

**TOWN OF CLARKSTOWN
HIGHWAY DEPARTMENT**

12 SEEGER DRIVE
NANUET, NY 10954
(845) 623-7500
FAX: (845) 624-7585
highway@clarkstown.org

Chapter 250: STREETS AND SIDEWALKS – ARTICLE II Openings, Excavations and Pavement Cuts [Adopted 4-3-1974 by L.L. No. 2-1974 as Art. II of Ch. 91 of the 1974 Code]

§ 250-8. Definitions and word usage.

A. The following words, when used in this article, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise:

APPLICANT . Any person who makes application for a permit.

DOUBLE POLE . Any damaged utility pole or old utility pole from which the plant has been removed, in whole or in part, which is attached or in close proximity to a new utility pole. **[Added 4-9-2013 by L.L. No. 2-2013]**

EMERGENCY . Any unforeseen circumstance or occurrence, the existence of which constitutes a clear and immediate danger to persons or properties, and, with respect to utilities only, sudden unforeseen interruption of preexisting service.

PERMITTEE . Any person who has been issued a permit and has agreed to fulfill all the terms of this article.

PERSON . Includes an individual, corporation, partnership, association or any other organized group of persons, or legal successor or representative of any of the foregoing. **[Amended 9-11-1991 by L.L. No. 6-1991]**

PLANT . The cables, terminal, conductors and other fixtures necessary for transmitting electric, telephone, cable television or other telecommunications service. **[Added 4-9-2013 by L.L. No. 2-2013]**

STREET . A public street, public easement, public right-of-way, public highway, public alley, public way, sidewalk or public road accepted or maintained by the Town.

SUPERINTENDENT . The person in charge of the Department of Highways or the highway operations in the Town, or his authorized deputy, representative or inspector.

TOWN . The Town of Clarkstown, County of Rockland, State of New York.

B. In this article, the singular shall include the plural, and the masculine shall include the feminine and the neuter.

C. In this article, all approvals, consents, permissions or like authorizations of any kind or nature shall and must be in writing in order to be valid.

§ 250-9. Permit required for excavations. [Amended 9-11-1991 by L.L. No. 6-1991;7-9-1996 by L.L. No. 11-1996]

No person, firm or corporation, public or private, including public service companies and transportation corporations, as defined in Article I of the Transportation Corporations Law, who or which, for the purpose of this article, are deemed such as NYNEX, Orange and Rockland Utilities, Inc., United Water New York, private and municipally owned water companies, community antenna television companies, municipal districts, et al., shall make any excavation, cut or breaking in or otherwise open any street, road, highway or sidewalk under Town jurisdiction in the Town of Clarkstown for any purpose whatsoever, including but not limited to the making of a driveway connection, without first obtaining a permit therefor from the Superintendent of Highways of the Town of Clarkstown as hereinafter provided; provided, however, that any person maintaining pipes, lines or other underground facilities in or under the surface of any street may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately, provided that the permit could not reasonably and practically have been obtained beforehand. The person shall thereafter apply for a permit on the first

regular business day on which the office of the Superintendent is open for business, and said permit shall be retroactive to the date when the work was begun.

§ 250-10. Applications for permit; deposit; lead permittee. [Amended 9-11-1991 by L.L. No. 6-1991;7-9-1996 by L.L. No. 11-1996]

- A. Application, in writing, shall be filed in triplicate with the Superintendent of Highways upon application blanks which he shall provide or in such other manner as he shall prescribe, which application shall be accompanied by a plan or map showing in detail the location of the proposed opening of the highway or highways therein identified and the dimensions of the breadth or width, length and depth of such opening and contain a short statement of the purpose for which the street is to be opened and the name or names of the owners for whom the work is to be done and the name or names of the contractors who are to perform the work for which the street is opened, accompanied by the fee hereinafter provided to be paid to the Town of Clarkstown.

- B. All applicants shall furnish a cash deposit or corporate surety bond in an amount to be determined by the Superintendent of Highways and to be based upon the estimated cost of restoring the pavement cut or other excavation to be made by the permittee, which sum is to be deposited with the Comptroller of the Town of Clarkstown to assure that, after completing the excavation, the street, road, highway or sidewalk, pavement, curb or gutter is in the same condition as it was prior to the excavation. The minimum bond or cash deposit shall be not less than \$1,000. Said cash deposit or bond shall be returned to the applicant upon final inspection and approval of the Superintendent of Highways. If the permittee anticipates requesting more than one permit a year, he may file a continuing corporate surety bond conditioned for compliance with the specifications of the Town and the provisions of this article, in such amount as the Superintendent deems necessary. The amount of such bond shall be in relation to the cost of restoring pavement cuts to be made by the permittee through the year.

- C. In lieu of meeting the requirements of Subsection B of this section, the applicant may deposit the sum of \$50,000 with the Town Comptroller or otherwise secure said amount in a form approved by the Town Board and enter into an agreement in a form approved by the Town Attorney which shall permit the Town of Clarkstown to draw against such deposited funds in the event that the applicant fails to perform corrective work as determined by the Highway Superintendent within 10 days after notification of defect has been provided or within 24 hours after notification of defect if the existing condition is designated as a safety defect.

- D. When a common trench shall be excavated which includes involvement by more than one firm or corporation, public or private, including public service companies and transportation corporations, as defined in Article I of the Transportation Corporations Law, those firms, corporations, public service and transportation corporations may together designate a lead permittee. That lead permittee shall then apply and take full responsibility for the permit that is issued. When a lead permittee is so designated, no other permits for the designated excavations shall be required.

- E. Upon compliance with the foregoing requirements, a permit shall be issued in the name of the Superintendent of Highways of the Town of Clarkstown.

§ 250-11. Permit fee. [Amended 12-31-1986 by L.L. No. 6-1986;4-28-1987 by L.L. No. 6-1987; 9-11-1991 by L.L. No. 6-1991; 7-9-1996 by L.L. No. 11-1996; 2-10-2009 by L.L. No. 1-2009]

Fees for an excavation permit, also known as a "road opening permit," shall be established from time to time by resolution of the Town Board. Said fee shall be nonrefundable and in addition to any inspection fee or other schedule of charges established under § 250-39. Excavations associated with a single contiguous project shall be permitted under a single permit application fee, subject to the approval of the Superintendent of Highways.

§ 250-12. Required notices.

For every street opening hereunder, it shall be the duty of every applicant to give at least 72 hours' advance written notice, including diagram, engineering drawings or the equivalent thereof, of a proposed excavation in any Town street, road, highway or public place to persons, corporations or municipalities engaged in the underground distribution of gas, gasoline, fuel oil, electricity, water, sewage, etc., via lines or mains within the vicinity of the proposed excavation. Proof of due notice shall be filed with the Superintendent at least 48 hours prior to the commencement of the proposed work.

§ 250-13. Authorized work.

No person to whom a permit has been granted shall perform any of the work authorized by such permit plus or minus 5%, except that, upon written approval by the Superintendent, additional work may be done under the provisions of the permit in any amount not greater than 10% of the amount specified in the permit. Any deposit and/or bond posted in connection with the original permit shall be deemed to cover any such additional work as may be approved pursuant to this section within the limit mentioned herein.

§ 250-14. Commencement of work.

Work for which a permit has been issued shall commence within 20 days after the issuance of the permit therefor. If not so commenced, the permit shall be automatically terminated. Permits thus terminated may be renewed upon the payment of an additional permit fee as originally required.

§ 250-15. Permits nontransferable.

Permits are not transferable from one person to another, and the work shall not be done in any place other than the locations specifically designated in the permit.

§ 250-16. Expiration of permits. [Amended 4-9-2013 by L.L. No. 2-2013]

Every permit shall expire at the end of the period of time which shall be set out in the permit. If the permittee shall be unable to complete the work within the specified time, he shall, prior to the expiration of the permit, present in writing to the Superintendent a request for an extension of time, setting forth therein the reasons for the requested extension. If, in the opinion of the Superintendent, such an extension is necessary and not contrary to the public interest, the permittee may be granted additional time for the completion of the work. Any such extension shall be in writing, signed by the Superintendent of Highways.

A. Town notification, time frame for removal.

- (1) When the Town determines that a utility pole in a Town road right-of-way is damaged and poses a potential threat to public safety, the Town shall notify any public utility with a plant on the damaged pole that it must remove its plant from the damaged pole within 15 days of receiving such notification from the Town.

(2) When the Town determines that a double pole is in a Town road right-of-way, the Town will notify the public utility which owns the double pole that the pole must be removed within 90 days or be subject to penalty.

B. Permit requirements. The Town of Clarkstown Highway Department shall include in all permits for the installation or removal of utility poles in Town's rights-of-way the following provision:

(1) The permittee shall have 90 days to remove a double pole following the installation of a new pole in its immediate vicinity. Failure to do so may result in penalties as provided by law.

§ 250-17. Highways under other jurisdiction.

The provisions of this article shall not be applicable in those instances where the highway is maintained by the State of New York or by the County of Rockland.

§ 250-18. Rights of Town.

Every permit shall be granted subject to the right of the Town or of any other person entitled thereto to use the streets for any purpose for which such street may lawfully be used, not inconsistent with the permit.

§ 250-19. Revocation of permit.

A. Any permit may be revoked by the Superintendent, after notice to the permittee, for:

- (1) Violation of any condition of the permit or of any provision of this article.
- (2) Violation of any provision of any other applicable ordinance or law relating to the work.
- (3) Existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or properties of others.

B. A permittee may be granted one period of three days from the date of the notice to correct the violation and to proceed with the diligent prosecution of the work authorized by the permit before said permit is revoked.

C. Written notice of any such violation or condition shall be served upon the permittee or his agent engaged in the work. The notice shall contain a brief statement of the grounds relied upon for revoking the permit. Notice may be given either by personal delivery thereof or registered United States mail addressed to the person notified.

D. When any permit has been revoked and the work authorized by the permit has not been completed, the Superintendent shall do such work as may be necessary to restore the street or part thereof to as good a condition as before the opening was made. All expenses incurred by the Town shall be recovered from the deposit or bond the permittee has made or filed with the Town.

§ 250-20. Default in performance.

Whenever the Superintendent shall find that a default has occurred in the performance of any term or condition of the permit, written notice thereof shall be given to the principal and to the surety on the bond. Such notice shall state the work to be done, the estimated cost thereof and the period of time deemed by the Superintendent to be reasonably necessary for the completion of such work.

§ 250-21. Completion of work by surety.

After receipt of such notice the surety must, within the time therein specified, either cause the required work to be performed or, failing therein, indemnify the Town for the cost of doing the work as set forth in the notice.

§ 250-22. Protection of excavations.

Any person making an excavation covered by this article shall erect a suitable barrier or guard for the protection of persons using the streets or sidewalks and, in addition thereto, shall set up and maintain during the hours of darkness sufficient lights or flares to properly illuminate the area and shall also take all necessary precautions for the protection of the Town and of public service companies or municipal districts and adjoining property owners and other which might be endangered by such excavations or the work incident thereto and shall comply with all directions given by the Superintendent of Highways with respect to such barriers, lights, flares and protective measures. All signs used at night shall be reflectorized with wide-angle, flattop, reflective sheeting. All devices used both day and night shall be mounted a minimum of five feet above the crown of the pavement. Traffic control devices shall be placed at least 100 feet in advance of obstructions to adequately warn and direct traffic. The Superintendent of Highways reserves the right to order the correction of any unsafe condition and the installation of additional signs, lights or other traffic control devices. Any opening found not to be properly protected shall immediately be properly protected by the Town and the cost thereof charged against the cash deposit or bond hereinbefore provided for.

§ 250-23. Tampering with lights and barricades.

It shall be unlawful for any person to break down, remove or interfere with any such barrier so erected, lights or any part thereof, or to remove said barrier or lights without the consent of the Town Highway Superintendent.

§ 250-24. Duties and responsibilities of applicants.

It shall be the duty and responsibility of any applicant to agree to save the Town, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under said permit. The acceptance of any permit under this article shall constitute such an agreement by the applicant, whether the same is expressed or not.

§ 250-25. Inspection of completed work release.

The permittee shall notify the Superintendent of Highways when work has been completed, after which an inspection will be made by the Superintendent of Highways or his duly authorized agent, and upon approval of the work, a release will be granted to the permittee. Until the granting of such a release, the permittee shall remain liable for proper guarding and protection as provided herein.

§ 250-26. Refund of deposit. [Amended 7-9-1996 by L.L. No. 11-1996]

Upon notification by the permittee that all work authorized by the permit has been completed and after restoration of the opening, the Superintendent shall refund to the permittee his deposit less all cost incurred by the Town in connection with said permit. In no event shall the permit fee or the inspection fees be refunded.

§ 250-27. Forfeiture of deposit.

- A. In the event that the street is not restored to its original condition or the work has not been completed pursuant to the terms and conditions of the permit, within 10 days after notice from the Town Superintendent of Highways that the work has not been satisfactorily performed or the street is not in proper original condition, or within 24 hours if the existing condition is designated as a safety defect, the aforesaid deposit made with the Town Superintendent of Highways shall be forfeited to the Town. **[Amended 7-9-1996 by L.L. No. 11-1996]**
- B. The Town Board may thereafter order the Town Comptroller to pay to the Superintendent of Highways, out of the moneys deposited, a sufficient sum of money to repair or replace said street, road, highway or sidewalk, pavement, curb or gutter. In the alternative, the Superintendent of Highways may contract with the applicant for the Highway Department to complete the pavement, sidewalk, curb or gutter for a mutually agreed upon sum. Upon the completion of said excavation, where the applicant has deposited cash in lieu of an undertaking, the moneys deposited hereunder are to be returned to the applicant, provided that all or part have not been expended pursuant to the provisions herein.

§ 250-28. Regulations and specifications for permit.

A. Construction.

- (1) When working on any Town street, no pavement cuts or trenches are to be left uncovered or unfilled overnight except in emergencies, and in such cases adequate precautions must be exercised to protect traffic.
- (2) Backfilling around completed structures shall be made of selected material, free from loose stones, as soon as the structure has attained sufficient strength to preclude injury, and shall be made in successive horizontal layers not exceeding six inches in depth. Each layer shall be thoroughly compacted by tamping to the satisfaction of the Superintendent of Highways. No frozen material shall be used in the backfill. Special care shall be taken to thoroughly compact the portion directly under the haunches, around the sides and for a depth of one foot over pipes or ducts. No rock shall be placed in the backfill within 12 inches of a pipe or duct. If permitted by the Superintendent of Highways, the backfilling of trenches may be thoroughly puddled by depositing the earth in water. No backfilling of trenches by scrapers or other machinery will be allowed, except that on longitudinal trenches outside the pavement limits the use of power backfillers mounted on pneumatic tires may be used if provisions are made for adequate compacting of filled material. The work shall be so carried on that not over 300 linear feet of trench shall remain open at any time, unless otherwise authorized by the Superintendent of Highways.
- (3) All pipes or mains crossing highway pavements shall, wherever possible, be driven beneath the roadway without disturbance to the pavement. The point of driving shall not be less than five feet from the edge of pavement. Such crossover pipes shall, whenever possible, be enclosed in sleeves or larger pipes so that repairs or replacements may be made without further disturbances of the roadway pavement.

- (4) If the boring method in the driving of crossover pipes is found to be impracticable, the representative of the Highway Department shall be consulted to determine the manner of placing the pipe by the opening method. This request is to be made, in writing, to the Highway Department and may be granted by the Superintendent upon such conditions as he deems necessary and proper under the circumstances.
- (5) All surplus excavated material and debris shall be cleaned up and removed from the site of the work upon the completion of the work by the permittee, leaving the site of the work in a neat and orderly condition.
- (6) Where topsoil, seeded areas or sod are disturbed in the excavating, the permittee shall restore the ground surfaces to the same conditions.
- (7) Manhole covers, frames and other structures placed within the roadway limits shall be of sufficient weight and strength and of a suitable type and stability approved by the Superintendent of Highways and shall be set flush with the surface of the pavement.

§ 250-29. Methods and types of openings.

- A. Openings in concrete streets shall have a minimum width of five feet.
- B. No streets are to be tunneled, but pipes may be driven or trenched across.
- C. All openings are to be made either by trenching machines or hand labor, as specified in the permit.
- D. Proper sheeting and bracing must be installed in trenches where there is a possibility of caving of the banks.
- E. All permittees shall comply with OSHA requirements for the work being performed. **[Added 7-9-1996 by L.L. No. 11-1996]**
- F. No opening shall be permitted until New York State Code 53 requirements are met. **[Added 7-9-1996 by L.L. No. 11-1996]**

§ 250-30. Insurance required. [Amended 9-11-1991 by L.L. No. 6-1991; 2-10-2009 by L.L. No. 1-2009]

No permit shall be issued by the Superintendent of Highways for the excavation in any street or highway unless the person to whom the permit is to be issued shall have filed with the application for such permit a comprehensive general or commercial general liability insurance policy or a certificate thereof naming the Town of Clarkstown as an additional insured with the minimum limits of coverage for bodily injury and property damage equal to \$1,000,000 per occurrence, combined single-limit bodily injury and property damage, and \$1,000,000 general aggregate and/or products completed, operations aggregate. The Town Attorney shall approve the policy or certificate for form.

§ 250-31. Enforcement officer. [Amended 2-10-2009 by L.L. No. 1-2009]

The Superintendent of Highways, or his designee, is hereby authorized to enforce the provisions of this article.

§ 250-32. Winter work. [Added 7-9-1996 by L.L. No. 11-1996 Editor's Note: This local law also provided for the repeal of former § 250-32, Bond requirements.]

- A. During the "winter work season," which is hereby defined as November 15 through April 1, road opening permits will be issued only for emergency work. In the event that an emergency exists and a permit is necessary, the backfill of all road openings, including shoulder openings, shall be made in accordance with the procedures given in this section.

- B. In shoulders, the final nine inches of material shall be approved and then thoroughly compacted to the contour of the road and shoulder.

- C. For openings in the pavement, a temporary pavement restoration shall be made by placing two layers of dust-bound crushed stone, each of a compacted thickness of four inches, on the prepared subgrade, thoroughly compacting these layers in accordance with the proper procedures for a base course and then placing a layer of bituminous concrete winter mix, six inches in compacted thickness, on top. No frozen material shall be placed in the excavation. As early in the spring as weather and ground conditions permit, sufficient temporary pavement shall be removed as will allow for its replacement with the normally required pavement.

- D. Notwithstanding anything which may appear to the contrary in the permit application and regulations, the applicant, by accepting the permit, assumes all responsibility for the safe maintenance of the subject opening(s) from November 15 through April 1 and further assumes all liability for damages resulting from or in any way connected with the subject opening(s) during this period.

§ 250-33. Notice of improvements by Town.

When the Town shall improve or pave any street, the Town Clerk shall first give notice to all persons owning property abutting on the street about to be paved or improved, and to all public utilities and authorities operating in the Town, and all such persons, utilities and authorities shall make all connections as well as any repairs thereto which would necessitate excavation of the street within 30 days from the giving of such notice. The time shall be extended if permission is requested in writing and approved by the Town after consultation with the Town Superintendent of Highways.

§ 250-34. Opening new streets restricted.

No permit shall be issued by the Superintendent which would allow an excavation or opening in a paved and improved street surface less than five years old unless the applicant can clearly demonstrate that public health or safety requires that the proposed work be permitted or unless an emergency condition exists as otherwise required by law.

§ 250-35. Abandoned facilities.

- A. Whenever any pipe, conduit, duct, tunnel or other structure located under the surface of any street, or the use thereof, is abandoned, the person owning, using, controlling or having an interest therein shall, within 30 days after such abandonment, file with the Superintendent a statement, in writing, giving in detail the location of the structure so abandoned.

- B. Each map or set of maps filed pursuant to the provisions of this section shall show in detail the location of all such structures abandoned subsequent to the filing of the last preceding map or set of maps.

- C. When the Town plans to pave or improve streets in which there are abandoned facilities, the owner of such facilities shall be notified to remove them if, in the opinion of the Board, their removal is in the best interest of the Town. If the owner shall refuse to remove such facilities, the Town shall remove the abandoned facilities, and the owner shall reimburse the Town for such removal.

§ 250-36. Notice to other persons affected.

- A. If the work to be undertaken by the permittee is such that it will affect the use of properties abutting or adjoining the project, the Superintendent shall require the permittee to submit a list of the names and addresses of the owners and/or tenants of such properties. Upon receipt of such list, the Superintendent shall notify the affected property owners and/or tenants of the proposed work to be done.

- B. If the work to be undertaken by a permittee will affect other subsurface installations in the vicinity of the proposed opening, the Superintendent shall notify the owners of such facilities of the proposed work.

§ 250-37. Notice to police and fire authorities.

The Superintendent shall notify, in writing, the Town police and fire authorities of all street opening permits he grants. Such notification shall state the nature of the work to be done, the proposed beginning and completion dates and the location of such project.

§ 250-38. Adoption of regulations.

The Superintendent is hereby authorized and directed to adopt from time to time such written regulations as may be necessary for the implementation and enforcement of the provisions of this article. Such regulations shall include, but shall not be limited to:

- A. Restrictions for the protection of existing subsurface installations, monuments and drainage systems.
- B. Requirements for the storage and removal of excavated materials.
- C. Designation of safety precautions to be taken by the permittee.
- D. Restriction as to the periods of the day when the work may be performed.
- E. Supplemental requirements for backfilling, inspecting and restoring of openings.

§ 250-39. Schedule of costs.

The Superintendent is authorized to establish a schedule of charges for inspections, labor, materials and such other expenses as may be incurred by the Town in meeting the requirements of this article. The schedule shall be open to public inspection in the office of the Superintendent upon demand.

§ 250-40. Decisions on costs. [Amended 2-10-2009 by L.L. No. 1-2009]

Any person committing an offense against any provision of this article shall be guilty of a violation punishable by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this article shall constitute, for each day the offense is committed, a separate and distinct offense hereunder.

§ 250-41. Penalties for offenses.

- A. Any person found guilty of a violation of any provision of this chapter shall be punished by a fine of up to \$2,500. Any person found guilty of a second offense of any provision of this chapter within 18 months of the date of the first conviction shall be punished by a fine of not less than \$2,500 and not more than \$5,000. Any person found guilty of a third offense of any provision of this chapter within 18 months of the date of the second conviction shall be punished by a fine of not less than \$7,500 and not more than \$10,000. Any person found guilty of a fourth or subsequent offense of any provision of this chapter within 18 months of the date of the third conviction shall be punished by a fine of not less than \$10,000 and not more than \$15,000. The continuation of an offense against the provisions of this article shall constitute, for each day the offense is committed, a separate and distinct offense hereunder. **[Amended 4-9-2013 by L.L. No. 2-2013]**
- B. The application of the above penalty shall not be held to prevent the enforced removal of the prohibited conditions and/or the exercise of any civil rights or remedies set forth in this article or in any other provision of law.
- C. Any public utility found guilty of violating § 250-16A and that fails to remove its plant from a damaged pole within 15 days of receiving notification from the Town, pursuant to § 250-16A(1), shall be punished by a fine of up to \$250 for each such violation. Each day that the violation continues shall be deemed a separate violation. **[Added 4-9-2013 by L.L. No. 2-2013]**
- D. Any public utility that fails to remove a double pole within 90 days of receiving notification from the Town, pursuant to § 250-16A(2), shall be punished by a fine of \$1,000 per full calendar month that the violation continues. **[Added 4-9-2013 by L.L. No. 2-2013]**