

Chapter 210

ARTICLE II

Winter Maintenance of Designated Private Ways

Section 210-19 Purpose and Authority

This Article is adopted pursuant to Chapter 10, P&S Law 2021, “An Act Regarding Winter Maintenance on Private Roads in the Town of Windham.” The purpose of this Article is to allow for continued winter maintenance by the Town of designated private ways to (1) ensure safe passage by residents over private ways comprising a large portion of the Town’s road network; and (2) ensure responsible and appropriate winter maintenance in order to protect Windham’s endangered waterbodies and watersheds. This Article further clarifies the status of and the Town’s obligations toward those private ways for which the Town has provided winter maintenance at Town expense over a period of at least 20 years.

Section 210-20 Definitions

- 1. Designated private way.** “Designated private way” means a private way located in the Town of Windham that satisfies the criteria listed in Section 210-22.
- 2. Private way.** “Private way” has the same meaning as in the Maine Revised Statutes, Title 23, section 1903, subsection 10-A.
- 3. Road association.** “Road association” means a road association created pursuant to the Maine Revised Statutes, Title 23, chapter 305, subchapter 2.
- 4. Town way.** “Town way” has the same meaning as in the Maine Revised Statutes, Title 23, section 3021, subsection 3.
- 5. Winter maintenance.** “Winter maintenance” means snow removal and surface treatment, including sanding and salting, performed on designated private ways.

Section 210-21 Winter Maintenance of Designated Private Ways.

Town equipment may be used to perform winter maintenance on a designated private way, ~~regardless of the existence or nonexistence of a public easement over the private way provided it remains compliant with the provisions of this Article.~~

Section 210-22 Identification and Declassification of Designated Private Ways.

- 1.** The Town Council may identify a private way as a designated private way if:
 - A.** There is evidence that the Town of Windham has performed winter maintenance on the private way for at least 20 consecutive years prior to June 17, 2021; ~~and~~

B. The Road Commissioner has determined that the private way cannot meet standards developed or required by generally applicable ordinances for acceptance of the private way as a town way.

2. All private ways identified by the Council as designated private ways shall be listed on a roster and depicted on a map of such ways. The roster and map shall be kept up-to-date by the Road Commissioner and Town Manager.

3. A private way may be removed from the roster and map of designated private ways if:

A. The Council accepts the private way as a town way; or

B. A road association with authority over the private way, or a majority of the owners of property benefited by the private way, present a petition to the Council for the vacation of any public easement and removal of ~~the private way~~ from the roster and map of designated private ways.

Section 210-23 Maintenance Standards

1. The Road Commissioner shall, in consultation with the Council, develop basic maintenance standards for designated private ways. These maintenance standards shall guide the Road Commissioner in determining the necessary repairs or maintenance that must be made to a private way in order for it to be eligible for designation as a designated private way for which the Town may provide winter maintenance in a given winter season. The purpose of the maintenance standards is to ensure that Town staff and equipment are not put at risk due to unsafe conditions on private ways.

2. Within 60 days of identification of a designated private way by the Council, the Road Commissioner shall mail a copy of this Article and the approved maintenance standards for designated private ways to all owners of property benefitted by designated private ways.

3. Each year during which this Ordinance remains in effect, the Road Commissioner shall survey designated private ways and provide mailed notice to the owners of property benefited by those private ways of any maintenance necessary in order to comply with the posted basic maintenance standards and otherwise to ensure safe passage of the Town's winter maintenance equipment and school buses, where applicable.

Section 210-24 Suspension and Termination of Designated Private Ways

1. The Town may suspend or cease to perform winter maintenance on a designated private way as follows:

A. The Town will not perform winter maintenance on a designated private way in a given winter season if maintenance required by the notice described in subsection 3 has not been performed as of the September 1 preceding that winter season.

B. The Council may remove from the roster and map of Designated Private Ways any private way for which those owners benefited by the private way, as of two years following enactment of this Article, have not ~~either~~ formed a road association with authority to make improvements to the private way and assess owners for related costs.

Section 210-25 Termination of Authority.

~~The authority given under this article for performance of winter maintenance on designated private ways shall automatically cease as of June 30, 2022, unless the Maine Legislature has adopted an extension of the authority granted under Chapter 10, P&S Law 2021 to a later date. Upon termination of the statutory authority for this Article~~Beginning October 1, 2022, the Town will cease providing winter maintenance on designated private ways unless an association with authority over the private way or all the owners of at least 50% of the parcels ~~owners~~ benefited by a designated private way or portion thereof have given and the Town has accepted a public easement over the private way or portion thereof ~~and executed a road maintenance agreement that (1) obligates the benefited owners to comply with stated maintenance standards for the way, and (2) holds the Town harmless for performance of winter maintenance.~~

Section 210-26 Winter Maintenance of Private Ways not Adopted as Designated Private Ways.

For any other private way that has not been identified as a designated private way but for which the Town has provided winter maintenance prior to enactment of this Ordinance, the Town will cease winter maintenance on October 1, 2022 unless an association with authority over the private way or all owners benefited by the private way or portion thereof have given and the Town has accepted a public easement over the private way or portion thereof and executed a road maintenance agreement that (1) obligates the benefited owners to comply with stated maintenance standards for the way, and (2) holds the Town harmless for performance of winter maintenance.