Public Highway Excavation Ordinance

SECTION I. GENERAL

1.1 Short Title

This Ordinance prepared in accordance with the provisions of Title 30, MRSA subsection 1917; 2151 and Title 23, MRSA subsection 3381, as amended, shall be known as and may be cited as the *Ordinance for the Control and Regulation of Public Highway Excavations within the Town of Searsport*, and shall be referred to herein as the "Ordinance."

1.2 Purpose

The purpose of this Ordinance is to control and regulate any and all excavations upon or in any public highway within the municipality.

1.3 Exceptions

Nothing in this Ordinance shall apply to the municipality's public works department nor any state or state aid highway construction and/or maintenance.

1.4 Definitions

For the purpose of this Ordinance, the following definitions shall be observed in the construction of this Ordinance.

1.4.1. "Applicant" shall mean a person as defined in 1.4.11 who makes application for a highway excavation permit, or any representative of said person(s)

1.4.2. "Application" shall mean the form or document supplied by the municipality, upon which an applicant shall supply pertinent information and details deemed necessary to apply for an excavation permit.

1.4.3. "Business Day" shall mean any day of any given week, except Saturday, Sunday or any holiday observed by the municipality.

1.4.4. "Emergency Excavation" shall mean an immediate excavation necessary to prevent personal injury, death or the loss or disruption of a private or public utility or service. The burden of proof of such emergency rests with the applicant.

1.4.5. "Excavation" shall mean any operation in which earth, rock, paving or like material, on, around or below the surface of the ground is moved, displaced, dug, trenched, tunneled or in any similar manner disturbed, except the agricultural tilling of soil or gardening.

1.4.6. "Highway" shall mean any town way or public easement including any sidewalks located within the boundaries of the way or easement.

1.4.7. "Municipality" shall mean the Town of Searsport.

1.4.8. "Permit" shall mean the form or document supplied by the municipality, upon which a majority of the municipal officers may approve an application for highway excavation.

1.4.9. "Permitee" shall mean that person who has obtained a permit for the excavation of a highway and shall include any employee(s) or representative(s) of the permitee.

1.4.10. "Person" shall mean an individual, partnership, private or public organization, utility, joint venture or corporation and includes any employee of said person.

1.4.11. "Road Commissioner" shall mean that individual so designated and appointed by the municipal officers. The road commissioner may appoint the public works foreman, or other to act in his/her stead.

1.4.12. "Underground facility" means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, appurtenances and those parts of poles below ground. This definition shall not include highway drainage culverts.

SECTION II. ADMINISTRATION

2.1 Application/Permit Procedure

2.1.1. In accordance with the authority granted in Title 23, subsection 3381, the municipality requires that any person wishing to cause an excavation of any highway of the municipality shall, on any business day, first obtain, complete and file an application for such purpose with the road commissioner or his/her appointed representative.

> EXCEPTION: Excavation applications and permits for the following highways only must be obtained from the Maine Department of Transportation, 143 Rankin Road, Rockland, Maine, specifically:
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> 1. U.S. Route 1 (East—West Main Street)
> 2. Mt. Ephraim Road (SA 667)
> 3. Nickels Road (SA 650)
> 4. Frankfort Road (SA660)
> 5. North Searsport Road (SA 669)

2.1.2. The excavation application shall include the following:

1. Name of applicant(s)
2. Date of application
3. Address of Applicant
4. Location of planned excavation (road name and number)
5. Purpose and description of the excavation
6. Who will do the excavation and any associated work
7. Date excavation to start
8. Date project to be completed
9. A graphic description of the proposed project
10. Utilities notified, if required
11. Location of any nearby churches, businesses, utility poles, cemeteries
12. Indicate type of highway surface and estimated area to be excavated
13. Name and address of insurance carrier providing liability insurance.

2.1.3. Following review of the application, the road commissioner may issue an excavation permit.

2.1. 4. The municipality shall maintain a record of all excavation applications and permits. Incidental fees paid to the municipality shall be separately accounted and shall constitute a special fund from which the cost of resurfacing and/or repaving shall be appropriated. A permit fee schedule shall be set and updated by the Board o. f Selectmen.

SECTION III. CONDITIONS OF THIS ORDINANCE

3.1 The permit may be subject to any one or all of the following conditions.

3.1.1. Except for emergency excavations, as defined in 1.4.4, no excavation permits will be issued from November 1 of any given year to March 15 of the following year.

3.1.2. Excavations within any highway, which has been paved within the immediately preceding five (5) years, may require additional road opening charges. The road commissioner or his/her appointed representative may, upon review of the proposed excavation, adjust the road opening charges accordingly and within reason. Any excess fee collected shall be addressed in accordance with Article IV, Section 4.1.2.

3.1.3. Pavement cutting for excavations shall be in straight lines, parallel to the excavation trench and cut back eight inches (8") on each side beyond the limits of the excavation trench opening.

3.1.4. Responsibility for public safety surrounding the excavation site rests exclusively with the permittee. Should the road commissioner or his/her appointed representative(s) feel that

inadequate safety measures are being used; he/she or they may direct corrective action. In no instance shall the failure of the road commissioner or his/her appointed representative(s) to act create any liability for the municipality nor shall it in any manner exonerate the permittee from any liability incurred.

3.1.5. The permittee shall be responsible for any requirements for contacting DIGSAFE and for meeting all Occupational Safety and Health Administration (OSHA) safety requirements relating to earth excavation, shoring or any other specific requirements incidental thereto.

3.1.6. The permittee shall not be permitted to leave open, at any time, any excavation trench of a greater length than two hundred feet (200') without prior approval from the road commissioner or his appointed representative. The permittee shall cause the excavation to be fully and completely filled to the surface of the surrounding highway before making any further excavation.

3.1.7. Excavated material may be used for backfill so long as the material contains no rocks or pavement pieces larger than six inches (6") in diameter. Unsuitable excavated material shall be totally removed from the excavated site. The final eighteen inches (18") of backfill shall be bank run or screened gravel having a maximum particle diameter of four inches (4"); fine sand, loam or clay is not acceptable. The backfill shall be placed in nine-inch (9") lifts and compacted with power tampers supplying a minimum energy of two hundred fifty foot pounds (250 ft./lb.) per square foot. Backhoe or truck compaction is unacceptable.

3.1.8. Prior to commencement of an excavation project, the permittee shall obtain, and retain for the duration of the excavation project, liability insurance in an amount not less than $300,000. The permittee's certificate of insurance shall name the municipality as co-insured certificate holder of the policy and a copy must be submitted to the municipality.

SECTION IV. REPAVING

4.1. The paving of the highways, subject to this Ordinance, rests exclusively with the municipality.

4.1.1. When an excavation made in any highway subject to this Ordinance has been backfilled, in accordance with 3.1.6 of this Ordinance, and upon the direction of the road commissioner or his/her appointed representative(s), the municipality shall cause the excavation trench be patched with premixed bituminous material on those highways that had been previously paved. In those instances where the highway surface is gravel, the municipality shall grade and maintain a level travel surface.

4.1.2. The cost of repaving or final surface grading of any highway excavations permitted under this Ordinance shall be charged to the special fund account cited in 2.1.6 of this Ordinance. Any excess remaining in said fund after the municipality has repaved or regraded or done other work necessary to restore the highway to its pre-excavation condition shall be returned to the

permittee, with any interest earned, within two months of the date upon which the restoration is completed.

SECTION V. PENALTIES AND ENFORCEMENT

5.1. Violations of this Ordinance may result in the enforcement of any one or all of the following penalties and provisions.

5.1.1. Any person who shall cause an excavation in any highway subject to this Ordinance without first obtaining a permit may be punished by a fine of One Hundred Dollars ($100) for each offense; each day of such violation shall constitute a separate offense.

5.1.2. Any person who shall cause an excavation of any highway subject to this Ordinance in a manner in violation of Section III Conditions of this Ordinance, may be punished by a fine of Two Hundred Dollars ($200) for each offense; each day of such violation shall constitute a separate offense.

5.1.3. If the backfilling or repair of any excavation(s) permitted in accordance with 2.1.3 of this Ordinance is improperly executed as prescribed in 3.1.7 of this Ordinance and the permittee refuses or fails to address the violation, the municipality shall cause the same to be corrected and shall keep separate account of the expense thereof. The person who had caused the excavation shall be assessed a penalty equal to one hundred and fifty percent (150%) of the cost incurred by the municipality in this instance. Thereafter, the municipality may refuse to issue any further or new highway excavation permits to such person or persons until such person has paid the penalty assessed under this paragraph.

5.1.4. The ordinance shall be enforced by the Road Commissioner or his designated agent. Once the Road Commissioner has determined that a violation of any provision of this ordinance has occurred, the Road Commissioner may take one or more of the following actions which shall not be considered mutually exclusive:

a. Refer the matter to the Town Manager or legal action.

b. Issue a stop work and corrective action order.

c. Take corrective action necessary to remedy any defect or danger created by the unauthorized or improperly executed excavation when, after notice and demand, the person responsible for the defect or danger fails to correct it immediately.

5.1.5. Should it become necessary for the municipality to enforce the provisions of this Ordinance in a court of law, and, if the municipality prevails in the enforcement action, the municipality shall be entitled to all costs and expenses incurred in the enforcement action, including, but not limited to, reasonable attorney's fees.

SECTION VI. CONSTRUCTION

6.1 Severability

6.1.1. Severability is intended throughout and within the provisions of this Ordinance. Should any provision, including interalia, any exceptions, parts, phrases or terms or the application thereof, to any person or circumstances be held invalid, the application of other provisions of this Ordinance shall not be affected thereby and the validity of this Ordinance in any and all other respects shall not be adversely affected.

6.2. Supersession

6.2.1. This Ordinance supersedes and replaces any and all like or comparable ordinances, policies or decisions previously enacted and in force within the town, and shall remain in effect until, or unless, revoked or superseded by action of the voters of the town.

6.3 Amendments

6.3.1. From time to time, circumstances may require that portions or sections of this Ordinance be amended, revised or deleted. The Selectmen shall propose such actions at town meeting to the voters of Searsport. Approval of any amendments, revisions, or deletions rests exclusively with the voters of the Town.

SECTION VII. EFFECTIVE DATE

This Ordinance was adopted at Town Meeting on March ___, 2015.