets.

(Code 1966, § 7-4-3; Ord. No. 5-69, 5-5-69)

**Sec. 23-6. Street names to remain until changed.**

The several streets, whether public or private, of the city shall continue to be known by the names previously assigned to them, unless and until changed by the council.

(Code 1966, § 7-4-2; Ord. No. 5-69, 5-5-69)

**Sec. 23-7. Municipal officers establish right-of-way indicators.**

The municipal officers hereby legally establish right-of-way indicators in accordance with plots and plans on file in the office of the city assessor.

(Code 1966, § 7-2-1)

**Sec. 23-8. Laying out, altering, discontinuing streets.**

- (A) The laying out, altering or discontinuing of streets within the city shall be in accordance with the state statutes.
- (B) Nothing in this article is to be construed as a limitation on the City Council's authority to accept any street in the city as a public street whenever the public interest so requires.

(Code 1966, § 7-1; Ord.No.6-96/97, 9-4-96)

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**State law reference(s)**--Laying out, altering or discontinuing highways, 23 M.R.S.A. § 2051 et seq.  
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**Sec. 23-9. Moving of buildings: Permit required; duties of public works director; bond; owner's, mover's responsibility.**

- (a) No person shall obstruct any street or any part thereof by placing therein any house, barn, shop, store or other building, and no person shall remove or draw through or upon any street, any house, barn, stable, shop, store or other building which is more than seven (7) feet in width or more than ten (10) feet in length, without first obtaining a permit from the director of public works.
- (b) The director shall designate the time of day such building may be moved, the streets over which such building may be moved and the length of time such street may be obstructed thereby, and he may require the filing of a bond, with sufficient securities, approved by the city manager, conditioned to indemnify the city for any and all damages sustained by moving such building.
- (c) The owner of the building or the person moving same shall be held responsible for damages to overhead wires, streetlights, streetlight brackets, signs and trees caused by moving such building, and if any such building shall remain in any street or place beyond the time allowed by such permit, the director may cause such building to be taken down or removed from the street at the expense of the owner thereof.

(Code 1966, § 7-3-1)

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**Cross reference(s)**--Permit schedule, § 14-3.

**State law reference(s)**--Moving heavy objects over ways and bridges, 29 M.R.S.A. § 1703.  
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**Sec. 23-10. Permit required for movement of large vehicles upon streets.**

No truck, tractor, team, engine or any other type of vehicle or contrivance which has any flange, rib, clamp, lug or other object attached to its wheels or treads, or made a part thereof so that its movement over and upon the streets of the city is likely to bruise and injure the surface of the streets, shall be moved over and upon the streets in the city without first obtaining a permit from the director of public works and paying the fee required in section 14-3.

(Code 1966, § 7-3-2)

**Sec. 23-11. Obstructing streets, sidewalks with material, appliances, etc.: Permit required; space permitted to be obstructed; occupant's duty.**

- (a) No person shall place or cause to be placed upon a public street, gutter, public sidewalk, or parts thereof, any materials, appliances or other devices used in connection with the construction, repair or alteration of any building without first obtaining a permit from the director of public works.
- (b) Such obstructions shall not occupy more than one-third (1/3) the width of any street, nor more than one-half (1/2) the width of any sidewalk.
- (c) The temporary occupant shall give acceptable assurance sufficient to the director that the obstructions shall be confined to the area for which the permit was issued.

(Code 1966, § 7-3-4)

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**Cross reference(s)**--Disposition of sawdust, soot, etc., on streets prohibited, § 9-22.  
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**Sec. 23-12. Prohibited placement of snow and ice.**

No person shall remove, or cause to be removed, any snow or ice from any private property and place, or cause to be placed, the same on any public street or sidewalk. No person shall remove, or cause to be removed, any snow or ice from any private property and place, or cause to be placed, the same on any public or private property located across the street from that person's lot or parcel of land. A property owner utilizing an agent or contractor for snow and/or ice removal is liable for the actions of the property owner's agent or contractor.

Notwithstanding any other provision of the Code of Ordinances to the contrary, every person adjudicated in a court of law to be in violation of this section shall be punished by a fine of not more than \$500 for the first violation, \$750 for the second violation committed within one calendar year after a previous violation, and \$1,000 for the third and subsequent violations committed within two calendar years after a previous violation. A person may elect, in lieu of such penalty, to waive his/her right to a court appearance by paying the applicable waiver fee of \$150 for the first violation, \$250 for the second violation without regard to the date of the first violation, and \$450 for the third violation without regard to the date of the prior violations. The waiver fee shall be paid to the City via the City's Public Works Department.

Payment of this waiver fee must be received at the Public Works Department within 15 calendar days of the date of the Public Works Department's notice of the violation. If the waiver fee is not received within 15 calendar days of the date of the Public Works Department's notice of the violation, the stated waiver fee shall be doubled.

(Ord. No. 11-19/20, 10/29/19 [Fiscal Note: Less than \$1000])

(Code 1966, § 7-51)

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**Cross reference(s)**--Department of public works to plow and remove snow and control ice, § 2-11.  
**State law reference(s)**--Authority to provide for snow and ice removal, 30 M.R.S.A. § 2151(2).  
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**Sec. 23-13. Setting trees, posts in streets, sidewalks.**

No person shall set any posts or any trees on any of the sidewalks or in any of the streets of the city without first obtaining the consent of the council or the consent of some person authorized by the council.

(Code 1966, § 6-6-1.10)

**Sec. 23-14. Duty to furnish information upon request regarding location of poles, etc.**

Upon the request of the city electrician, persons operating electric or other wires upon, over or under any street or building shall, within fifteen (15) days thereafter, furnish accurate lists of the locations of their poles, the number of crossarms thereto affixed and the number of wires thereto attached, the locations of subways and manholes, and other information in relation to their appliances, together with the locations where service is rendered, vis.: Telegraphic, telephones, electric lighting, specifying either arc or incandescent or for electric power.

(Code 1966, § 6-3-3.3)

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**Cross reference(s)**--Director of public works to supervise the rights-of-way of streets with regard to erection of utility poles, § 2-13.  
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**Sec. 23-15. Placing, throwing substances on streets; duty to remove.**

No person shall throw or place or cause to be thrown or placed upon any highway any glass, glass bottle, nails, tacks, wire, scrap metal, crockery, cans or wheels of vehicles. Whoever accidentally, or by reason of an accident, drops from his hand or a vehicle any such substance upon any highway shall forthwith make all reasonable efforts to clear such highway of the same.

(Code 1966, § 4-20-5)

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**State law reference(s)**--For similar provisions, see 29 M.R.S.A. § 1752.  
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**Sec. 23-16. Litter, animal waste in streets.**

It shall be unlawful for any person to place, deposit, or permit to be deposited any litter, debris, refuse, garbage, human or animal excrement upon any street of the city. Violation of this section shall subject a person to a fine of one hundred dollars (\$100.00 for the first offense; two hundred and fifty dollars (\$250.00) for a second offense; and five hundred dollars (\$500.00) for each violation thereafter.

Horses, mules, donkeys, ponies and jackasses are exempt from this section.

(Ord. No. 26-89/90, 6-4-90; Ord. No. 24-00/01, 5/21/01 [Fiscal Note: Less than \$1000])

**Sec. 23-17. Parking of recreational vehicles etc. in streets**

No owner, driver or person with custody or control over any trailer, boat, camper, recreational vehicle, snowmobile, snowmobile trailer all-terrain vehicle (ATV) or ATV trailer shall permit the same to stand upon any public street in the city for a longer period than twenty-four hours at any one time. Violation of this section shall subject the owner, driver or person with custody or control to a fine of one hundred dollars (\$100) for a first offense, two hundred and fifty dollars (\$250) for a second offense, and five hundred dollars (\$500) for each violation thereafter. Each day of a continuing offense shall be deemed to be a separate offense.

(Ord. No. 27-03/04, 7/19/04; [Fiscal Note: Less than \$1000])

**Sec. 23-18. Appeals**

All appeals by any party of decisions or actions pursuant to any provision of this chapter shall be taken to Superior Court in accordance with the Maine Rules of Civil Procedure Rule 80B or other applicable law.

(Ord. No. 1-07/08, 8/6/07; [Fiscal Note: Less than \$1000])

**Sec. 23-19. Smoking at school bus stops.**

Smoking/tobacco use at school bus stops is regulated under Article VIII (Tobacco-Free Parks and Recreation Facilities/School Bus Stops) of Chapter 18, "Parks and Recreation," of the Code of Ordinances.

(Ord. No. 4-16/17, 10/3/16; [Fiscal Note: Less than \$1000])

**Secs. 23-20--23-24. Reserved.**





**ARTICLE II. NUMBERING OF BUILDINGS**

**Sec. 23-25. Violations; penalties.**

Any owner or occupant of any building or part of a building who shall neglect or refuse to affix to the same the number so designated, or who shall affix to or retain thereon more than forty-eight (48) hours any number other than the properly designated number shall be subject to the provisions of section 1-8,  
(Code 1966, § 7-4-1)

**Sec. 23-26. Required.**

There shall be inscribed on or affixed to all dwelling houses and other buildings erected or fronting on any street, lane, alley or public court within the city, numbers of regular series to be designated by the council or by some person authorized by the council to designate such numbers.  
(Code 1966, § 74-1)

**Sec. 23-27. Minimum height of numbers.**

Numbers required by this article to be inscribed or affixed to dwelling houses and other buildings shall not be less than three (3) inches in height.  
(Code 1966, § 7-4-1; Ord. No. 8-12/13, 11/19/12 [Fiscal Note: Less than \$1000])

**Sec. 23-28. Numbers to be plainly visible.**

Numbers required by this article to be inscribed or affixed to dwelling houses and other buildings shall be so placed as to be plainly visible and of contrasting color.  
(Code 1966, § 74-1; Ord. No. 8-12/13, 11/19/12 [Fiscal Note: Less than \$1000])

**Secs. 23-29--23-34. Reserved.**



**ARTICLE III. ENTRANCES TO PUBLIC WAYS\***

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 \* **Editor's note**--Ord. No. 2-73, adopted Jan. 15, 1973, amended this Code by adding Art. III, §§ 23-35--23-40, as herein set out.  
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**Sec. 23-35. Permit required to construct entrance and exit driveways and curb cuts to public ways.**

No person shall construct or maintain any entrance or exit driveways or curb cuts from private property to any public way in the city without first having secured a permit to do so from the director of public works. In considering each application for such permit, the director of public works shall apply the standards and criteria set forth in section 23-37 of this chapter.

(Ord. No. 2-73, 1-15-73)

**Sec. 23-36. Permit fee.**

Each application for a permit required by section 23-35 shall be accompanied by an application fee in the amount of twenty dollars (\$20.00) per entrance or exit.

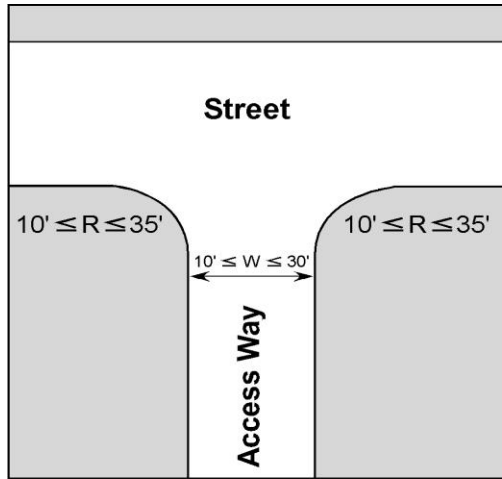
(Ord. No. 2-73, 1-15-73)

**Sec. 23-37. Standards and criteria.**

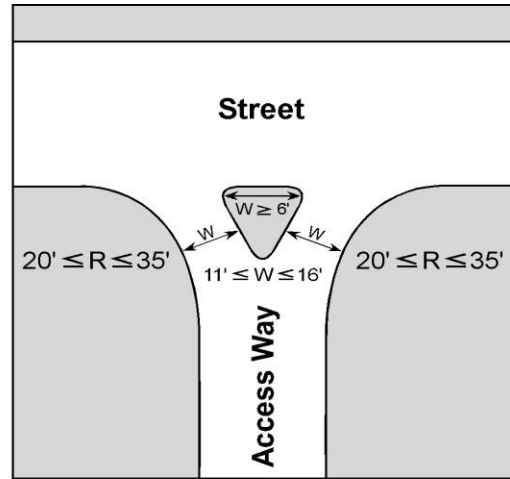
In considering each application for a permit required by section 23-35, the director of public works shall apply the following standards and criteria:

- (1) When the entrance and exit driveway or curb cut serves a residential use with less than twenty (20) dwelling units, the following standards and criteria apply:
  - (a) The width of said driveway or curb cut at its entrance to the public way shall not be less than ten (10) feet nor more than twenty (20) feet;
  - (b) No such driveway or curb cut shall be located within twenty (20) feet of any intersection of ways in the city;
  - (c) The director of public works shall consider traffic volume and conditions, both motor vehicle and pedestrian, on the public way into which entrance is sought;
  - (d) The director of public works shall determine that there is no obstruction to the view of any person using said proposed driveway or curb cut.
  
- (2) When the entrance or exit driveway or curb cut serves a development that includes business, commercial or industrial use, or that serves a residential use with twenty (20) or more dwelling units, the following standards and criteria apply:
  - (a) The width of said driveway or curb cut at its entrance to the public way shall be as follows:
    - (1) Maximum allowed curb cut width, without a splitter island: Determined based on an access way width of no less than ten (10) feet and no more than thirty (30) feet, and radii of no less than ten (10) feet and no more than thirty-five (35) feet.
    - (2) Maximum allowed curb cut width, with a splitter island: Determined based on ingress and egress ways of not less than eleven (11) feet and not more than sixteen (16) feet in width, separated by a raised

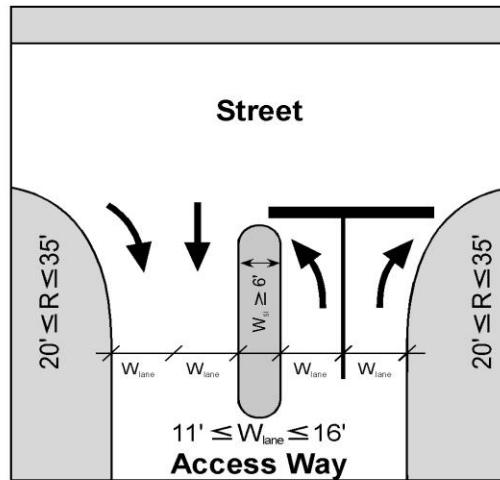
traffic island not less than six (6) feet wide, and with radii of not less than twenty (20) feet and not more than thirty-five (35) feet.



Maximum Allowed Curb Cut Width:  
No Splitter Island



Maximum Allowed Curb Cut Width:  
Splitter Island Example #1



Maximum Allowed Curb Cut Width:  
Splitter Island Example #2

- (b) No such driveway or curb cut shall be located within two hundred (200) feet of any intersection in the city or within a like distance, as measured along a public way from any playground, school, church, hospital or places of public assembly;
- (c) The director of public works shall consider the traffic volume and conditions, both motor vehicle and pedestrian, on the public way into which entrance is sought;
- (d) The director of public works shall determine that there is no obstruction to the view of any person using said proposed driveway or curb cut.

(Ord. No. 2-73, 1-15-73, Ord. 9-02/03, 1/22/03 {Fiscal Note: Less than \$1000})

**Sec. 23-38. Limitation on driveways or curb cuts.**

No person shall be granted permits for more than two (2) driveways or curb cuts to serve any single use by the director of public works.

(Ord. No. 2-73, 1-15-73)

**Sec. 23-39. Appeal of denial to the city council.**

The director of public works shall, where applicable, give the permit applicant written notice of denial stating the reasons therefor. Any applicant for a permit required by section 23-35 who is aggrieved by the denial of such permit by the director of public works shall be afforded the right to appeal such denial to the city council. The city council shall act as administrative hearing tribunal on any such appeal and shall permit the applicant the opportunity to be present and represented at such hearing, to be heard, to present evidence and to cross-examine any witnesses. The city council shall, upon a showing of hardship by the applicant, grant such permit or additional permits as they, in their sole discretion, deem just and proper. No such appeal shall be in order for hearing until the applicant shall have provided the council with the following:

- (a) The results of a traffic count measuring the flow of traffic on the street into which access will be gained by means of the entrance or exit driveway or curb cut in question; and
- (b) A plot plan, drawn to scale, showing all of the features enumerated below:
  - (1) Location and boundaries of the land to be served by the proposed entrance or exit,
  - (2) Location and dimensions of all public and private ways (drawn to scale and identified by name) within three hundred (300) feet distance of the land in question,
  - (3) Location and identification of any and all traffic-control signs and devices within three hundred (300) feet of the proposed entrance or exit driveway,
  - (4) Location of all street lights within the area of the plot plan,
  - (5) Indication of slope or grade of all public and private ways included on the plot plan,
  - (6) Location of any bus stops, parking restrictions, driveways, railroad tracks and crossings; location of utility poles; location of sidewalks and pedestrian crosswalks and any traffic channelization,
  - (7) Identification of the land use of all adjacent parcels of land to the land in question, and

- (8) The applicant shall request of the traffic engineer a statement as to pedestrian traffic in the area of the proposed entrance or exit driveway and also a statement of accident frequency on the public way within three hundred (300) feet of the proposed entrance or exit driveway. This information shall be written onto the plot plan.

(Ord. No. 2-73, 1-15-73; Ord. No. 20-73, 7-16-73)

**Sec. 23-40. Penalty.**

Any person using or permitting the use of any entrance or exit driveways or curb cuts entering his property in violation of this chapter shall be subject to a penalty not to exceed one hundred dollars (\$100.00) per day. Each day of such violation shall constitute a separate offense.

(Ord. No. 2-73, 1-15-73)

**ARTICLE IV. EXCAVATIONS IN PUBLIC PLACES****Sec. 23-41. Definitions.**

*Administrator* shall mean the city's agent, duly authorized by the City Manager to direct the city's street opening program.

*City* shall mean the City of South Portland and/or its authorized agent.

*Emergency* shall mean any event which may threaten public health or safety, including, but not limited to, damaged or leaking water or gas conduit systems, damaged, plugged, or leaking sewer or storm drain conduit systems, damaged underground electrical and communications facilities, or downed or seriously damaged overhead pole structures.

*Excavation* shall mean any opening in the surface of a public place made in any manner whatsoever, except an opening in a lawful structure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public place.

*Facility* shall mean pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, pole line, anchor, cable, junction box, or any other material, structure, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under, or over any public place.

*Inspector* shall mean a duly authorized representative of the city its representatives, or other designee.

*Licensee* shall mean any person who has been issued an annual excavator license as required by this article.

*Newly built, rebuilt or resurfaced streets* shall mean any public place which has been newly built, rebuilt or resurfaced within the preceding five (5) years.

*Permittee* shall mean any person who has obtained a permit required by this article.

*Person* shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

*Public place* shall mean any public street, way, place, esplanade, alley, sidewalk, park, square, plaza or any other similar public property owned or controlled by the city and dedicated to public use.

*Rehabilitation* shall mean that activity of work on any street which provides structural improvement having a minimum service life of fifteen (15) years with minor maintenance, which includes pavement overlay of one and one-half (1 ½) inches minimum depth, and partial or full depth reconstruction.

*Technical and Design Standards and Guidelines* shall mean the standards and guidelines as adopted by the City Council and as amended from time to time by the City Council.

*Utility* shall mean a private company, corporation or quasi-municipal corporation under the direction and control of the public utilities commission.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 1-07/08, 8/6/07; [Fiscal Note: Less than \$1000])

**Sec. 23-42. License.**

No person or utility shall be granted a permit to excavate in a public place without holding a valid license for such work from the city. The administrator shall issue such license upon receipt of a completed application, the required license fee,



and proof of insurance as required in Sec. 23-70. No person or utility possessing such license shall allow his or her name to be used by any person or utility, directly or indirectly, either to obtain a permit or to do any work under this license; provided, however, that nothing herein shall be construed to prohibit a licensed excavator from doing such work through an authorized agent or employee who is directly and continuously supervised by him while in the performance thereof. A license issued to an excavator may be revoked by the administrator after notice to the licensee, if the administrator deems that the licensed excavator has willfully disobeyed any portion of this article. The annual excavator license is valid from January 1 to December 31 and contains no prorated provisions.

The annual excavator's license fee of \$300.00 is valid from January 1 to December 31 and contains no prorated provisions.

(Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01 3/19/01 [Fiscal Note: Less than \$1000]; Ord. No. 9-06/07, 11/20/06 [Fiscal Note: Less than \$1000])

### **Sec. 23-43. Excavation permit required.**

#### (a) General Provisions.

1. No person or utility shall make any excavation or fill any excavation in any public place without first obtaining a permit from the Administrator except as otherwise provided in this article.
2. Excavation shall not begin within a twelve-hour period from the time the permit is issued. The applicant shall notify the city when excavation will begin at least twelve (12) hours beforehand.
3. The city shall have the authority to revoke said permit if it is found that any section of the article has been violated. Upon such action the person or utility shall cease all work and proceed to make trench conditions safe to the public. Work shall not commence until a new permit has been issued and all waiting periods have been adhered to.

#### (b) Application for permit.

No excavation permit shall be issued unless a written application on a form provided by the city for the issuance of an excavation permit is submitted to the administrator. The written application shall state the name and address of the applicant and an emergency phone number that will be answered twenty-four (24) hours per day. If the applicant is other than a utility and intends to excavate in the vicinity of a facility owned or operated by a public utility or oil pipe line owned by a person, said applicant shall provide the information required by the city under this section to the utility or person owning such facility, in addition to providing such information to the city. The application shall provide the name of the public place to be excavated, street number, the beginning date of proposed work, the type of work to be done, signatures of utility approval, the signature of city department (if involved), a diagram of the planned excavation showing trench locations, trench widths, trench depths, location of all barricades, warning signs, detour signs and detour routes. The permit shall also provide for a preconstruction meeting if so warranted by the administrator.

The application for permit shall be accompanied by a fee as hereinafter provided. All applications shall be presented to the administrator for the issuance of an excavation permit within thirty (30) days from the date of the last utility approval. After the expiration of this thirty-day period such application shall become null and void and shall have to be renewed.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: Less than \$1000])

### **Sec. 23-44. Utilities required to submit annual work plan.**

Each year on or about March 31, each utility shall submit to the director of public works and the administrator its planned work program for the ensuing year, which shall not include emergency work, as defined in section 23-60 hereof, or normal house service lines. Any excavation permitted to a utility company by the administrator

which is contained on the list aforementioned shall be issued for the duration depending on the complexity of the work to be performed, and supported by a work schedule which must be approved by the administrator. Any excavation permit issued to a utility company by the administrator which is not covered on the aforementioned list shall be issued for a period not to exceed thirty (30) days from the time of issuance.

(Ord. 14-91/92, 4-6-92)

**Sec. 23-45. Permit fee; street and sidewalk opening fees.**

- (a) Each street opening permit may be assessed two (2) fees; an administrative charge, and a permanent pavement restoration charge,
- (1) *Administrative:* This fee shall reimburse the city for the direct cost of labor and equipment necessary to administer this article and the rules and regulations and the rehabilitation of city streets primarily due to excavations.
  - (2) *Permanent pavement restoration:* This fee shall cover the city's cost of permanently restoring the disturbed pavement area and shall not exceed, the requirements in the Technical and Design Standards and Guidelines.
    - (a) While it is the permittee's responsibility to perform permanent pavement restoration, the City reserves the right to do this work itself in certain instances, whether with its own personnel or through a company under contract to the City. Such instances include but are not limited to failure by the permittee to complete work in a timely manner or performing work that does not meet the requirements in the Technical and Design Standards and Guidelines. When the City and not the permittee performs the work or contracts for it to be performed, the City shall invoice the permittee the actual cost to the City for the staff time, materials, equipment rental, and other costs directly attributable to the permanent pavement restoration job. The minimum restoration charge shall be for two (2) square yards of excavation.
    - (b) In the case of excavations in moratorium streets, the permittee, prior to receiving a permit, shall pay a fee to the City in an amount set by the City Council for permanent pavement restoration for moratorium streets. This fee will be held in escrow by the City as a performance guarantee and will be returned, without interest, to the permittee upon a determination by the Administrator that the pavement restoration work has been completed according to the requirements in the Technical and Design Standards and Guidelines. If the Administrator determines that the work has not been completed in a timely manner or has not been done according to the required standards, the Administrator will use as much of the escrowed fee as necessary to reimburse the City for its actual costs in doing the work itself or through a hired contractor. Any balance of the fee remaining will be returned to the permittee; any amount not fully covered by the fee shall be invoiced to the permittee.
- (b) All fees shall be enacted annually by order of the City Council. The City's Administrator shall notify currently licensed excavators in advance of annual fee revisions necessary to reflect costs of program administration, permanent pavement restoration, annual excavator's license fee, and other applicable charges.
- (c) Upon permit application, the administrative charge, and in the case of moratorium streets, permanent pavement restoration charge shall be paid to the Administrator unless waived by the Administrator as provided below. No permit shall be issued without appropriate payment of fees.
- (d) Effective July 1, 2001, all fees and charges collected by the Administrator in the issuance of permits pursuant to this article shall be placed in a fund

dedicated and utilized solely for the administration of this article and the rules and regulations, and the rehabilitation of city streets primarily due to excavations.

(e) Waiver of fees:

1. To prevent untimely delays to construction activities in a planned reconstruction area involving the removal of pavement, the Administrator shall waive payment of administrative/inspection fees for utilities and individuals having work to do in such areas. In a City planned resurfacing, repaving or rehabilitation area, the Administrator shall permit any licensed excavator to perform all excavations that can be completed in one day within the planned resurfacing, repaving or rehabilitation area under a single permit, and shall charge a single administrative/inspection fee. Any single continuous excavation in a City planned resurfacing, repaving or rehabilitation area shall require only one permit, regardless of the number of days required to complete the excavation and associated work.

2. In any emergency situation involving a residential dwelling unit the Administrator shall waive payment of administrative fee.

3. For driveway repaving that requires a permit, all but \$50 of the administrative/inspection permit fee shall be waived.

(Ord. No. 34-75, 1-19-76; Ord. No. 6-84/85, 9-17-84, Ord. 14-91/92, 4-6-92; Ord.No.1-96/97, 7-15-96; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000]; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: Less than \$1000])

**Sec. 23-46. Cash deposits.**

Bonds or deposits shall be required of all applicants other than utilities in good standing in order to guarantee their performance. Bonds must be posted in order for an excavator's license to be issued. Current licensees at the effective date of this ordinance must post the required bond before the issuance of any street opening permit. Bonds shall be posted for a minimum of two (2) years and shall not exceed Ten Thousand Dollars (\$10,000). In lieu of a bond, an applicant may substitute a cash deposit or an irrevocable letter of credit. Deposits shall be refunded upon approved completion of all conditions of this article and the rules and regulations.

(Ord. No. 34-75, 1-19-76; Ord. No. 20-80/81, 11-3-80, Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000])

**Sec. 23-47. Clearance for vital structures.**

The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, valve housing structures, traffic signal cables, and loops and all other vital equipment as designated by the city.

(Ord. No. 34-75, 1-19-76, Ord. No. 14-91/92, 4-6-92)

**Sec. 23-48. Protective measures and routing of traffic.**

The permittee shall maintain safe crossings for two (2) lanes of vehicle traffic at all street intersections where possible and safe crossings for pedestrians at intervals of not more than two hundred (200) feet. If any excavation is made across any public street, alley or sidewalk, adequate crossings shall be maintained for vehicles and for pedestrians. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, a passageway at least one-half (1/2) of the sidewalk width shall be maintained along such sidewalk line.

It shall be the duty of every permittee cutting or making an excavation in or upon any public place, to place and maintain barriers and warning devices necessary for safety of the general public. Traffic control in the vicinity of all excavations affecting vehicular, pedestrian and bicycle traffic shall be subject to final review and approval of the traffic engineer or his designated representative.

Barriers, warning signs, lights, etc., shall conform to the latest edition of the

"Manual on Uniform Traffic--Control Devices." Warning lights shall be electrical markers or flashers used to indicate a hazard to traffic from sunset of each day to sunrise of the next day. Electrical markers or flashers shall emit light at sufficient intensity and frequency to be visible at a reasonable distance for safety. Reflectors or reflecting material may be used to supplement, but not replace light sources.

The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions as near 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.

When traffic conditions permit, the traffic engineer or his designated representative, with the approval of the police and fire departments of the city, may by written approval (or by verbal approval in case of emergency), permit the closing of streets and alleys to all traffic for a period of time prescribed by him, if in his opinion it is necessary. The written approval of the traffic engineer of the city 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. In case of emergency on week nights, weekends, or holidays the utility company having such emergency shall contact the police and fire departments by phone before closing a street to traffic, except in a case of immediate hazard of loss of life or serious property damage, in which event prompt notice of closing shall be given.

Warning signs shall be placed far enough in advance of the construction operation to alert traffic within a public street, and cones or other approved devices shall be placed to channel traffic, in accordance with the instructions of the traffic engineer of the city, after his review of the proposed traffic-control measures for the project.

The permittee shall hereby be informed that the city has or may have a school walk route map, and that the traffic engineer of the city will require special police protection at locations where the permittee, by his work, interferes with these designated school walk routes or crossing locations. Copies of school walk route maps for various locations in the city may be procured from the traffic engineer of the city.

The permittee is also informed that construction activities (unless an emergency condition exists) shall not interfere with the normal flow of traffic on arterial streets of the city (Appendix A) [section 23-75], except to the extent and under conditions approved by the traffic engineer and police and fire departments. The full inbound roadway lane width shall be maintained between the hours of 7:00 a.m. and 10:00 a.m. and the full outbound roadway lane width shall be maintained between the hours of 3:00 p.m. and 6:00 p.m.

The permittee may shift traffic to the opposite side of the roadway to maintain the above-required lane width. The permittee may only make such shift with the approval of the traffic engineer following proper review of detour plans to insure adequate safe two-way traffic flow and proper number and placement of police officers.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: Less than \$1000])

### **Sec. 23-49. Relocation and protection of existing utilities and oil pipe lines.**

The permittee shall not interfere with any existing facility without the written consent of the city and the owner of the facility. If it becomes necessary to relocate an existing facility this shall be done by its owner. No facility owned by the city shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the facility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across said work. The permittee shall secure approval of method of support and protection from the owner of the facility. In case any of said pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure,

the permittee shall promptly notify the owner 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. It is the intent of this paragraph that permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owner of the facility. The city shall not be made a party to any action because of this paragraph. The permittee shall inform itself as to the existence and location of all underground facilities and protect the same against damage

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-50. Abandonment of structure.**

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 thirty (30) days after such abandonment, file with the city a statement in writing giving in detail the location of the substructure so abandoned. If such abandoned structure is in the way, or, subsequently becomes in the way, of an installation of the city or any other public body, the owner of such substructure, upon notice 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.

When gas or other flammable service to buildings is discontinued, the existing service line for such service shall be terminated at a point outside the building.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-51. Protection of public property.**

The permittee shall not remove, even temporarily, any trees or shrubs which exist in the street area without first obtaining the consent of the appropriate city department or city official having control of such property.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-52. Care of excavated material.**

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.

Whenever necessary in order to expedite the flow of traffic or to abate the dirt or dust nuisance, toe boards or bins may be required by the city to prevent the spreading of dirt into traffic lanes.

Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the city 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.

It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-53. Breaking through pavement in streets.**

- (a) All excavation on paved street surfaces shall be pre-cut in a neat straight line with pavement breakers or saws.
- (b) Heavy duty pavement breakers may be prohibited by the city when the use endangers

existing underground facilities or other property.

- (c) Cutouts of the trench lines must be normal or parallel to the trench line.
- (d) Pavement edges shall be trimmed to a vertical face and neatly aligned with the center line of the trench.
- (e) Unstable pavement shall be removed over caveouts and overbreaks and the subgrade shall be treated as the main trench.
- (f) The permittee shall not be required to pay for repair of pavement damage existing prior to the excavation unless his cut results in small floating sections that may be unstable, in which case, the permittee shall remove the unstable portion and the area shall be treated as part of the excavation.
- (g) When three (3) or more street openings are made in sequence (fifteen (15) feet or less, center to center, between each adjacent opening), the permittee shall neatly cut and remove the area of pavement between these adjacent openings and shall patch as one trench.
- (h) All granite paving blocks, Belgian Pavers and/or cobble stones in the way of excavation shall be removed by the permittee prior to commencement of work, and transported to a storage site to be selected by the city. All excavated granite paving blocks, Belgian Pavers and/or cobble stones remain the sole property of the city.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-54. Breaking through pavement in sidewalks.**

- (a) All parts of section 23-52 shall apply to this section in all cases except gravel sidewalks.
- (b) On concrete sidewalks, all cuts shall be made from the nearest joint or score line on one side of the excavation to the nearest joint or score line on the other side of the excavation.
- (c) All bricks in the way of excavation shall be removed by the permittee prior to the work to be done, and transported to a storage site to be selected by the city. All bricks remain the sole property of the city.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-55. Backfilling of excavation.**

Upon completion of the utility installation the trench shall be backfilled to the grade of the underside of the surfacing material.

- (a) *Trench backfilling--Paved areas.* In paved areas, the backfill material shall be that excavated material which the inspector deems suitable and which the excavator may have stockpiled, or it shall be a granular material from off site. Granular material for trench backfill shall be approved by the inspector and shall meet the requirements of the current edition of the M.D.O.T. Standard Specification, Highways and Bridges manual. No stones over three (3) inches in size, roots or other organic matter or frozen material shall be allowed in the backfill material.

The backfill shall be placed and compacted in layers not exceeding twelve (12) inches in depth. The moisture content of the fill material shall be such that ninety-five (95) per cent of optimum density, as determined by field tests, may be obtained. The maximum density shall be determined in accordance with the current edition of the M.D.O.T. Standard Specifications, Highways and Bridges manual. The inspector shall reserve the right, if in his opinion the compaction is not adequate, to perform such tests necessary to confirm that the required compaction has been attained. The cost of such test shall be borne by the excavator should they not meet the above requirements. If it is found that the

above requirements have not been met the excavator shall recompact and/or reexcavate and compact as necessary until the densities requirements have been met. Compaction methods shall be the option of the excavator providing required densities can be met without disturbing or damaging existing facilities.

Minimum depths of base and subbase materials in paved areas shall be that required under section 2380 of this article unless existing conditions exceed these minimums.

- (b) *Trench backfilling--Nonpaved areas.* For nonpaved areas the trench may be backfilled with excavated material or with granular material described as specified in (a) above. The material shall be placed in layers not to exceed two (2) feet and compacted in accordance with M.D.O.T. Standard Specification, Highways and Bridges, 1991. The permittee shall maintain any apparent trench settlement for a period of three (3) years after the excavation has been completed.  
(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: Less than \$1000])

**Sec. 23-56. Restoration of surface in streets and sidewalks.**

- (a) All paved area restorations, including temporary and permanent work within any street, driveway, or sidewalk shall be performed in accordance with the city's Code of Ordinances and Technical and Design Standards and Guidelines available through the Administrator. The Administrator may choose to waive specific repair requirements for just cause, including utility work being conducted prior to or in conjunction with a planned City/MDOT construction project.
- (b) *Refilling of bar holes.* Any person or utility making bar holes in the street or sidewalk area of any public way shall immediately, upon completion of the work, fill these bar holes by the method set forth below:
  - (1) Plugging of bar holes. Bar holes shall be plugged by the use of Plug-R asphalt plug made by the Package Pavement Company, Stormville, New York, or approved equal.
  - (2) Size of asphalt plug to be used shall be as follows:

<i>Approximate Size of Plug (inches)</i>	<i>Drill Size (inches)</i>	<i>Top Diameter Plug (inches)</i>
3/4	3/4	1
7/8	1	1 1/3
1 1/8	1 1/4	1 1/2
1 1/4	1 1/2	1 3/4
1 1/2	1 3/4	2
1 3/4	2	2 1/4
2	2 1/4	2 1/2

- (c) *Unfilled bar holes.* Any bar holes left unfilled shall be repaired by the utility/contractor

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000]; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: less than \$1000])

**Sec. 23-57. Trenches.**

The maximum length of open trench permissible at any time shall be one hundred (100) feet and no greater length shall be opened for pavement removal, excavation, construction, backfilling, patching or any other operation without the written permission of the city. No trench exceeding ten (10) feet in length shall remain open through night hours or nonworking days without the written permission of the city, which permission may be made conditional upon having said excavation guarded or protected by a watchman at the permittee's expense twenty-four (24) hours a day. Trenches shall be at a width that will allow the backfill materials to be thoroughly compacted. When an excavation is within a paved area, the trench area within the

pavement and road or sidewalk base area shall not be less than twenty-four (24) inches in width.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-58. Prompt completion of work.**

After an excavation is commenced, the permittee shall pursue with diligence and expedition all excavation work covered by the excavation permit and shall promptly complete such work and restore the street as specified herein. The permittee shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel by foot or vehicle.

**The permittee must renew the excavation permit far enough in advance of the expiration date if the terms of the permit have not been completed before expiration.**

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-59. Urgent work.**

When traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the city shall have the full power to order, at the time the permit is granted, that a crew of men and adequate facilities be employed by the permittee beyond normal working hours including up to twenty-four (24) hours a day to the end, that such excavation work may be completed as soon as possible.

(Ord. No. 34-75, 1-19-76)

**Sec. 23-60. Emergency action.**

Nothing in this article shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs, provided that the person making such excavation shall apply to the city for such a permit on the first working day after such work is commenced. Before any excavation work is started, the person or utility excavating must contact all utilities or persons owning oil pipe lines in the area for on the spot locations.

Within fifteen (15) days after commencing any such emergency excavation, the person performing such emergency excavation shall make a detailed report thereof to the administrator who shall review same to determine whether or not such excavation was of an emergency nature. No further permits under this article shall be issued to the person or utility making such excavation after the expiration of the fifteen-day period until such report has been submitted.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-61. Noise, dust and debris.**

Each permittee shall conduct and carry out excavation work in such 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 10:00 p.m. and 7:00 a.m. shall not use, except with the express written permission of the city or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb sleep of occupants of the neighboring property.

(Ord. No. 34-75, 1-19-76)

**Sec. 23-62. Preservation of monuments.**

Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point, or a permanent



survey bench mark within the city, shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the city to do so. Permission to remove or disturb such monuments, reference points or bench marks shall be granted only when no alternate route for the proposed substructure or conduit is available. If the city is satisfied that no alternate route is available, permission shall be granted only upon condition, by an agreement in writing, that the person or utility applying for such permission shall pay all expense incident to the proper replacement of this monument by the city.

(Ord. No. 34-75, 1-19-76)

**Sec. 23-63. Granite and bituminous curb.**

No person or utility shall remove, damage, haul away or cause misalignment of any bituminous curb or granite curbing, including radius curb and catch basin stones, for any reason whatsoever without first receiving written permission from the city. Any curb missing, damages or misaligned shall be replaced or aligned by the city at the rate set forth herein and shall be charged to the permittee, provided, however, that the city at its option may allow the permittee to replace or realign that portion of curb damaged by the permittee's excavation. In such event, replacement or realignment shall be done in a manner and under specifications prescribed by the city and subject to inspection by the city and shall be completed within a period of ninety (90) days after such authorization to complete such work. The permittee shall, for a period of three (3) years thereafter, be fully liable for all defects in materials and workmanship relating to such work and shall promptly repair or replace the same upon notice of the public works authority and to the satisfaction thereof. This time period is for municipal enforcement of this article only and shall not be construed to alter or limit any statute of limitations established by law in the State of Maine for civil actions.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-64. Bituminous curb.**

Any person or utility damaging bituminous curbing during the course of excavation work or any other reason, shall be responsible for the repair or replacement of the bituminous curbing.

(Ord. No. 34-75, 1-19-76; Ord. No. 1-07/08, [Fiscal Note: Less than \$1000])

**Sec. 23-65. Excavation during winter.**

No person or utility shall be granted a permit to excavate or open any street or sidewalk from the 3rd Friday of November to the 3rd Monday of April of the following year unless an emergency or special conditions exist and permission is obtained in writing from the administrator. Any person or utility wishing to obtain a street opening permit between these aforementioned dates shall first explain fully in writing the emergency situation existing to the administrator before a permit shall be issued.

This prohibition shall not apply if a hazardous condition which would endanger life or property exists; however, a written explanation shall be delivered to the administrator as soon as possible and a street opening permit obtained for any such opening made.

(Ord. No. 34-75, 1-19-76; Ord. No. 26-76, 9-8-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-66. Facilities.**

(a) No person or utility shall, without written permission of the city, install any facility, except manholes, vaults, valve casings, culverts, and catch basins at a vertical distance less than:

- (1) *Streets.* Twenty-four (24) inches below the established flow line of the nearest gutter in street areas. If said flow line is not established, then the depth shall be at a minimum of twenty-four (24) inches below the surface of the nearest outermost edge of the traveled portion of the street.

(2) *Other public places.* The minimum depth of any facility on any other public place shall be eighteen (18) inches below the surface; provided, however, that the city may permit a lesser depth in special cases.

(b) Nothing in this section shall impose a duty upon the permittee to maintain said specifications as required herein upon subsequent changes of grade in the surface unless the grade in said facility interferes with the maintenance of, or travel on, a public street.

(Ord. No. 34-75, 1-19-76)

#### **Sec. 23-67. Inspections.**

The city shall make such inspections as are reasonably necessary in the enforcement of this article. The city shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this article.

(Ord. No. 34-75, 1-19-76)

#### **Sec. 23-68. Maintenance of drawings.**

Every person or utility owning, using, controlling, or having an interest in substructures, under the surface of the public way used for the purpose of supplying or conveying gas, electricity, communication, impulse, water, steam, ammonia or oil in the city, shall file with the city, after the adoption of this article a map or set of maps each drawn to a scale of not less than one inch to fifty (50) feet, showing in detail the plan, location, size and kind of installation, of all new and/or renewed substructures, except service lines designed to serve single properties. These maps shall be provided to the city no later than sixty (60) days after the completion date of construction.

(Ord. No. 34-75, 1-19-76)

#### **Sec. 23-69. Liability of city.**

This article shall not be construed as imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of an excavation work for which an excavation permit is issued hereunder, nor shall the city or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit, or the approval of any excavation work.

(Ord. No. 34-75, 1-19-76)

#### **Sec. 23-70. Insurance.**

The permittee shall maintain during the life of this permit the following insurances which shall be made a part of the permit application.

(a) *Bodily injury liability and property damage liability insurance.* The contractor shall take out and maintain during the life of this permit such bodily injury liability and property damage liability insurance and automobile bodily injury liability and property damage liability insurance as shall protect him and any subcontractor performing work covered by this permit from claims for damages for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under this permit, whether such operations be by himself or by any subcontractor, or by anyone directly or indirectly employed by either of them, and the amounts of such insurances shall not be less than:

(1) Bodily injury liability insurance, in an amount not less than one million dollars (\$1,000,000.00) for injuries, including wrongful death to any one person, and subject to the same limit for each person in an amount not less than two million dollars (\$2,000,000.00) on account of one accident.

- (2) Property damage insurance, in an amount not less than one million dollars (\$1,000,000.00) for damages on account of any one accident, and in an amount not less than two million dollars (\$2,000,000.00) for damages on account of all accidents.

(b) *Reserved.*

(Ord. No. 34-75, § 1-19-76; Ord. No. 11-76, 5-17-76, Ord. 14-91/92, 4-6-92)

**Sec. 23-71. Excavation in reconstructed or resurfaced street.**

Whenever the city has developed plans to reconstruct a street, the city or its representative shall give written notice thereof to all abutting property owners, to the city departments, and to all public utilities or persons which have or may wish to lay pipes, wires, or other facilities in or under the street. Upon receipt of such written notice, such person or utility shall have sixty (60) days in which to install or lay any such facility. If an extension of time is needed by a person or utility for the installation of such facilities, the person or utility shall make a written application to the city explaining fully the reasons for requesting such an extension of time. At the expiration of the time fixed and after such street has been constructed, reconstructed or rehabilitated, the Administrator has the right to deny permits to excavate such streets for a period of five (5) years as provided in 23 M.R.S.A. Sec. 3351 as may be amended from time to time. Any excavations into such street shall be subject to moratorium restoration requirements as set forth in 23 M.R.S.A. Sec. 3351-A as may be amended from time to time. In emergency situations involving repairs to any residential dwelling unit that requires the opening of a reconstructed or resurfaced street, the Administrator shall waive payment of the administrative/inspection fee.

The above mentioned five (5) year moratorium for street openings also pertains to new public or private streets, including those in subdivisions or developments that have been accepted in accordance with city specifications.

(Ord. No. 34-75, 1-19-76; Ord. No. 31-78, 11-20-78, Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000])

**Sec. 23-72. Corrective actions to excavations and restorations.**

- (a) If any part of any excavation, including the excavation, backfilling and repairs fails to conform with the standards of this chapter and the rules, the city shall notify the permittee and require the appropriate corrective actions to be undertaken. Permittee shall take corrective action within twenty-four (24) hours after the issuance of notice if the failure could trigger tort liability or liability for a street defect, as defined in 23 M.R.S.A. § 3351, et seq, as amended from time to time. In all other instances, the permittee shall have a reasonable time to undertake corrective action.
- (b) If the permittee fails to respond within the required time period, the city shall cause the necessary repairs to be accomplished, and shall keep an account of the expense thereof, and in such case the permittee shall be billed an amount equal to one hundred fifty percent (150%) of the whole of the expense incurred by the city. Bills rendered in accordance with this section shall be due and payable by the permittee immediately upon receipt. The city shall issue no further or new permits to the permittee until full payment of the billed costs has been received.
- (c) If for any reason the city has to perform repair work to an excavation after the permittee's guarantee has started, that guarantee period shall start over again upon completion of the repairs.

(Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000]; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: Less than \$1000])

**Sec. 23-73. Violations.**

- (a) Any person or utility failing to comply with or violating any provision of this article or the Technical and Design Standard and Guidelines shall be served by the Administrator with written notice stating the nature of the failure or violation and providing a reasonable time limit for the necessary corrective actions. Such person or utility shall, within the period of time stated in such notice, permanently cease or correct all failures or violations.
- (b) In order to ensure public safety, the Administrator shall have the right to verbally notify and require immediate corrective actions of any person or utility whose failure to comply with this article or the rules could cause a safety hazard.
- (c) Any person or utility who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this article or The Technical and Design Standard and Guidelines shall be guilty of a violation of this article.
- (d) Any person or utility violating any of the provisions of this article or the Technical and Design Standard Guidelines shall be liable to the city for any expense, loss, or damage occasioned by the city by reason of such violation. The city may seek injunctive relief for the purposes of enforcing this article or the guidelines.
- (e) (1) Any violation of this article which is also a violation of 35-A M.R.S.A. §2509 or 2511 or a violation of 23 M.R.S.A. §3353 or 3355 shall subject the permittee or party to a fine as provided in said statutes, as said statutes may be amended from time to time.  
 (2) Any violation of this article other than the violations of state law described in the preceding paragraph shall subject the permittee or party to a court enforcement action with a penalty of a fine of not less than \$100 nor more than \$2000 per day for each day that a violation continues.
- (f) Any permittee or party who continues to violate any section of this article or the guidelines and fails to correct violations in a timely manner shall receive no further permits and will be invoiced for permanent repairs as appropriate until such time as the city is satisfied that the permittee or party shall have corrected all violations in compliance with the terms of this article and the guidelines and regulations.
- (g) The city reserves the right to notify a permittee's insurance and/or bond carrier of repeated violations.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000])

Any person or utility found to be conducting any excavation activity within the public right-of-way without having first obtained the required permit(s) shall immediately cease all activity (exclusive of actions required to stabilize the area) and be required to obtain a permit before work may be restarted. A surcharge of five hundred dollars (\$500.00) shall be required in addition to all applicable permit fees. This provision shall not apply to utilities or persons responding to emergency situations, which may obtain any required permit(s) within two business days after responding to the emergency.

(Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000])

#### **Sec. 23-75. Appendix A.**

Arterial streets:

Broadway.  
 Cottage Road.  
 Evans Street.  
 Gorham Road.  
 Highland Avenue.

Lincoln Street.  
Main Street.  
Main Turnpike and Exit 7 Spur.  
Maine Mall Road.  
Ocean Street.  
Rumery Road.  
Running Hill Road.  
Sawyer Street.  
Waterman Drive.  
Westbrook Street.  
Western Avenue.

(Ord. No. 34-75, 1-19-76; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000])

**Sec. 23-76. Repealed.**

(Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000]; Ord. No.1-07/08, 8/6/07 [fiscal Note: Less than \$1000])

**Secs. 23-77--23-79. Reserved.**

**ARTICLE V. DESIGN AND CONSTRUCTION STANDARDS**

**Sec. 23-80. Standards.**

Sections 24-40 through 24-59 of the Subdivision Ordinance shall govern except that the word "subdivision" shall be changed to read "project."

- (a) "Project" shall mean the road construction and any area affected by the construction or reconstruction of a road or sidewalk including subdivisions as well as individual parcels of property.
- (b) "Project" shall not include road construction undertaken for or on behalf of the City of South Portland.

(Ord. No. 34-75, 1-19-76; Ord. No. 2-77, 3-21-77)



**ARTICLE VI. UTILITIES**

**Sec. 23-81. New streets.**

Section 24-38(F) of the Subdivision Ordinance shall govern for all new streets. Section 24-38(F) (2) shall read: "The following shall constitute the utilities provision of this street and sidewalk ordinance."

- (a) *Existing utilities.* Where a utility exists the new installation shall be placed in its original position or as close to its original position as possible and the old system removed.
- (b) Where there is a conflict with existing utilities the proposed location of the new utility shall be approved by the city council.

(Ord. No. 34-75, 1-19-76)



