

TOWN OF ACTON

RULES & REGULATIONS CONCERNING CONSTRUCTION WITHIN PUBLIC WAYS

SECTION 1. General Requirements

1.1 Application and License Requirements

- 1.1.1 Work Requiring a License - Any public utility company, private contractor, or any person(s) who intends to break any street or sidewalk surface, construct a driveway, or excavate any road shoulder within the limits of a Town way in the Town of Acton for any reason must first obtain a license from the Board of Selectmen, pursuant to General Bylaws Section E39, permitting such work (“Street Construction License”). Licenses are granted in the Board of Selectmen’s sole discretion and are not subject to any appeal rights. An application for such a license is available from the Acton Land Use Department or Engineering Department, 472 Main Street, Acton, MA, 01720, (978) 929-6630 or by emailing engineering@acton-ma.gov.
- 1.1.2 Granting of License – The Board may issue a Street Construction License if proposed work is (1) in the best interests of the Town and its inhabitants; (2) encompassed within and conducted pursuant to a building permit duly issued by the Building Inspector, or (3) in conjunction with the construction of a road shown on an approved Subdivision plan.
 - 1.1.2.1 By requesting a Street Construction License, the Licensee agrees to comply with and be bound by these rules and regulations.
- 1.1.3 Interpretation of License Requirements – The Board of Selectmen (or their designee) shall be solely responsible for the interpretation of these Rules and Regulations. All work pursuant to a Street Construction License shall be performed and completed to their satisfaction.
- 1.1.4 Application Fees, Inspection Fees and Performance Bonds – In order for an application for a Street Construction License to be processed, the applicant must pay the applicable fee as follows in the chart below. All license fees are non-refundable.

Upon approval of an application for a Street Construction License, the Licensee shall provide a cash bond or deposit in the amounts reflected in the chart below in order to protect the Town in case of incomplete or defective work. Licensees shall provide such bonds, in forms approved by the Town, or deposits to the Town Engineer prior to the commencement of work pursuant to the Street Construction License. The release of such bonds and deposits, and all other applicable terms shall be governed by Section 3.1 below.

All Fees, Bonds, and Deposits shall be paid into the Town’s General Fund. The Town may, in its discretion, direct that all Fees, Bonds, and Deposits related to Street Construction Licenses be held in a Revolving Fund to be established at a later date. The payment of Fees, Bonds, and Deposits described herein, however, is in no way contingent on the establishment of a Revolving Fund.

License Category	<u>Application / Inspection & Maintenance Fees</u>	<u>Performance Guarantee</u>
<u>Modification of Existing Driveways</u> No license required	\$0	N/A
<u>New Driveways</u>	\$50 Application \$25 Inspection	\$1500 Additional amounts as required depending on existing shoulder objects (guardrails, etc)
<u>Minor Construction</u> Sidewalk and Smaller Excavations (10 sq. ft max)	\$50 Application \$50 Inspection	\$5000 Additional amounts as required dependent on existing sidewalk material
<u>Major Construction</u> Standard Larger Excavations (Greater than 10 sq. ft)	\$75 Application \$75 Inspection (10-150 sq. ft) \$25 per additional 50 sq. ft	\$7500 Additional amounts as required dependent on size of excavation and existing materials
<u>Public Utility</u>	\$75 Application \$0 Inspection	N/A
<u>Winter Excavation</u> (November 15 – March 15)	\$75 Application \$100 Inspection (10-150 sq. ft) \$75 per additional 50 sq. ft	\$7500 Additional amounts as required depending on size of excavation and existing materials

License #1 (New Driveways) – The installation of new driveways ONLY, which does not result in the excavation of a sidewalk or roadway,

License #2 (Minor Construction) – Standard street construction occurring either: 1) entirely within the paved area of a sidewalk or road shoulder or are 2) excavations occurring in the roadway smaller than 10 sq. ft.

License #3 (Major Construction) – Standard street construction or excavations of the roadway greater than 10 sq. ft.

License #4 (Public Utility) – Standard street construction conducted by a Public Utility such as National Grid or Eversource for the construction of a public utility main, service or repair. Public Utilities are responsible for inspection and maintenance of the trench and shall report on an annual basis to the Town Engineer on the condition of public utility trenches

License #5 (Winter Excavations) – Standard street construction by any applicant, including public utilities, occurring within the public right-of-way. The Town

Engineer reserves the right to approve licenses only if the Town Engineer determines the weather conditions that will not hinder the applicant from completing the work pursuant to the license

Bonds for Street Construction Licenses 2 through 5 shall be held for one-hundred and twenty (120) days after the placement of the permanent patching. The Licensee shall warrant the condition of the Street Construction for five (5) years after the issued date of the Street Construction License.

Bonds for Driveway Licenses shall be released upon completion of construction and notification to the Engineering Department

1.1.5 Life Cycle Maintenance Fees – A Life Cycle Maintenance Cost (LCMC) will be calculated at the time of review by the Town Engineer. The payment of these fees will be required prior to the issuance of a Street Construction License. The following formula shall be used to calculate the LCMC:

$$(L \times W \times UC + \$400) \times PCI = LCMC$$

L = length of trench (feet)

W = width of trench (feet)

UC = unit cost to reconstruct a roadway (\$/SF)

PCI = Pavement Condition Index (%) of road prior to start of construction

The current UC shall be posted on the Town website at www.acton-ma.gov/highway or by calling the Engineering Department at 978-929-6630. The PCI for the roadway shall be determined by the Engineering Department

The Town Engineer may waive the Life Cycle Maintenance Fee if it is determined to be in the best interest of the Town such as, but not limited to, standard street construction occurring on a roadway listed on the projected roadways to be repaved list and constructed prior to the roadway repaving.

1.1.6 Drain Layer License - Street Construction Licenses for work involving the excavation of material that results in a trench of any depth within a public way, the construction of a utility within a trench, or requiring the proper backfilling and paving of a trench shall be performed by a licensed drain layer with the Town. A drain layer shall not have more than three (3) street construction licenses outstanding at any one time without written permission from the Town Engineer

1.1.6.1 Work performed by public utilities shall not require the work to be performed by a licensed drain layer. Work performed by third parties on behalf of said public utility, however, may be required to be done by a licensed drain layer as determined by the Town Engineer.

1.1.7 Plan Approval – Applicants must submit plans or sketches showing the proposed work with the application. The Town Engineer (or his designee) must approve all such plans and sketches in order for the application to be deemed complete and ready for review by the Board of Selectmen.

1.1.7.1 Approval required from other outside Town Boards or Departments shall be obtained concurrently to applying for a Street Construction License. It is the responsibility of the Licensee to obtain other approvals. Other approvals commonly related to the granting of a

License include but are not limited to a sewer connection permit, land disturbance permit or scenic road approval.

- 1.1.7.2 The Town Engineer reserves the right to require a plan certified by a Registered Professional Engineer (PE), at the applicant's expense.
- 1.1.8 Time Limits – Work pursuant to the Street Construction License must commence within 90 days after issuance unless otherwise specified. Substantial completion of approved work shall be completed by December 15th of the same year the license was issued; December 15th being when all licenses expire. The Town Engineer (or his designee) may extend any time limit in these specifications if weather or other conditions beyond the control of the licensee have hindered the proper completion of the work pursuant to the license.
- 1.1.9 Inspection Schedule – The Town is entitled to conduct inspections of any work performed pursuant to a Street Construction License at any time. By inspecting the work, the Town and the Acton Engineering Department does not in any manner warrant the work being performed by the Licensee, but rather solely confirms compliance with these rules and regulations. The Licensee must notify the Acton Engineering Department at (978) 929-6630 at least 24 hours in advance whenever an inspection is requested or required as provided herein. Licensees can expect routine inspections at the following phases of construction; however, inspections for work conducted pursuant to each license may vary depending on the size and scope of the work being licensed:
 - 1.1.9.1 Prior to the issuance of a Street Construction License, the Town will conduct a site inspection to confirm the location and condition of such features as road bounds, private property bounds, stone walls, pavement, sidewalks, trees, and the like;
 - 1.1.9.2 After the excavation and installation of the proposed utility (if any), and later during the compaction of backfill and installation of surface gravel;
 - 1.1.9.3 After installation of the temporary patch;
 - 1.1.9.4 After installation of the final patch;
 - 1.1.9.5 Prior to release of the bond; and
 - 1.1.9.6 At other times deemed necessary by the Town Engineer or his designee.
- 1.1.10 Emergency Utility repair - Public Utility Companies may undertake emergency underground repair of their facilities without a Street Construction License pursuant to these Rules and Regulations when public health, safety or welfare requires that such repairs be made at night, on weekends or holidays, or otherwise prior to a time within which the Board of Selectmen can act on such application; provided that the utility applies for a Street Construction License on the first regular business day during or following the repair, and the utility takes all reasonable measures provided for in these regulations for the care and safety of the public, including but not limited to requesting a police detail pursuant to Acton General Bylaws Chapter E.

1.2 Public Safety

- 1.2.1 General - The Street Construction Licensee shall be responsible for ensuring that the work pursuant to the License does not endanger the public or risk public safety in any manner from the time the work commences until the work has been approved in writing by the Town Engineer (or his designee). Depending upon the nature of the work and as required by the Town Engineer, sections of Part VI of the Manual on Uniform Traffic Control Devices may apply.
- 1.2.2 Detours - If the nature of the work requires the closing of all or a portion of a public way, the applicant must ensure that there is a suitable detour. Applicants requesting a detour must complete a Special Request Form, which are attached to these Rules & Regulations and also available from the Acton Engineering Department by emailing engineering@acton-ma.gov. All applications must show the proposed route of any detour in order to be deemed complete. Each detour shall be adequately marked with standard temporary signs as described in Section GB-38 of the Manual on Uniform Traffic Control Devices. The Town Engineer (or his designee) shall notify the persons or agencies listed on the Special Request Form of the date, time and place of each detour. No detour shall be enacted or put in place until the Licensee obtains approval from the Acton Chief of Police, as indicated by signature on Special Request Form. It is the responsibility of the Applicant/Licensee to ensure ADA compliance for all detours per MUTCD Section 6.
- 1.2.3 Warning Devices - When required by the nature of the work, the Town may determine that the Licensee must use signs, lights and barricades, erected at the sole expense of the Street Construction Licensee, in conformance with sections 6B through 6F of the Manual on Uniform Traffic Control Devices.
- 1.2.4 Traffic Control Officer – Applicants requesting a license hereunder must, in all cases, submit a copy of the completed Application, including a Special Request Form (if applicable) to the Police Chief or his designee for review and approval. The Police Department is located at 365 Main Street, Acton, MA 01720, (978) 929-7711. If the Police Chief deems it necessary for public safety, any Street Construction License granted shall include payment for the expenses of a police detail to direct traffic during work performed pursuant to the Street Construction License.
- 1.2.5 "Dig Safe" - Massachusetts General Laws c.82, §40 requires that contractors notify public utility companies at least 72 hours before any excavation in a public way. A license cannot be issued until the applicant demonstrates compliance with this requirement. A telephone call to the Underground Plant Damage Prevention System, otherwise known as "Dig Safe," satisfies this requirement. The telephone number is 811. The "Dig Safe" job number assigned by the Underground Plant Damage Prevention System shall be included on the license application.
 - 1.2.5.1 The Licensee shall notify the Engineering Department at least 72 hours before any excavation in a public way for sewer and stormwater utility marking.

SECTION 2. Excavation Specifications

2.1 General

- 2.1.1 Preservation of Physical Features - All excavations and other work performed pursuant to a Street Construction License within the limits of a Town way shall be conducted in a manner that minimizes damage or disruption to such features as stone walls, trees, fences, guard rails and the like.

- 2.1.1.1 Damage to public property outside of the limits approved in the Street Construction License shall be deemed to be a destruction of public property subject to the forfeiture of the bond deposit and/or withholding of other permits related to the project or Licensee.
- 2.1.1.2 Licensee shall be required to repair any damage to public utilities such as, but not limited to, sewer or stormwater systems, if determined by the Town Engineer to be most likely caused by the construction activities approved in the License. The Town Engineer reserves the right to require third-party inspection, including but not limited to a video camera inspection, at the Licensee's expense.
- 2.1.2 Bounds- If the work performed pursuant to a Street Construction License issued hereunder requires or results in the disruption or destruction of a road bound or private property bound, the Street Construction Licensee shall cause the bound to be reset by a Registered Professional Land Surveyor at its sole expense in its original location at the new grade of the shoulder or driveway. The location of the reset bound must be certified in writing, at the Licensee's expense, by a Registered Professional Land Surveyor.
- 2.1.3 Working Around Public Shade Trees - Any work within the drip line of a public shade tree shall be performed in accordance with the following guidelines, and will be subject to the inspection and approval of the Acton Tree Warden, 472 Main Street, Acton, MA 01720, (978) 929-7744
 - 2.1.3.1 Removal of public shade trees is subject to M.G.L. c. 87, § 3, meaning that the tree must be posted and a public hearing held prior to removal.
 - 2.1.3.2 The Tree Warden may require, at his sole discretion, hand trenching, tunneling or removal of tree roots for all work around Public Shade Trees.
 - 2.1.3.3 No trenches within the drip line of any public shade tree will be allowed to remain open overnight.
 - 2.1.3.4 Pruning of roots or branches, or repairs to tree trunks must comply with the best arboricultural practices, according to the Acton Tree Warden.
 - 2.1.3.5 Licensees shall pay for the costs of all inspections performed by the Acton Tree Warden, at a rate of \$50.00 per hour.
- 2.1.4 New Roads – Street Construction Licenses for roadways where road surfaces are less than five (5) years old, measured from the date of application to March 15th of the year when the roadway was paved, shall not be allowed except as provided in Section 2.1.4.1.
 - 2.1.4.1 In addition to being subject to the Life-Cycle Maintenance Fee, for road surfaces less than five (5) years old, Street Construction Licenses may be allowed by the Town Engineer under the following criteria:
 - i) The applicant shall pay the following “Moratorium Fees”, depending on the age of the roadway pavement:
 - 0-1 Years: \$2,500
 - 1-2 Years: \$2,000

2-3 Years: \$1,500

3-4 Years: \$1,000

4-5 Years: \$750

- ii) Fees shall be waived for public utilities in cases where the Town has not provided a minimum advance notice of sixty (60) days to the utility company of which roadways have been, or are scheduled to be, paved.
- iii) All Licensees must use infrared patching equipment, notify the Town Engineer at least 24 hours prior to infrared patching and provide documentation of infrared patching to the Town Engineer otherwise it is presumed the infrared patching did not occur. When infrared patching does not occur, the Licensee shall forfeit the cash bond and the license shall be considered “outstanding.”

2.1.5 Seasonal Limits for Construction – The Town may prohibit issuance of Street Construction Licenses during the winter months due to weather conditions and, if such Licenses are granted, the Town may require or impose additional conditions to reflect the inherent risk of performing road work in the winter.

2.1.5.1 License Approval & Construction Schedule

- March 15 to November 15 – Construction period. Licenses shall be issued and construction allowed for permitted Licensees;
- November 16 to December 15 – Licenses issued prior to November 15 shall be completed by December 15 or sooner if otherwise required by the Town Engineer;
- December 16 to March 14 – Winter Licenses shall be issued and construction allowed for permitted Winter Licensees only.

2.2 Materials

2.2.1 Approval of Materials – All materials used on construction within public ways shall be subject to approval by the Town Engineer (or his designee). This includes, without limitation, the size, type, and quality of pipe, the type of gravel backfill, and the quality of the patching material. Applicants should be aware that cold patch materials as a temporary or permanent patching material will only be allowed between November 15 and March 15, when it may be used for temporary patches on road cuts allowed under Section 2.1.5.

Licensees shall return all road and sidewalk materials to their condition as they existed prior to the work performed pursuant to any Street Construction License, at the Licensee’s sole expense (*i.e.* concrete sidewalks replaced with concrete, 6” asphalt roadways replaced with 6” asphalt, and the like). It shall be the responsibility of the Licensee to contract the Engineering Department to confirm existing materials prior to backfilling.

2.3 Driveways

2.3.1 Typical Driveway Construction - Residential driveways shall be constructed according to a validly issued Building Permit from the Town.

- 2.3.2 Driveways at Intersections - Driveways will not be allowed to enter directly onto an intersection rounding.
- 2.3.3 Sight Distance - Driveway entrances should be located on the lot frontage at a location offering the maximum sight distance and safety.

2.4 Trenches

- 2.4.1 Permission from the Town for digging trenches shall be pursuant to the separate Trench Permit application and be pursuant to M.G.L. 82A, § 1 and 520 CMR §7.00 *et seq.* (as amended). Such applications are available from the Town Engineer's Office or by emailing engineering@acton-ma.gov.
- 2.4.2 Temporary patching of all trenches shall be in place and exposed to one (1) winter season prior to placement of the final patching. The Licensee shall be responsible for keeping the temporary patch in a safe condition in the event of settling or other changes to the temporary patch after placement. The final patching shall be placed by milling to binder one (1) foot beyond the limits of the temporary patch and paving a final patch.
 - 2.4.2.1 Trenches for utility work greater than thirty (30) feet in length shall be required to provide a final patch by milling to binder and paving one-half of the roadway from the road shoulder to the roadway crown or a width to be determined by the Town Engineer. Utility trenches that include "long-side services" (e.g. a gas main along the even side of the road with services to the odd side) shall provide a final patch by milling to binder and paving the full width of the roadway along the length of the utility trench.
 - 2.4.2.2 The Town Engineer may waive the final patching requirement if it is determined to be in the best interest of the Town such as, but not limited to, work occurring on a roadway listed on the projected roadways to be repaved list or work pursuant to a Minor Construction License
- 2.4.3 Steel plating, sealed along the edges, shall be required for all open trenches within a public right-of-way. Trenches found in an unsafe condition, as determined by the Town Engineer or Building Inspector, may be subject to immediate repair by the Town and forfeiture of the Licensee's bond, without the three (3) day notice described in section 3.1.4.1 of these Regulations.

2.5 Shoulders and Lawns

- 2.5.1 Restoration of Road Shoulders - Licensees shall return all road shoulders to their condition as they existed prior to the work performed pursuant to any Street Construction License, at the Licensee's sole expense.
- 2.5.2 Restoration of Lawns – Licensees shall restore all lawns damaged as a result of work performed pursuant to any Street Construction License with a minimum of four (4) inches of loam, fertilized, rolled and seeded.

SECTION 3. Performance Bonds and Insurance

3.1 Performance Bonds and Deposits

- 3.1.1 Special Deposits- Street Constructions over one-hundred and fifty (150) square feet in area, or significantly larger in scope—such as, but not limited to, the removal of guardrails or concrete surfaces—shall be secured by a larger

amount, as determined by the Town Engineer (or his designee). In appropriate cases as the Town may determine, Letters of Credit will be accepted for amounts exceeding ten thousand dollars (\$10,000.00) upon the approval of the Town Treasurer.

- 3.1.2 Bonds from Public Utility Companies – public utility companies may maintain a performance bond in the amount of seven thousand five hundred dollars (\$7,500.00) on an annual basis on file with the Town Engineer’s Office, in a form acceptable to the Town Engineer, to cover the required security for all Street Construction Licenses issued to such Public Utility Company that year.
- 3.1.3 Deposit Release - When all work pursuant to the Street Construction License has been approved in writing by the Town Engineer or his designee, the Town will refund to the Licensee the amount of the deposit, less any amounts retained as noted below or release the bond.
- 3.1.4 Deposit Forfeiture - In the event that the Town or Acton Water District must make emergency repairs or to complete unfinished work pursuant to a Street Construction License issued hereunder, the cost of such repair or work will be deducted from the deposit. In the event that either the Town or Acton Water District must file an insurance claim against the Licensee, any costs associated with the insurance claim including, but not limited to, an insurance deductible shall be deducted from the deposit.
 - 3.1.4.1 If possible without risking public health or safety, the Town shall give the Licensee three (3) days notice of its intent to complete the work. If the Licensee fails to cure within that three (3) day period, the Town may proceed with the work at the Licensee’s expense. The Town shall charge the Licensee the actual amount of its costs and expenses for such work to determine the amount to be deducted from the deposit or applied to the bond. If the repair or completion cost exceeds the amount of the deposit, the Licensee must pay the difference to the Town.

3.2 Insurance

- 3.2.1 The Licensee shall submit with the Street Construction License application a Certificate of Insurance indemnifying the Town against all claims for injury, death or property damage during construction. The Town of Acton shall be included on the policies as an additional insured.
- 3.2.2 The minimum coverage limits shall be as follows:
 - General Liability of at least \$1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a \$3,000,000 Annual Aggregate Limit. The Town should be named as an "Additional Insured".
 - Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Town should be named as an "Additional Insured".
 - Workers' Compensation Insurance as required by law.
 - Umbrella Liability of at least \$3,000,000/occurrence, \$3,000,000/aggregate. The Town should be named as an Additional Insured.

SECTION 4. Violations

4.1 General

- 4.1.1 Expiration of Licenses – If, at the expiration of ninety (90) days from the date of the Street Construction License, the work pursuant to the Street Construction License has not been commenced, the License shall expire. If the repair to the Town way is not completed according to these specifications and to the satisfaction of the Town Engineer (or his designee) at the expiration of the Construction Period (November 15th), the Town shall notify the Licensee in writing of the additional work required to complete the work pursuant to the Street Construction License. If the Licensee takes no action to complete the work within fourteen (14) days of the date of the Town’s written notice, the Town may complete the necessary work as it deems appropriate and deduct from the deposit or bond all costs it has incurred in completing such work.
- 4.1.2 Emergency Repairs - If at any time during the License, the Town determines that the Licensee is causing or permitting the construction to exist in a condition dangerous to users of the road, then the Town may, without written notice to the Licensee, make the necessary arrangements to correct the dangerous condition. The cost of such work will then be deducted from the security deposit or bond provided by the Licensee.
- 4.1.3 Fines - Failure to obtain a license prior to the start of any construction within a public way shall be subject to a fine of not more than fifty dollars (\$50.00) per offense in accordance with Article 35 of the 1989 Annual Town Meeting. Each day that such violation continues shall constitute a separate offense.

SECTION 5. Authority for Rules & Regulations and Amendments

5.1 General

- 5.1.1 These Specifications for Regulating Construction Within Public Ways are approved and adopted by the Board of Selectmen under the authority of the Bylaws of the Town of Acton, Section E39.
- 5.1.2 Approved and adopted by the Board of Selectmen on February 4, 1969, with revisions approved on September 24, 1974, August 3, 1982, March, 1985, January 8, 1991, and January 22, 2018