

## STREETS & SIDEWALKS

### Chapter 210

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#### ARTICLE II

##### Winter Maintenance of Designated Ways

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[HISTORY: Adopted by the Town Council of the Town of Windham: Art I, at time of adoption of Code; See Ch 1, General Provisions, Art I. Amendments noted where applicable. Amended by the Town Council of the Town of Windham: July 13, 2010]

## **ARTICLE I Excavations**

### **210-1 Permit Required**

No person or utility shall make any excavation or fill any excavation in any public way without first obtaining a permit to do so from the Town of Windham, Maine. This includes entrances to private driveways, which entrances are situated on public ways.

### **210-2 Application for Permit**

No excavation permit shall be issued unless a written application is submitted to the town (forms are provided by the Public Works Department). The written application shall state the following:

- name and address of the applicant,
- name and address of the contractor performing the work,
- street address of the location to be excavated,
- beginning date of the proposed work,
- type of work to be done,
- signed approval of all utilities with infrastructure in the area to be excavated,
- Dig Safe approval number,
- signature of the Public Works Director, or his/her designee,
- diagram of the planned excavation.

### **210-3 Time Limits and Restrictions**

Excavation work must be started no later than (30) days from the date of issuance of the excavation permit. After expiration of the thirty-day period, such excavation permit shall become null and void. Notification shall be made to the Public Works Department on the actual day the work will begin. No work shall be done under the permit on Saturdays, Sundays or holidays, unless first approved by the Public Works Director or his designee.

### **210-4 Responsibility of Applicant**

The applicant shall be responsible for the protection of all public and private property. Before any work commences, the applicant shall notify Dig Safe and all utilities who have infrastructure in the area of the proposed excavation.

### **210-5 Fees**

A fee of one-hundred dollars (\$100.00) shall be paid for each issuance and/or renewal of an excavation permit. [Amended 2-28-1989]

## **210-6 Guaranty; Bond**

- A. The Town Manager or Public Works Director may require the establishment of a performance guaranty prior to the commencement of any excavation work.
- B. The Town Manager or Public Works Director may require the establishment of a performance guaranty for completed repairs. The guaranty shall cover a period of one (1) year from the date of project completion. The amount of performance guarantee shall be established by the Town.

## **210-7 Insurance**

For the purpose of this section, every excavator that works within the Town's right-of-way that requires a permit shall provide a certificate of insurance demonstrating liability coverage in the minimum amount of \$500,000.00 or the limits established by the Maine Tort Claims Act, 14 M.R.S.A. Sections 8101-8118, as may be amended from time to time. Any such policy shall name the Town of Windham as an additional insured and shall remain in effect throughout the time that the work is being done.

## **210-8 Maintenance of Street and Sidewalk Safety**

The permittee shall maintain safe crossing for two (2) lanes of vehicular traffic at all street intersections where possible, as determined by the Public Works Director, 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, the permittee will maintain warning signage and use flaggers as needed per the latest edition on the Manual on Uniform Traffic Control Devices and maintain adequate crossings for vehicles or pedestrians. If the permitted work area within 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.

## **210-9 Removal of Trees or Shrubs**

The permittee shall not remove any trees or shrubs within a public right-of-way without first obtaining consent from the Public Works Director.

## **210-10 Breaking Through Pavement in Streets**

- A. Prior to removal of bituminous pavement the limit of the removal area shall be sawcut in a neat straight line to the full depth of the existing pavement. The cutting equipment used shall be specifically designed for the purpose. It shall be capable of making a straight and vertical cut and shall minimize chipping of the existing pavement surface to remain.
- B. When two (2) or more openings are made in sequence, fifteen (15) feet or less, edge to edge, between each adjacent opening, the permittee shall neatly cut and

remove the area of pavement between these adjacent openings and patch it all as one (1) trench.

## **210-11 Backfilling**

### **A. Utilities.**

- Sand shall be used to bed and backfill all underground utilities and shall be thoroughly compacted under, around, and to a minimum six (6) inches above the utility.
- The minimum sand fill shall be in addition to the minimum sub-base and base gravel requirements in subsection B(3), below.
- Sand backfill for water services shall conform to Portland Water District specifications.
- Sand backfill for natural gas, electrical, telephone or other utilities shall conform to the respective utility company specifications.
- Compacted  $\frac{3}{4}$ -inch crushed stone shall be used to bed and backfill sewer pipes to a minimum depth of 6 inches surrounding the pipe.
- Caution tape with locator wire or magnetic tape shall be placed at least two (2) feet above all backfilled utilities.

### **B. Fill Standards.**

#### **1. Granular Fill:**

- Granular fill material shall conform to MDOT 703.19, Granular Borrow, and shall contain no stones larger than six (6) inches in diameter, and no frozen material.
- Granular fill shall be placed in eight (8) to twelve (12) inch lifts and thoroughly compacted with mechanical compactors to the bottom of the sub-base.

#### **3 Sub-Base and Base Gravel:** Sub-base and base gravel fill shall be at least twenty-four (24) inches in depth and thoroughly compacted by mechanical compactors. The layers of fill shall meet the following specifications:

- Sub-base Gravel. Twenty-one (21) inches of MDOT 703.06 Type D aggregate subbase placed in twelve (12) inch lifts.
- Base Gravel. Three (3) inches of MDOT 703.06 Type A aggregate base.
- Compacted gravel shall be left flush with the bottom of the existing pavement.

#### **4. Base Pavement.** Base course pavement shall conform to MDOT Hot Mix Asphalt 19.0 mm. Base course pavement will be placed the full depth of the existing pavement in accordance to the diagram in Appendix A and compacted so it will be flush with the existing pavement to create a smooth patch.

5. Surface Pavement.

- Surface course pavement shall conform to MDOT Hot Mix Asphalt 9.5 mm for Local Streets and 12.5 mm for Arterial, Collector and Industrial/Commercial streets.
- Surface pavement shall be installed in accordance with the diagram in Appendix A.
- A minimum settling period of ninety (90) days shall pass between the installation of the base pavement and the installation of the surface pavement. If a settling period of ninety (90) days cannot be achieved prior to the Saturday following October 15<sup>th</sup> of any given year, surface pavement shall not be installed until the following Spring. Spring season surface pavement installation shall not commence until April 15 unless otherwise allowed by the Public Works Director, provided air temperature is 50 degrees F or higher.

6. Conformance to Maine DOT Standard Specifications.

- Fill placement shall conform to Section 203 of the Standard Specifications.
- Subbase and base gravel placement shall conform to Section 304.
- Paving work shall conform to Section 401.

**210-12 Emergencies**

Nothing in this chapter shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property. The person or corporation making such excavation shall apply to the town for such a permit on the first working day after such work is commenced. Before any excavation work is commenced, the excavator must contact Dig Safe and all utilities that have infrastructure within the excavation area.

**210-13 Winter Excavation**

No person or utility shall be granted a permit to excavate or open any street or sidewalk from December 1 of each year to March 31 of the next year, unless an emergency or special condition exists as determined by Town officials. In the case of an emergency or special condition, the provisions of Section 210-12, above, shall apply.

**210-14 Excavations in Reconstructed Streets**

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- A. Prior to paving or substantially repairing any street or public highway, the Director of Public Works, or his/her designee, shall duly serve upon owners of property abutting on a street or highway and upon all corporations, persons, firms and public or private utilities occupying a street or highway a notice directing owners, corporations, persons, firms and public or private utilities to make sewer, water and conduit connections or other work as may be designated, within sixty (60) days from date of notice.

(1) Extension Request. If an extension of time is needed by an owner of property abutting on a street or highway or a corporation, person, firm or public or private utility for the installation of such infrastructure, the permittee shall make a written application to the Public Works Director within 30 days from the date of notice explaining the reasons for requesting such an extension of time. The Public Works Director may approve or deny any or all requests for extension of the established time period.

B. Emergency Excavation Request. At the expiration of the time fixed and after a street has been paved or repaired, no permit may be granted to open that street for a period of five (5) years, unless in the judgment of the Director of Public Works, or his designee, an emergency situation exists which makes it necessary that an excavation permit be issued.

(1) If the Public Works Director or his designee issues a permit to open a street within five (5) years after that street or highway was paved or substantially repaired, the Director of Public Works may require the permittee to install bituminous pavement surface overlay the full width of the road surface on both sides of the cut for a distance of twenty (20) feet from the furthest outside edges of the cut. If that repair overlaps the edge of a repair from a previous opening, the Public Works Director may require the permittee to overlay the full width of the road to the furthest edge of that previous repair. The overlay shall meet, at a minimum, the standards contained in Appendix A of this Ordinance. The Public Works Director may prescribe additional depth and/or methods of restoring the pavement based upon the class of the street. Existing pavement within the overlay area shall be removed by grinding to a depth of 1-1/2 inches.

#### **210-15 Inspections**

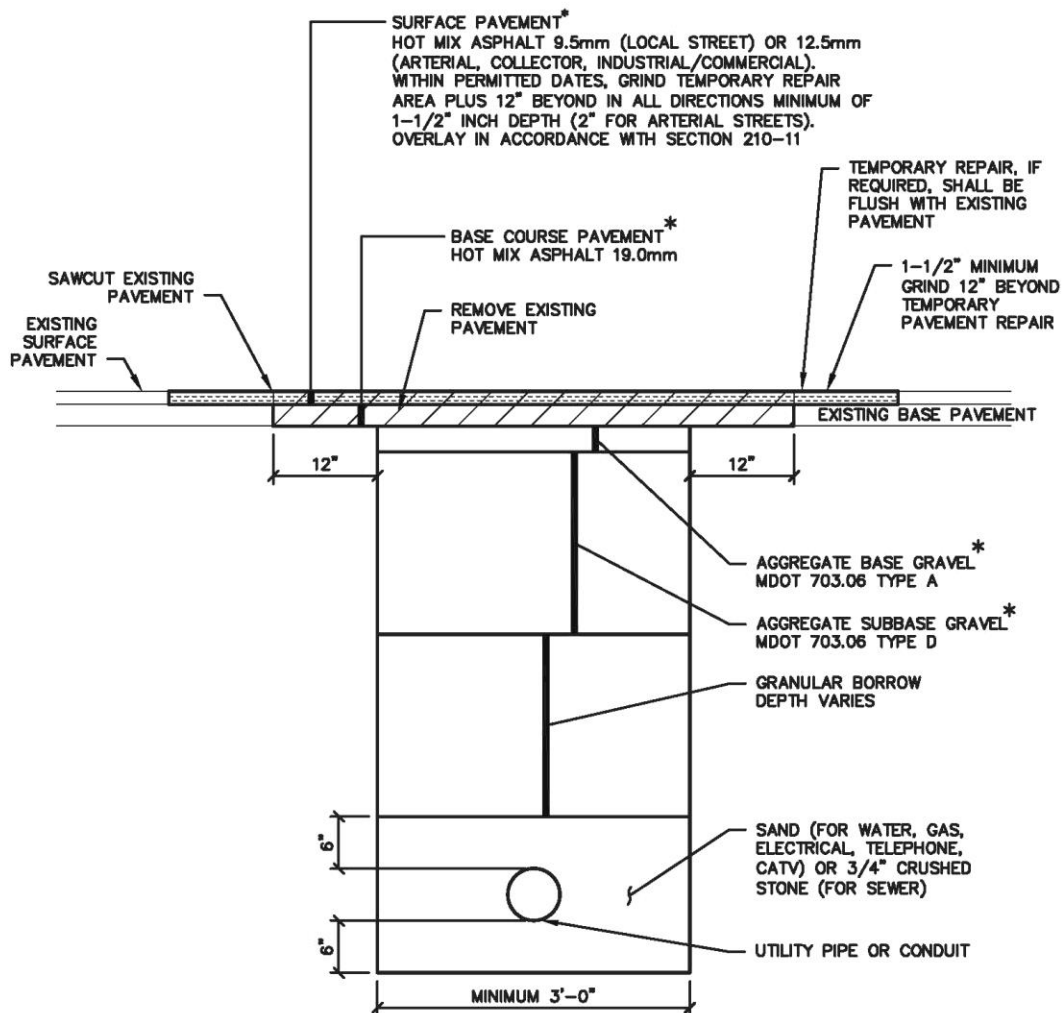
The town shall make such inspections as are reasonably necessary in the enforcement of this chapter. The town shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this chapter.

#### **210-16 Town Liability**

This chapter shall not be construed as imposing upon the town or any official or employee of the town any liability or responsibility for damages to any person or property injured by the performances of excavation work for which an excavation permit is issued hereunder, nor shall the town 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.

## **210-17     Violations and Penalties**

- A. Any person, firm or corporation who violates any of the provisions of this chapter shall be guilty of a civil violation and, upon conviction thereof, shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00). Each day that such violation continues shall constitute a separate offense.
- B. If the work or any part thereof mentioned in the preceding sections of repairing and backfilling the trenches or excavations aforesaid shall be unskillfully or improperly done, the town shall cause the same to be skillfully and properly done and shall keep an account of the expense thereof, and, in such case, such person or utility shall pay the town an amount equal to the whole of said expense incurred by said town, with an additional amount of fifty percent (50%). Thereafter, upon completion of the work and the determination of the costs thereof, the town shall issue no further permits to any person or utility until it shall receive payment of said costs.
- C. Any person or utility who continues to violate any section of this chapter shall receive no further permits until such time as the town is satisfied that the person or utility shall comply with the terms of this chapter.



\* REFER TO WINDHAM ORDINANCE CHAPTER 140, SECTION 900, APPENDIX B, TABLE 4 FOR BITUMINOUS PAVEMENT AND GRAVEL THICKNESS.

#### NOTES:

1. REFER TO WINDHAM ORDINANCE CHAPTER 210 FOR SPECIFICATIONS.
2. THE 12" PAVEMENT OVERCUT MEASUREMENT SHALL START AT FARTHEST EDGE OF UNDISTURBED TRENCH WALL.

#### CROSS SECTION OF TYPICAL EXCAVATION NOT TO SCALE



## ARTICLE II

### Winter Maintenance of Designated Private Ways

#### 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.

#### 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.

#### 210-21 Winter Maintenance of Designated Private Ways.

Town equipment may be used to perform winter maintenance on a designated private way, provided it remains compliant with the provisions of this Article.

#### 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;

B. The Town 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 Town 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.

#### **210-23 Maintenance Standards**

1. The Town Road Commissioner shall, in consultation with the Council, develop basic maintenance standards for designated private ways. These maintenance standards shall guide the Town 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 Town Road Commissioner shall mail a copy of this Article and the approved maintenance standards for designated private ways to the designated contact of the road association or to all the owners of property benefitted by designated private ways.

3. Each year during which this Ordinance remains in effect, the Town Road Commissioner shall survey designated private ways and provide mailed notice to the designated contact of the road association or 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.

#### **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 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 formed a road association with authority to make improvements to the private way and assess owners for related costs.

#### **210-25 Termination of Authority.**

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 the owners of at least 50% of the parcels 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.

#### **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.