

**CHAPTER 17
TOWN WAYS
(With amendments effective through 10/10/2012)**

Article I	Definitions	17-1
Sec. 17-1-1	Definitions	17-1
Article II.	Entrances to Public Roads	17-2
Sec. 17-2-1.	Entrance Permit Required	17-2
Sec. 17-2-2.	Town Held Harmless	17-2
Sec. 17-2-3.	Application	17-2
Sec. 17-2-4.	Conditions of Permit	17-2
Sec. 17-2-5.	Heavily-Used Entrances	17-3
Article III.	Excavations and Utility Installation	17-3
Sec. 17-3-1.	Street Opening Permit Required	17-4
Sec. 17-3-2.	Excavation	17-5
Sec. 17-3-3.	Protection of Public Property	17-5
Sec. 17-3-4	Pavement Breaking in Streets	17-5
Sec. 17-3-5	Pavement Breaking in Sidewalks	17-5
Sec. 17-3-6.	Backfilling	17-5
Sec. 17-3-7	Inspections	17-5
Sec. 17-3-8.	Restoration of Surface on Streets	17-6
Sec. 17-3-9.	Proof of Insurance	17-6
Sec. 17-3-10.	Excavations in Reconstructed or Repaved Streets	17-6
Sec. 17-3-11	Penalty	17-6
Article IV.	Construction of Streets	17-7
Sec. 17-4-1.	Compliance with Subdivision Requirements	17-7
Article V.	Regulation of Heavy Loads	17-7
Sec. 17-5-1.	Highway Load Limits	17-7
Sec. 17-5-2.	Penalty	17-7

Article I. Definitions

Sec. 17-1-1. Definitions.

(a) The words "public way" shall mean the entire width between the right-of-way boundaries of every public way, or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of traffic, except for

private roads and private ways. [Amended Eff. 1/07/09]

(b) The words "adequate sight distance" shall mean continuous and clear sight distance that meets the minimum requirements of Sec. 17-2-4(b) of this ordinance. [Amended Eff. 10/10/2012]

(c) "Permittee" shall mean a person who has obtained a permit as required by this ordinance.

Article II. Entrances to Public Roads.

[Adopted eff. 12/2/63 under R. R. 1954, C. 90-A, Sec. 3, (R.S. 1964, T. 30, Sec. 2151.

Sec. 17-2-1. Entrance Permit Required. No owner of property abutting upon any public way within the Town shall construct, cause or permit to be constructed, altered or relocated, any driveway, entrance, or approach or other improvement within the right-of-way of such road or extending from such road onto his property except in accordance with an entrance permit issued upon his application to the Director of Public Works and except for the bona fide purpose of securing access to his/her property and not for the purpose of parking or servicing vehicles within such right-of-way. Decisions of the Director of Public Works are appealable to the Zoning Board of Appeals. A permit fee established by the Town Council shall be paid for each permit. [Amended Eff. 1/11/1995, 01/07/2009 and 10/10/12]

Sec. 17-2-2. Town Held Harmless. The applicant shall hold harmless the Town of Cape Elizabeth and its duly authorized agents and employees against any action for personal injury or property damage sustained by reason of the exercise of an Entrance Permit.

Sec. 17-2-3. Application. Application shall be made by filing with the Director of Public Works together with the permit fee . The applicant shall furnish a copy of plans or sketches showing the proposed entrance locations, width and arrangement; distance between entrances; setback of building, gasoline pumps, etc., in relation to the center line of the traveled way; length, size and location of existing pipes, culverts, catch basins or manholes, curbing, curb and gutter, and/or sidewalks, the proposed location of new pipes, culverts, catch basins or manholes, curbing, etc and all other information needed to demonstrate compliance with the requirements in Sec. 17-2-4.. [Amended Eff. 1/07/2009 and 10/10/2012]

Sec. 17-2-4. Conditions of Permit. The location, design and construction of any entrance permitted shall be in accordance with the following requirements:

(a) **Access Management.** The applicant shall demonstrate that the entrance is needed and that no other reasonable alternative exists. For lots with frontage on more than one road, access to a local classification road is preferable to access onto a higher classification road. New entrances shall be located as far as possible from road intersections. [Amended Eff. 10/10/2012]

(b) **Sight Distance.** All entrances shall be so located that vehicles approaching or using the entrance will be able to obtain adequate sight distance that meets the minimum requirements of 16-3-2 (a) (1) Road Classifications Standards Table. Measurements to determine sight distance shall be made in the proposed entrance at a point ten feet (10') from the edge of pavement with the height of eye three and one-half feet (3.5') above the pavement. The sight distance computed from this point measuring along the roadway to a point where an approaching object with a height of four and one-quarter feet (4.25') is first seen. [Amended Eff. 10/10/2012]

(c) **Geometry.** Driveway and Private Way entrance grades shall be as provided in Sec. 16-3- 2 (a) 10 of the Subdivision Ordinance. The entrance shall intersect the traveled way at a horizontal angle as close as possible to 90 degrees, but in no case shall the horizontal angle be less than 75 degrees. [Amended Eff. 10/10/2012]

(d) **Number.** Not more than two entrances (or exits) shall be allowed any parcel of property the frontage of which is less than two hundred (200) feet. Additional entrances (or exits) for parcels of property having a frontage in excess of two hundred (200) feet shall be permitted only after showing of actual convenience and necessity. When frontage is fifty (50) feet or less, only one combined entrance and exit is permitted, the width of which shall not exceed thirty (30) feet.

(e) **Sidewalk and Curbs.** When sidewalk, curbing or curb and gutter is to be removed, it shall be replaced at the owner's expense at the break points of the entrance. All curbing at the side of entrance shall be tapered to meet finish driveway grade. [Amended Eff. 10/10/2012]

(f) **Drainage.** Drainage in road side ditches shall not be altered or impeded and suitable, approved drainage structures shall be provided at all entrances if required by the Public Works Director. Surfacing drainage shall be provided so that all surface water on the areas adjacent to the road shall be carried away from the road. Culverts or other provisions shall be made underneath the entrance or filled areas adjacent to the road adequate to carry the water in the road side ditches, if required by physical conditions as determined by the Public Works Director. [Amended Eff. 10/10/2012]

(g) **Paving.** The first ten (10) feet of the entrance extending from a Town Way shall be paved in accordance with the paving requirement for local roads in Sec. 16-3-2(b) 4 of the Subdivision Ordinance or other hardscape may be installed with the approval of the Public Works Director . (Added eff. 12/10/2003 and 10/10/2012)

Sec. 17-2-5. Heavily-Used Entrances. Application for entrances to drive-in theaters, shopping centers, ball parks or other large public gathering places may be granted only after approval by the Planning Board based upon the applicable standards under Site Plan Review, Sec 19-9. [Amended Eff. 1/11/1995 and 12/10/2003]

Article III. Excavation and Utility Installation

Sec. 17-3-1. Street Opening Permit Required.

No person or utility shall make any excavation in any public road way without first obtaining a street opening permit from the Public Works Director or his/her designee. All such excavations are governed by 23 M.R.S.A., Sec. 3352 et seq. and this Ordinance.

(a) **Excavation Site** Prior to any excavation, applicants shall pre-mark the proposed area of excavation in white paint, in accordance with the applicable State of Maine and Dig-Safe requirements. Limits of pre-marked sites shall be within a reasonable area for purposes of the excavation. Excavators may identify pre-marked site, though it is not required by the “Dig Safe” legislation. Identification shall be done using company or utility initials, in letters no larger than six (6) inches in height. Identification shall be placed in the area to be excavated so that the identification will be eliminated after the job is completed. The Town of Cape Elizabeth is member of “Dig Safe”, Inc. and requires that “Dig Safe, Inc.” be contacted for all excavations on any public road way within the Town of Cape Elizabeth. [Amended Eff. 1/07/2009]

(b) **Application** A Street Opening Permit shall be issued only after a written application on a form provided by the Town of Cape Elizabeth is submitted to the Public Works Director or his/her designated agent. The completed application shall state applicant's name, address, 24 hour emergency phone number and the purpose of the excavation. Applicants shall provide a “Dig-Safe” confirmation number on the application that is applicable to the proposed excavation site. The completed application shall also provide the name of location to be excavated, the beginning date of the proposed work, the completion date, the name of property owner for whom work is being done. The application shall be accompanied by a valid certificate of insurance, as outlined in Sec. 17-3-9, unless one is already on file with the Department of Public Works. [Amended Eff. 1/07/2009]

(c) **Permit** Upon receipt of completed street and sidewalk opening applications, an opening permit will be issued. A fee established by the Town Council shall be paid for each permit or renewal thereof. Street opening permits shall only be issued from April 1 to November 30, unless an emergency or special circumstance exist. An explanation shall be given to the Public Works Director explaining the special situation or emergency prior to the issuance of a permit during the months of December 1 through March 31. Any oral explanation shall be followed up by a written explanation within two (2) working days.

(d) **Work Zone Signage** All excavations within any public way shall be posted and identified with the appropriate work zone signage and/or devices that conform to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Traffic control in the vicinity of all excavations affecting vehicular, pedestrian and bicycle traffic shall be subject to final review and approval of the Director of Public Works, or his designee. [Added Eff. 1/07/2009]

Sec. 17-3-2. Excavation Excavation work must be started no later than thirty (30) working days from the date of issuance of the Street Opening Permit. After the expiration of the thirty (30) day period, such street opening 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 approved by the Public Works Director. During all street excavations, one-way traffic shall be maintained for emergency vehicles. Temporary exceptions may be made only by the Fire Chief and/or the Director of Public Works only when another means of access is available. [Amended Eff. 1/07/2009]

Sec. 17-3-3. Protection of Public Property. In the course of any excavation, individuals and/or utilities shall not remove any trees or shrubs which exist in the street area without first obtaining the consent of the Tree Warden and/or Director of Public Works. [Amended Eff. 1/07/2009]

Sec. 17-3-4. Pavement Breaking in Streets. All excavations on paved street surfaces shall be precut in a neat straight line with pavement breakers or saws. Cutouts of the trench lines must be normal or parallel to the trench line. Pavement edges shall be trimmed to a vertical face and neatly aligned with the center line of the trench. When three (3) or more street openings sequence fifteen (15) feet or less, center to center, between each adjacent opening, the individual and/or utility shall be charged for one (1) opening measured from the first to the last.

Sec. 17-3-5. Pavement Breaking in Sidewalks. All parts of Section 17-3-4 shall also apply to sidewalks in all cases except concrete sidewalks. Concrete sidewalks shall be saw cut. Use of pavement breakers will not be allowed. 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.

Sec. 17-3-6. Backfilling. Fine material (free of lumps and stones no larger than four (4) inches shall be thoroughly compacted around and under the substructure to the upper level of the substructure. Backfill material shall be placed and compacted in lifts of eight (8) to twelve (12) inches and thoroughly compacted by mechanical compactors approved by the Director of Public Works. Within eighteen (18) inches of the sub grade of the pavement, backfill shall meet MDOT specification Type B and be left three (3) inches below the surface. Within twenty-four (24) hours after the trench has been backfilled three (3) inches of cold bituminous concrete shall be placed over the gravel and compacted, or permanent repairs completed per Section 17-3-8. [Amended Eff. 1/11/1995 and 01/07/2009]

Sec. 17-3-7. Inspections. The Director of Public Works or his designee shall make such inspections as are necessary in the enforcement of this ordinance.

Sec. 17-3-8. Restoration of Surface in Public Ways. Permanent resurfacing of excavations shall be made by the Town of Cape Elizabeth. The Town, at its option, may allow the individual or utility to permanently resurface that portion of the street surface damaged by the excavation, in which event, permanent resurfacing shall be done in a manner and under the specifications of the Town of Cape Elizabeth's Subdivision Ordinance for pavement thickness. If such permanent repairs are made to the satisfactory completion of the Director of Public Works, or his/her designee, all charges for resurfacing will be canceled.

The Director of Public Works, or his/her designee may require any trench to be cold-planned and/or resurfaced due to settlement, defects in materials and workmanship related such resurfacing within three (3) years of the original excavation, at the expense of the permittee. [Amended Eff. 1/11/1995 and 01/07/2009]

Sec. 17-3-9. Proof of Insurance. Applicants for opening permits shall supply to the Department of Public Works a certificate of insurance listing the Town of Cape Elizabeth as an additionally named insured - \$400,000 minimum. Coverage shall be for not less than the following amounts:

a. General liability including comprehensive form, premises/operations, underground explosion and collapse hazard, products/completed operations, contractual, independent contractors, broad form property damage and personal injury.

1. \$1,000,000 Bodily Injury and Property Damage Each Occurrence
2. \$2,000,000 Bodily Injury and Property Damage Aggregate
3. \$2,000,000 Personal Injury Aggregate

b. Automobile liability including any auto, hired autos and non-owned autos - \$1,000,000 bodily injury and property damage combined.

c. Workers' Compensation and Employer's Liability

1. \$500,000 each accident
2. \$500,000 Disease - Policy limit
3. \$500,000 Disease - Each employee [Amended Eff. 01/07/2009]

Sec. 17-3-10. Excavations in Reconstructed or Repaved Roads. After a public road has been reconstructed or repaved, no permit shall be granted to open such road for a period of five (5) years unless an emergency condition exists or unless the necessity for making such installation could not have been reasonably foreseen at the time of the reconstruction or repaving. This section shall be void unless the Town shall have given sixty (60) days notice by certified mail of the impending work to the owners of property abutting the road and to all public utilities serving the road. [Amended Eff. 01/07/2009]

Sec. 17-3-11. Penalty. Any person, firm or corporation who shall violate any provision of this Article III shall upon conviction be fined for the use of the Town in a sum not less

than \$500.00 and not more than \$1,000.00. Each day of continued violation shall constitute a new and separate offense. [Amended Eff. 1/11/1995 and 01/07/2009]

Article IV. Construction of Streets.

[Adopted eff. 11/12/76 under R.S. 1964, T. 30, Sec. 2151.]

Sec. 17-4-1. Compliance with Subdivision Requirements. Any way hereafter constructed within the limits of the Town, including any way serving more than one residential unit or serving two or more lots of land to which title is held in different ownership, shall be designed and constructed so as to satisfy the requirements imposed upon streets within subdivisions and shall be submitted for acceptance by the Town unless the Planning Board, after considerations of future traffic and the provision of municipal services over such street, its location with respect to the comprehensive plan and the adequacy of construction proposed, approves the construction of such street to lesser standards and with reasonable requirements as may be necessary to assure adequate access by municipal emergency vehicles, maximum utility in relation to objectives of the comprehensive plan, and continuing maintenance of such street. [Amended Eff. 01/07/2009]

Article V. Regulation of Heavy Loads.

Sec. 17-5-1. Heavy Load Limits. The Town Manager may, upon the recommendation of the Director of Public Works, and after seven (7) days notice published once in a newspaper of general circulation in the community, post registered gross vehicle weight limits on any town public road. [Amended Eff. 01/07/2009]

Sec. 17-5-2. Penalty. Any person, firm or corporation who shall violate a posted weight limit enacted under Sec. 17-5-1 shall, upon conviction, be fined, for the use of the Town, a sum not less than \$100.00 nor more than \$250.00 for each 1,000 pounds of registered gross vehicle weight over a posted weight limit. [Revised 11-11-1988 and 01/07/2009]