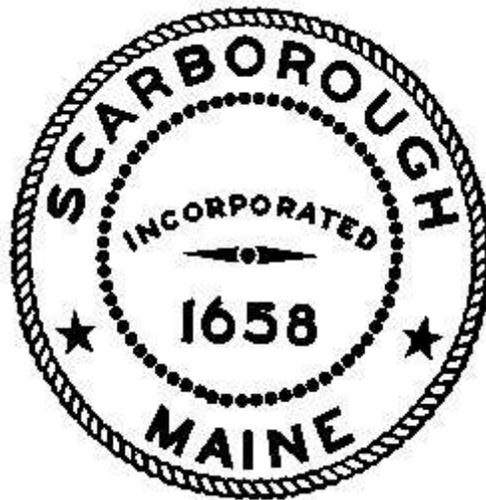


**CHAPTER 702**

**TOWN OF SCARBOROUGH**

**STREET OPENING ORDINANCE**



**ADOPTED JUNE 1988**  
**Amended September 6, 1995**  
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**CHAPTER 702  
TOWN OF SCARBOROUGH  
STREET OPENING ORDINANCE**

**Section I Definitions, License, Insurance, Permit**

**Definitions:**

The following words and phrases, when used in this article, shall have the following meanings respectively ascribed to them:

1. **Town:** Town of Scarborough and/or its public works authority.
2. **Excavation:** Any opening in the surface of a public place made in any manner whatsoever, except an opening in a lawful structure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public place. Trenchless Excavation – Any subsurface disturbance of a public place for the purpose of installation or removal of a facility that does not require a surface opening.
3. **Facility:** Pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire tower, pole, pole line, anchor, cable, junction box, or any other material, structure, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under, or over any public place.
4. **Licensed Excavator:** Any person issued an Excavating License by the Town of Scarborough.
5. **Newly constructed, reconstructed or repaved streets:** Any street which has been newly constructed, reconstructed or repaved within the past five (5) years.
6. **Permittee:** A person who has obtained a permit as required by this article.
7. **Public Place:** Any public street, way, place, sidewalk, park, square, plaza, or any other similar public property owned or controlled by the Town and dedicated to public use, and any dedicated-but-unaccepted street or way.
8. **Substructure:** any pipe, conduit, duct, tunnel, manhole, vault, buried cable, or wire, or any other similar structures located below the surface of any public place.
9. **Digsafe:** The one-call utility-locating organization that contractors must call, under Maine Law, before breaking the plane of the ground surface.
10. **Utility:** A private company, corporation or quasi-municipal corporation under the direction and control of the Public Utilities Commission.

**License:**

No person or utility without a valid Excavating License approved by the Town of Scarborough shall excavate in a public place. The Scarborough Public Works shall issue an Excavating License upon receipt of an application, the annual license fee and after determining the competency and ability of the applicant to perform excavation to the standards of the Town. No person or utility possessing such license shall allow his or her name to be used by any person or utility, directly or indirectly, either to obtain a permit to do any work under this license. An Excavating License may be revoked if the Town determines the excavator has willfully disobeyed any portion of this article.

The annual Excavator License fee specified in the *Schedule of License, Permit and Application Fees* is established by the Town Council. The license is valid from January 1 to December 31 of the year issued.

**Insurance**

This article shall not be construed as imposing upon the Town or any official or employee any liability or responsibility for damage to any person injured by the performance of an excavation work for which an Excavation Permit is required under this article, 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. In the case of a dedicated-but-unaccepted street or way, this article shall not be construed as authorizing any action which is inconsistent with any private rights in said street or way, nor shall the issuance of any permit hereunder be construed as an acceptance of said street or way by the Town for highway or any other purposes. For purposes of this section, every licensed excavator shall at all times maintain a minimum of \$400,000.00 public liability insurance coverage protecting herself/himself, her/his agents and the Town from all such claims for damages or injuries and naming the Town as an additional insured. The Scarborough Public Works Department requires proof of such coverage prior to approval of any Excavating License. [amended 11/01/17]

**Permit**

No person or utility shall make any excavation or fill any excavation in any public place without first obtaining an approved permit from the Town. A Public Liability Insurance Certificate naming the Town as an additional insured and a minimum coverage of \$400,000.00 is required before an Excavation Permit will be approved.

No Excavation Permit shall be issued until an Excavating Permit Form has been submitted and approved by the Scarborough Public Works Department. The form requires the following information: excavation location, property description, contractor contact information, estimated start date, utility approvals with a Digsafe number and the signature of approval by an authorized Public Works Administrator.

Utility Companies, although having to submit an application for a permit to the Town, may contact other utilities involved by phone and fill in the Excavating permit for accordingly. All request forms shall be submitted to the Scarborough Public Works

Department within thirty (30) days from the date of the last utility approval. Once expired a request is no longer valid and the application process must be renewed.

Fees specified in the *Schedule of License, Permit and Application Fees* are established by the Town Council. A fee is charged for each permit issued. Each Excavating Permit is approved for work at a single location.

Work must start no later than thirty (30) days from the approval date on the Excavation Permit. The permit expires after this 30-day period and must be renewed before any work can begin.

## **Section II Special Conditions, Excavation, Resurfacing, Fees**

### **Special Conditions**

#### **1. Relocation and protection of utilities**

The permittee shall not interfere with any existing facility without the written consent of the Town and the owner of the facility. If it becomes necessary to relocate an existing facility, this shall be done by its owner. No facility owned by the Town shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the facility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across the work. The permittee shall secure approval of method of support and protection from the owner of the facility. In case any of the pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure, the permittee shall promptly notify the owner thereof. All damaged facilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this section that the permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The Town shall not be made a party to any action because of this section. The permittee shall inform itself as to the existence and location of all underground facilities and protect the same against damage.

#### **2. Protection of public property**

The permittee shall not remove, even temporarily, any trees or shrubs which exist in the street area without first obtaining the consent of the appropriate Town department or Town official having control of such property.

#### **3. Urgent Work**

When traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the Town shall have the full power to order, at the time the permit is granted, that a crew and adequate facilities be employed by the permittee beyond normal working hours

including up to twenty-four (24) hours a day to end that such excavation work may be completed as soon as possible.

#### **4. Emergency action**

Nothing in this article shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs, provided that the person 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 started, the person or utility excavating must contact Digsafe for on the spot locations.

#### **5. Noise, dust and debris**

Each permittee shall conduct and carry out excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of excavation work, noise, dust and unsightly debris and between the hours of 10:00 p.m. and 7:00 a.m. shall not use, except with the express written permission of the Town or in case of an emergency, any tool, appliance or equipment producing noise of sufficient volume to disturb sleep of occupants of the neighboring property.

#### **6. Preservation of monuments**

Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point, or a permanent survey bench mark within the Town, shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the Town to do so. Permission to remove or disturb such monuments, reference points or bench marks shall be granted only when no alternate route for the proposed substructure or conduit is available. If the Town is satisfied that no alternate route is available, permission shall be granted only upon condition, by an agreement in writing, that the person or utility applying for such permission shall pay all expenses incident to the proper replacement of this monument by the Town or permittee.

#### **7. Granite and bituminous curb**

No person or utility shall remove, damage, haul away or cause misalignment or any bituminous curb, granite curbing, including radius curb and catch basin stones, for any reason whatsoever without first receiving written permission from the Town. Any curb missing, damaged or misaligned shall be replaced or aligned. The permittee to replace or realign that portion of curb by the permittee's excavation. In such event, replacement or realignment shall be done in a manner and under specifications prescribed by the Town and subject to inspection by the Town and shall be completed within a period of ninety (90) days after such authorization to complete work. The permittee shall, for a period of three (3) years thereafter, be fully liable for all defects in materials and workmanship relating to such work and shall promptly repair or replace the same upon notice of the Scarborough Public Works Department and to the satisfaction thereof.

#### **8. Maintenance of drawings**

Every person or utility owning, using, controlling, or having an interest in substructures, under the surface of the public way used for the purpose of supplying or

conveying gas, electricity, communication, impulse, water, steam, ammonia or oil in the Town, shall file with the Town, a map or set of maps each drawn to a scale of not less than one (1) inch to fifty (50) feet, showing in detail the plan, location, size and kind of installation, if known, of all new or renewed substructures, except service lines designed to serve single properties. These maps shall be provided to the Town no later than sixty (60) days after the completion date of construction. The same information shall be provided in a geo-reference CAD file

**9. Annual work program to be submitted by utilities**

Each year on or before March thirty-first, each utility shall submit to the Scarborough Public Works Department its planned work program for the ensuing year, which shall not include emergencies and normal house service lines. Thereafter, no permit shall be issued to a utility for excavations not contained within its planned work program, except for emergencies and house service lines, until a prior written application for such excavation shall have been submitted to and approved by the Scarborough Public Works Department.

**Excavation**

**1. Clearance for vital structures**

The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, water gates, underground vaults, valve housing structures, traffic signal cables and loops and all other vital equipment as designated by the Town.

**2. Protective measures and routing of traffic**

**a. Safe crossing.**

The permittee shall in general maintain safe crossings for two (2) lanes of vehicle traffic at all street intersections where possible and safe crossings for pedestrians. If any excavation is made across any public street or sidewalk, adequate crossings shall be maintained for vehicles and pedestrians. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, a passageway at least one-half of the sidewalk width shall be maintained along such sidewalk line.

**b. Barriers and warning devices.**

It shall be the duty of every permittee cutting or making an excavation in or upon any public place, to place and maintain barriers and warning devices necessary for safety of the general public. Traffic control in the vicinity of all excavations affecting vehicular, pedestrian and bicycle traffic shall be subject to final review and approval of the Scarborough Public Works Department. Barriers, warning signs, lights, etc., shall conform to the latest edition of the *“Manual on Uniform Traffic Control Devices”*. Warning lights shall be electrical markers or flashers used to indicate a hazard to traffic from sunset of each day to sunrise of the next day. Electrical markers or flashers shall emit light at sufficient intensity and frequency to be visible at a reasonable distance for safety. Reflectors or reflecting material may be used to supplement, but not replace light sources.

**c. Normalizations of traffic conditions.**

The permittee shall take appropriate measures to assure that during the excavation work, traffic conditions as near normal as possible shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public.

**d. Closing of streets.**

When traffic conditions permit, the Scarborough Public Works Department, with the approval of the Scarborough Police and Fire Departments of the Town, may permit the closing of streets to all traffic for a period of time if necessary. Written approval of the Scarborough Public Works Department may require that the permittee give notification to various public agencies and to the general public. In such cases, such written approval shall not be valid until such notice is given. In case of emergency on week nights, weekends or holidays the utility company having such emergency shall contact the police and fire departments by phone before closing a street to traffic.

**e. Interference with arterial streets.**

Unless an emergency condition exists, construction activities of the permittee shall not interfere with the normal flow of traffic on arterial streets of the Town of Scarborough. The full in-bound roadway lane width shall be maintained between the hours of 6:45 a.m. and 8:30 a.m. and the full out-bound roadway lane width shall be maintained between the hours of 4:00 p.m. and 5:45 p.m.

**f. Shifting traffic to opposite side.**

The permittee may shift traffic to the opposite side of the roadway to maintain required lane width. The permittee may only make such shift with the approval of the Scarborough Public Works Department following proper review of detour plans to insure adequate safe two-way traffic flow and proper number and placement of police officers.

**3. Breaking through pavement in streets and sidewalks**

All excavations on paved street and sidewalk surfaces shall be pre-cut in a neat straight line with pavement breakers, saws, or asphalt cutters.

Heavy duty pavement breakers may be prohibited by the Town when the use endangers existing substructures or other property.

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.

Unstable pavement shall be removed over cave-outs and overbreaks and the subgrade shall be treated as the main trench.

The permittee shall not be required to pay for repair of pavement damage existing prior to the excavation unless the cut results in small floating sections that may be unstable, in which case, the permittee shall remove the unstable portion and the area shall be treated as part of the excavation.

When three (3) or more street openings are made in sequence (fifteen (15) feet or less, center to center, between each adjacent opening), the permittee shall neatly cut and remove the area of pavement between these adjacent openings and shall patch as one trench.

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.

#### **4. Care of excavated material**

All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the Town shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling.

It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

All material excavated shall be laid compactly along the side of the trench and kept trimmed so as to cause as little inconvenience as reasonably possible to vehicular and pedestrian traffic, or as specified by the Town. Whenever necessary in order to expedite the flow of traffic or to abate the dirt or dust nuisance, the boards or bins may be required by the Town to prevent the spreading of dirt into traffic lanes.

#### **5. Backfilling of excavation**

Crushed stone or sand shall be used to bed and backfill all underground utilities and shall be thoroughly compacted under, around and to a minimum of 6 inches above the structure. After being properly bedded, the backfill material for all other substructures shall be of a fine material, free from lumps, frozen materials and no stones larger than four (4) inches in diameter. All backfill materials shall be placed in eight (8) to ten (10) inch lifts and thoroughly compacted with approved mechanical compactors. Within eighteen (18) inches of the subgrade of the pavement, gravel shall be used as backfill material consisting of fifteen (15) inches of bankrun and three (3) inches of crushed or screened gravel in accordance with the Town's specifications. The Town may require soil tests to be furnished by a recognized soil testing laboratory or registered professional engineer specializing in soil mechanics when, in its opinion, backfill for any excavation is not being adequately compacted. In order for the resurfacing to be permitted, such tests must show that the backfill material meets the minimum requirements as prescribed by the Town. All expense of such tests shall be borne by the permittee.

## **6. Trenches**

The maximum length of open trench in an excavation permissible at any time shall be two hundred (200) feet, and no greater length shall be opened for pavement removal, excavation, construction, backfilling, patching or any other operation without the written permission of the Town.

## **7. Prompt completion of work**

Once an excavation has begun, the permittee shall expedite all excavation work covered by the excavation permit shall promptly complete the work and restore the street in accordance with this article. The permittee shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel by foot or vehicle.

## **8. Winter Excavations**

No person or utility shall be granted a permit to excavate or open any street or sidewalk from November first of each year to April fifteenth of the following year unless an emergency or special condition exists and permission is obtained in writing from the Town. Any person or utility wishing to obtain a street opening permit between these aforementioned dates shall first explain fully in writing the emergency situation existing to the Town. If a hazardous condition endangering life or property exists, excavation work shall not be delayed by this section. However, a written explanation shall be delivered to the Town as soon as possible to obtain a permit.

## **9. Manholes and/or catch basins**

No person or utility shall remove, damage, haul away, or otherwise disturb any manhole and/or catch basin castings, frames, and/or covers owned by the Town without first receiving written permission from the Town. Any manhole and/or catch basin castings, frames and/or covers missing, damaged, or disturbed shall be repaired and/or replaced by the permittee in accordance with the specifications set forth by the Scarborough Public Works Department.

## **10. Excavations in reconstructed streets**

Whenever the Town has developed plans to reconstruct a street, the Town or its representative shall give written notice to all abutting property owners, to the Town departments, and to all public utilities which have, or want, to lay pipes, wires or other facilities in or under the highway. Upon receipt of such written notice, such person or utility shall have sixty (60) days in which to install or lay any such facility. If an extension of time is needed by a person or utility for the installation of such facilities, the person or utility shall make a written application to the Town explaining fully the reasons for requesting such an extension of time. At the expiration of the time fixed and after such street has been reconstructed, no permit shall be granted to open such street for a period of five (5) years unless an emergency condition exists or unless the necessity for making such installation could not reasonably have been foreseen at the time such notice was given. The above mentioned five (5) year moratorium for street openings also pertains to all new public or private streets, i.e. new subdivisions or developments that have been accepted in accordance with the Town specifications.

**11. Incurred expenses through repairing and backfilling by Town**

If the work or any part thereof mentioned in this article for repairing or backfilling the trenches or excavations 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 the expense incurred by the Town with an additional amount of fifty (50) percent. Thereafter, upon completion of the work and the determination of the costs thereof, the Town shall not issue any additional permits to any person or utility receipt of payment due.

Any person or utility who continues to violate any section of this article 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 article.

**12. Resurfacing of streets and sidewalks**

**Temporary resurfacing by the permittee.**

The top surface of backfill shall be covered with four (4) inches compacted depth of bituminous temporary resurfacing material, by the permittee. Such temporary paving material shall be cold mix, except that the permittee may use or the Town may require hot mix. All temporary paving material shall be compacted so that it is hard enough and smooth enough to be safe for pedestrian travel over it, as well as for vehicular traffic to pass safely over it at a legal rate of speed. The permittee shall maintain the temporary paving and shall keep same safe for pedestrian and vehicular traffic until the excavation has been resurfaced. If it is not possible to maintain the surface of the temporary paving in a safe condition for pedestrian and vehicular traffic, then the permittee shall maintain barriers and lights where necessary.

**Permanent resurfacing by the permittee.**

Upon completion of all excavation the permittee shall permanently resurface that portion of the street surface damaged by the permittee. In such event, permanent resurfacing shall be done under specifications prescribed by the Town and subject to inspection by the Scarborough Public Works Department. Completion is required within a period of ninety (90) days after such authorization to complete final resurfacing. If such permanent resurfacing is satisfactory to the Scarborough Public Works Department, all charges for resurfacing except for permit fees will be canceled. The permittee shall, for a period of three (3) years thereafter, be fully liable for all defects in materials and workmanship relating to such resurfacing and shall promptly repair or replace the same upon notice of the public works authority and to the satisfaction thereof.

**13. Inspection**

The Town shall make such inspections as are reasonably necessary in the enforcement of this article. 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 article.

## **Fees and Charges**

### **1. Fee:**

A fee as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council, shall be paid for each excavation permit issued or renewed.

### **2. Cost of Replacement:**

After opening charges shall be established by order of the Town Council to cover replacement costs of the street or sidewalk. Under this article, charges shall not be in excess of the reasonable cost of such replacement.

### **3. Special Conditions:**

Where three (3) or more street openings are made in sequence (fifteen (15) feet or less, center to center, between each adjacent opening), the permittee shall be charged for one opening measured from the first opening to the last opening.

If the street openings exceeds fifty (50) square yards, a utility company or contractor may request, in writing, the Town's permission to contract privately for the street or sidewalk repairs. If the Town agrees, the contractor shall post a letter of credit for the actual amount of the street opening times the appropriate unit rate established or as approved by the Scarborough Public Works Department. The letter of credit shall be for a period of one year or as otherwise approved by the Scarborough Public Works Department and shall be retained by the Town for the period of time. Upon notification from the public works authority, that the repairs have been accepted, the Town shall release the letter of credit to the contractor. Street work must be done in accordance with the Town's specifications and is subject to inspection by a Town representative.

The Town shall provide an on-the-job inspector to supervise all excavation of temporary or permanent repairs. The permittee shall be charged the appropriate hourly inspector's rate, plus thirty-five (35) percent overhead for the services of such inspector.

## **Billing Procedures**

Upon completion of the excavation work and after ground settlement has stabilized, the size of the opening will be measured by the Scarborough Public Works Department. The Town's long-term cost to maintain the opening are calculated by multiplying the size of the road cut (total square yards) by the appropriate rate as set forth herein. An invoice is generated and mailed to the permittee. Invoices rendered in accordance with this section shall be due and payable by the permittee immediately upon receipt thereof. If a permittee does not pay such invoice within thirty (30) days of receipt, the Town shall issue no further permits to permittee until payment has been received.

**Town of Scarborough**  
**STREET OPENING FEE SCHEDULE**

**Street Opening Charges**

As specified in the *Schedule of License, Permit and Application Fees* established by the Town Council.

**Sidewalk and Driveway Opening Charges**

As specified in the *Schedule of License, Permit and Application Fees* established by the Town Council.

**Curbing**

As specified in the *Schedule of License, Permit and Application Fees* established by the Town Council.

**Other Charges**

As specified in the *Schedule of License, Permit and Application Fees* established by the Town Council.