

LEGAL NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that the Town Board of the Town of Poughkeepsie does hereby set the 19th day of July, 2017 at 7:00 P.M. at the Town Hall, Town of Poughkeepsie, One Overocker Road, Poughkeepsie, NY as the time date and place of a public hearing to afford all interested parties an opportunity to be heard and seek public comment concerning amendments to Chapter 174, entitled "Streets and Sidewalks"

AND PLEASE ALSO TAKE FURTHER NOTICE that said amendment is available in full, to preview in the Town Clerk's Office located at One Overocker Road, Poughkeepsie, New York, between the hours of 8:00 A.M. - 4:00 P.M., Monday thru Friday and also on our website at www.townofpoughkeepsie.com.

Felicia Salvatore, Town Clerk
Town of Poughkeepsie
June 26, 2017

Proposed "Draft" amendments are attached and will be replaced once legal notice is published In Poughkeepsie Journal

**AMENDMENT
RESOLUTION 6:21- # 17 OF 2017**

BE IT RESOLVED, that the Town Board of the Town of Poughkeepsie does hereby set the 19th day of July, 2017 at 7:00 p.m. at the Town Hall, Town of Poughkeepsie, One Overocker Road, Poughkeepsie, NY as and for the time, date and place of a public hearing to consider amendments, in substantially the form attached, to Town Code Chapter 174, entitled "Streets and Sidewalks", which amendments would read as follows:

REPEAL: §§ 174-21 through 174-35, Streets and Sidewalks, Article IV Excavations.

ADD: §§ 174-21 through 174-36, Streets and Sidewalks, Article IV Excavations.

SEE ATTACHMENT

AND BE IT FURTHER RESOLVED, that the Town Board does hereby waive the verbatim reading and does direct that said amendments be spread across the record as if it, in fact, they had been read verbatim; and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Poughkeepsie does determine that this action is a Type II Action requiring no environmental review; and

BE IT FURTHER RESOLVED, that said amendments, if adopted, will take effect immediately upon filing with the Secretary of State.

Dated: June 21st 2017

Moved: Ann Shershin

Seconded: William Carlos

Ayes 7 Nays 0

JEN/mem
t-6/15/2017
m-6/21/2017

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	AYE	NAY
Councilman Renihan	<u>✓</u>	_____
Councilman Carlos	<u>✓</u>	_____
Councilman Conte	<u>✓</u>	_____
Councilman Cifone	<u>✓</u>	_____
Councilman Lepore	<u>✓</u>	_____
Councilwoman Shershin	<u>✓</u>	_____
Supervisor Baisley	<u>✓</u>	_____

§ 174-21 Definitions

The following terms used in this Article shall have the following meanings:

EXCAVATION – Shall mean any work, process, or construction that touches, impacts, disturbs or alters the surface or subsurface of any Highway, including, but not limited to, pavement cuts and culvert installations, and also including road surface work and paving.

EXCAVATION PERMIT – Shall mean any permit required under or pursuant to this Article.

HIGHWAY – “Highway” shall mean all Town owned public places and all public streets, sidewalks, roads, alleys, curbs, gutters and highways within the Town of Poughkeepsie, whether established by use, dedication or otherwise, including all paved or finished surfaces, shoulders, signage, ditches, culverts, drains and drainage, utility and similar structures, appurtenances, improvements, and land within the bounds of the Town Highway rights-of-way.

HIGHWAY SUPERINTENDENT – The elected Highway Superintendent of the Town of Poughkeepsie and his/her designees.

REQUIRED INSURANCE – Those insurance coverages from time to time specified by the Highway Superintendent for Excavation Permits.

SECURITY – Security shall mean a guarantee of performance, maintenance, and indemnity executed by the applicant for the benefit of the Town in form acceptable to the Highway Superintendent together with: (1) a cash deposit; or (2) an unconditional letter of credit approved by the Town of Poughkeepsie; or (3) a performance, maintenance and indemnity security company bond approved by the Town of Poughkeepsie or (4) a Certificate of Deposit irrevocably assigned to the Town of Poughkeepsie; or (5) any other form of undertaking as approved by the Town of Poughkeepsie; or (6) any combination of the foregoing approved by the Town of Poughkeepsie, all in an amount and form consistent with this Article and approved by the Highway Superintendent.

§ 174-22 Legislative authority

This Article is enacted pursuant to N.Y. Town Law § 130, Subdivision 7 and NY Municipal Home Rule Law §10(1)(i) and (10)(ii)(a)(6) and (9-a), (11) and (12), to regulate the manner in which Excavations may be made in or under the streets, Highways, sidewalks and public places in the Town of Poughkeepsie to protect the health, safety and welfare of the public during Excavations and to ensure the quality, safety and longevity of Town thoroughfares and public places.

§ 174-23 Excavation permits required.

No person, firm, corporation or other legal entity shall open or cause or allow any Highway to be opened or disturbed by cutting, Excavating, patching, paving, installing or placing anything upon or against the surface, soil or subsurface of any Town Highway or Town owned public place without first obtaining an Excavation Permit.

§ 174-24 Permit application.

An application for an Excavation Permit, together with the fee therefore as specified in Town Code Article _____ shall be made to the Superintendent of Highways upon a form(s) to be provided by the Superintendent. The application shall require the name and address of the Applicant (alternatively herein, "Contractor") and shall identify all person(s) and entity(ies) performing the work for the Applicant; the person or entity on whose behalf the work is to be performed by the Applicant; the location of the Excavation; the size and purpose of the Excavation; the beginning and end dates when the work is to be performed; the type of pavement or surface to be disturbed; and the materials proposed to be used in replacement; together with sketches and such additional documentation and information as the Highway Superintendent may require, including but not limited to:

- A. Drawings, specifications, surveys and plans sealed by a New York State licensed engineer, architect or surveyor.
- B. If work will be performed upon or under, or will impact any lands outside of the Highway or public place, the written consent of the owner(s) of such lands, which consent shall recite that such owner(s) has reviewed the documents submitted with the application.
- C. Whenever required, a completed Environmental Assessment Form ("EAF") pursuant to the New York State Environmental Quality Review Act ("SEQRA") shall be submitted. No Permit may be issued until any required SEQRA review process has been completed.
- D. Proof of the Required Insurances and Security called for by this Article.

E. All other permits, easements and consents which are required for the performance of the Excavation and related work.

§ 174-25 Insurance, Guarantee, Security, Deposit.

Except as otherwise provided herein, no Excavation Permit shall be issued unless the Applicant shall have delivered to the Highway Superintendent and filed with the Town Clerk proof of the Required Insurances and Security called for by this Article.

1. Insurance. The Applicant shall provide proof of all of the Required Insurances specified by the Highway Superintendant which shall be endorsed to eliminate the exclusion of underground damage and shall provide for broad form property damage coverage.

2. Security. Applicant shall execute a Guarantee of Performance, Maintenance and Indemnity (see subsection 2(a) below) for the benefit of the Town, together with a performance bond or other Security therefore (as defined above) in form acceptable to the Attorney to the Town. The Security shall be in an amount determined by the Highway Superintendent to cover the full cost of the Excavation, whether completed by the applicant or, in the event of default, by the Town, including the cost to correct deficiencies and restore the areas in and adjacent to the Excavation.

(a) The Guarantee of Performance, Maintenance and Indemnity (the "Guarantee") shall provide that the Applicant assumes sole responsibility for the Excavation and adjacent areas, and assumes all responsibility for injury and damage resulting from any Excavation or related work. The Applicant, to the fullest extent permitted by law, shall indemnify and hold

the Town of Poughkeepsie, its officers, employees and agents, harmless from all loss, cost, expense, suits, claims and demands (together, "Claims") including but not limited to all reasonable expert, consultant and attorneys' fees and expenses arising from or in relation to any Claim.

(b) The Guarantee and the Security therefore shall provide that all work shall be performed in accordance with the conditions of the Permit and all codes, laws, rules and regulations applicable thereto.

(c) All surety bonds given as Security shall be issued by a company authorized to do business in the State of New York.

3. The Guarantee, Security and Required Insurances shall be approved by the Town Attorney for conformity with the provisions of this Article. They shall not be deemed to limit the Applicant's legal liability for matters arising out of or in relation to the Permit.
4. Each Guarantee and the Security for it shall specifically provide coverage to the Town for the period when the Excavation is being performed and for one year after its completion and acceptance by the Highway Superintendent, and the Required Insurance shall be maintained for the same extended period.
5. Deposit. Except as otherwise provided herein, no Permit shall be issued unless, as a condition precedent thereto, the Applicant shall have deposited a sum with the Town Clerk in cash, by bank check or certified personal check in an amount equal to \$50 per square yard of excavated area of soil or of an oil and stone street or excavated area of a blacktopped street. The Highway Superintendent shall return to the Applicant all moneys on deposit 30 days

after completion of all work, less any moneys expended by the Town Superintendent to correct deficiencies in the applicant's performance of the permit specifications.

§ 174-26 Public service corporations; Security and Required Insurance.

A. In addition to the Guarantees of Performance, Maintenance and Indemnity, all public service corporations shall file and keep on file with the Town a performance bond or undertaking of \$25,000 approved as to form and sufficiency of surety by the Town Attorney. The bond or undertaking shall be retained as security for the faithful performance by the applicant of all requirements of this Article and the terms and conditions of any Permit issued to it.

B. A public service corporation may, in lieu of the Guarantee of Performance, Maintenance and Indemnity for each required Permit, but not in lieu of the Required Insurances or required Permit, file and keep on file with the Town Clerk a general guarantee of Performance, Maintenance and Indemnity approved as to form by the Town Attorney.

C. In an emergency, as that term is defined in § 174-27L below, Excavations may be made by a public service corporation prior to obtaining a Permit; provided, however, that the public service corporation shall have filed a general or job specific Guarantee of Performance, Maintenance and Indemnity and the Required Insurances as specified in this Article, and provided further that the public service corporation shall provide notice to the Highway Superintendent as soon as practicable of the emergency and shall also make application for the necessary Permit within 24 hours, Saturdays, Sundays and holidays not included, after it becomes aware of the emergency.

§ 174-27 Performance of the work.

In performing such work and Excavation, the applicant shall:

- A. Preserve and protect the Highway and adjoining areas from damage.
- B. Commence and complete the work as one continuous operation.
- C. Complete the work and Excavation by the completion date in the Permit.
- D. Restore and repair all affected areas to current requirements.
- E. Maintain at all times all safety devices, structures and procedures required by the Permit and all codes, laws and regulations, and as required in the exercise of diligent care, all until the Excavation work has been accepted by the Highway Superintendent.
- F. Maintain at all times the Security and Required Insurance coverage(s) during the course of the work and for a one (1) year period from acceptance of it by the Highway Superintendent.
- G. Perform the work so as not to interfere with or minimize any obstructions to the safe flow of traffic.
- H. Perform all backfilling and tamping with materials specified by the Highway Superintendent, which materials shall be free from clay, loam or silt, and which materials shall be moistened and mechanically tamped until thoroughly compacted.
- I. For all work that will impair the provision of any public utility, water supply, or effect any closure or partial closure of any Highway, give at least 72 hours' advance written notice of the work and the effect of it to all owners of property within 500' of the Excavation. Proof of notice shall be filed with the

Highway Superintendent at least 48 hours prior to the commencement of the work.

J. Notify the Highway Superintendent within four hours of the completion of the work under any Permit. If work is completed on a Saturday, Sunday or holiday, or after the close of the business day, then the completion of the work shall be reported within four hours after the office of the Superintendent of Highways is open for the transaction of regular business. The applicant shall remain responsible to maintain barricades, warning lights and other required warning devices until the Superintendent has accepted the Excavation work or has completed the repair of the Excavation.

K. Prior to Excavation, provide to the Highway Superintendent proof that it has fully complied with all Public Service Commission and other "Call Before You Dig" regulations for the protection of underground facilities.

L. In an emergency, when a Permit cannot first be obtained by a non public service corporation because the office of the Superintendent of Highways is closed, proper excavations may be made, provided that Permit as required herein shall be applied for within four hours after the office of the Superintendent of Highways is opened. An emergency shall be deemed to exist when failure to take prompt action may result in danger to the life or property of the public. In the event of an emergency, the Town Superintendent may issue a permit immediately, requiring only such information as he or she deems necessary.

M. During Excavations, whenever practicable a serviceable portion of all Highways shall be kept open for travel and the applicant shall, upon the direction

of the Superintendent of Highways, provide one or more flagpersons to direct the flow of traffic. The Superintendent of Highways may require and for good cause may allow a detour to be established and maintained by the applicant.

N. Excavations shall not be performed between November 1 and April 1, unless a special Permit is obtained from the Superintendent of Highways or in the event of an emergency. Except in emergency situations, no work shall be commence on a Friday or the day before a legal holiday unless written permission is obtained from the Superintendent of Highways.

O. The Highway Superintendent may furnish and charge the applicant for inspections while the work is in progress, solely to verify compliance with the Permit conditions and this Article. No inspection will be made for the purpose of reviewing, recommending, or verifying applicants safety procedures. The cost for each such inspection shall be \$_____ per hour, to be paid by the applicant in advance.

§ 174-28 Safeguards and barriers; reasonable conditions to be imposed.

Upon the issuance of a Permit, the applicant shall properly barricade the area of proposed excavation and shall place and maintain windproof lights and such signs and warning devices as are reasonably necessary to protect the public. The Superintendent of Highways shall have the power to impose such additional terms and conditions as will provide for the public health, safety and welfare under the particular circumstances of each Permit. If the applicant fails to comply with the provisions of this article, any conditions attached to its permit and/or the directions of the Highway Superintendent, the Highway Superintendent may, as the agent of the applicant, install such devices and take

such action as he or she deems necessary. The applicant shall be liable for any expenses incurred by the Town under such circumstances.

§ 174-29 Revocation of Permit.

The Highway Superintendent may, after three (3) days notice to cure, revoke any Permit if the applicant has failed to correct any violations thereof or any violation of the provisions of this Article or any other applicable code, law, rule or regulation during the Excavation, as follows:

- A. Written notice of violation shall be given to the applicant or its agent engaged in the Excavation. The notice shall contain a brief statement of the violation and a demand that it be cured within three (3) days.
- B. Notice may be given either by personal delivery thereof or by registered United States mail addressed to the person notified.
- C. The failure of an applicant to cure any violation within three (3) days shall entitle the Town of Poughkeepsie to collect and utilize any Security for any purpose related to the applicant's Permit, including, but not limited to, the repair of any damage, the completion of the project, or the hiring of any third party to complete the project. No default, nor the completion of the project by any third party or the Town of Poughkeepsie shall relieve the applicant of any obligation or expense imposed under this Article, or as may otherwise be imposed by any other law or regulation.
- D. Whenever the Highway Superintendent, Deputy Highway Superintendent, or the designee believes that there is an emergency condition at an Excavation which endangers the public health, safety and welfare, he/she may issue a "stop work"

order. Immediately upon receipt of the same the Applicant shall cease work, secure the worksite, immediately adhere to the directions of the Superintendent and comply with all safety inspections and procedures as may be required by law, regulation, or the terms of the Permit and “stop work” order. Work may only recommence upon the written revocation of the “stop work” order, and the cost of all work performed by the Highway Superintendent shall be charged against the deposit and Security.

§ 174-30 Enforcement, Penalties for offenses.

- A. The Highway Superintendent or his/her designees are authorized and directed to enforce the provisions of this Article.
- B. Any person who shall violate any provision of this Article shall be guilty of an offense and shall be subject to a fine of \$500 to \$2,000 or to imprisonment for not more than 15 days, or both. Every violation of any provision of this article shall be a separate and distinct violation, and in the case of a continuing violation, every day's continuance thereof shall be a separate and distinct offense.
- C. In addition to any other remedies set forth herein authorizing the Town to enforce the provisions of this chapter, establishing penalties, and setting forth additional remedies, the persons charged with the responsibility to enforce the provisions of this chapter may apply for injunctive relief, and may impose a civil penalty or agree to a civil penalty of \$100.00 to \$500.00 for a first violation, and of \$500.00 to \$1,000.00 for any subsequent violations not to exceed \$1,000 per day for each day of the violation.

§ 174-31 Appeals.

Any aggrieved person or entity may appeal any action or determination of the Highway Superintendent or any designee to the Town Board of the Town of Poughkeepsie by filing a written statement setting forth the reasons for such appeal. Such statement shall be filed within 5 days of the delivery or filing of any action or determination from which the appeal is taken, time being of the essence.

§ 174-32 Restoration, acceptance, maintenance.

A. After performance and/or completion of any Excavation work, the Highway and all affected areas shall be repaired and restored in a permanent manner satisfactory to the Superintendent and in accord with Permit requirements. To the extent possible, any repair or restoration must match the original Highway and affected areas and type, color, structure, materials, grade, and texture, in compliance with then current applicable specifications therefore.

B. Upon completion of the work and the restoration pursuant to the terms of this Article and the Permit, and there acceptance by the Superintendent, 10% of the original Security shall be retained by the Superintendent, and the balance shall be returned or released, as applicable. The 10% shall be retained for one (1) year by the Superintendent as security for the maintenance of the Excavation work in the same condition as required by this Article and the Permit on the date of acceptance.

§ 174-33 Waivers.

A. Where Excavation work is to be begun and completed within one day, the Town Superintendent of Highways may grant a Permit without requiring a bond if the

Excavation is less than six (6) inches in depth below the surrounding surface and it is not made between the gutter and the curb line in any major Highway or where barricades will be required.

B. Where the Highway Superintendent finds that special circumstances exist, a waiver of any one or more requirements of this Article may be granted for good cause shown provided that the Highway Superintendent finds in writing that:

1. Granting the waiver would be keeping with the intent and spirit of this Article and is in the best interests of the community.
2. There is no adverse effect upon the Highway or any surrounding area.
3. There is no adverse impact upon the ability to safely travel upon such Highway.
4. There are special circumstances involved in the particular case.
5. Denying the waiver would result in undue hardship which has not been self imposed, provided that such hardship has not been self-imposed.
6. The waiver represents the minimum necessary to achieve the desired result.

§ 174-34 Winter Work.

During the "winter work season," which is hereby defined as November 15 through April 1, annually, Permits will generally be issued only in the discretion of the Highway Superintendent and generally only for emergency work. In the event that a winter Permit is issued, the following remediation requirements apply:

- A. All Highway shoulders shall require additional materials and compaction as determined by the Highway Superintendent.

- B. Pavement and road surface restorations may be permitted by the placement and compaction of a minimum of two layers of dust-bound crushed stone, each of a compacted thickness of four inches on the prepared sub grade, followed by a layer of bituminous concrete, winter mix, six inches in compacted thickness, on top.
- C. No frozen material shall be placed in the excavation areas.
- D. As early as spring weather permits, the excavation area shall be inspected at the expense of the Contractor and, if required in the discretion of the Highway Superintendent, the area shall be re-constructed in accord with normal roadway restoration specifications.
- E. Notwithstanding anything which may appear to the contrary in the Permit or this Article, the Contractor assumes all responsibility for the safe maintenance of the subject work site(s) from November 15 through April 1, and further assumes all liability for damages resulting from, or in any way connected with, the subject work and work area during this period.

§ 174-36 Repealer.

This Article shall supersede and replace Town Code §§174-21 through 174-35, which are hereby repealed.