

Concord Public
Works
Engineering Division
978-318-3210



Right-of-Way Permit Terms & Conditions

This application must be completed *in full* at the time of submittal. It is the responsibility of the applicant to provide all information required herein. Please type or print neatly. Except in the event of a situation posing an immediate threat to public safety, failure to obtain a permit before commencing work will result in the assessment of a fine.

Guidelines for Applicants

1. The "Private Digging of Roads" bylaw (Article 47, Town Meeting, April 1992) requires that "no public way shall be dug up nor opening made therein for any purpose, nor shall any material be dumped or placed thereon or removed there from, nor any alteration made, nor shall any tree be planted thereon or removed without first obtaining a written permit..." Except in the event of a situation posing an immediate threat to public safety, said permit shall be obtained prior to any work being performed.
2. The applicant is solely responsible for obtaining all other permits or permission required to perform the work as established by Town bylaw or state or federal regulations prior to commencement of the work.
3. The Town of Concord restricts installation of landscape plantings, trees, walls, curbs, cobbles, bricks, pavers, utilities, conduits, force mains, etc. within the right-of-way. No private drainage utilities such as catch basins, leaching structures, area drains, sump pump discharge pipes, etc. are permitted in the right-of-way.
4. Activities classified as requiring **Class I ROW Permits** include, but are not limited to, access and/or disturbance of the ROW. This applies to temporary access across any portion of the ROW which does not have an existing curb cut or driveway or placement of an object such as a dumpster or storage/moving cell.
5. Activities classified as requiring **Class II ROW Permits** include, but are not limited to the installation of new utility *services*, the transfer of residential overhead utility (phone, cable, electric, etc.) to under-ground utility *services*. The applicant is responsible to determine if a "Pole and/or Conduit Petition" pursuant to MGL Chapter 166: Section 22 is required. See "Other Required Approvals" above.
6. Activities classified as requiring **Class III ROW Permits**, include, but are not limited to the installation, relocation, replacement or extension of utility *mains*, and to relocate overhead *mains* under ground. The applicant is required to determine if a "Pole and/or Conduit Petition" pursuant to MGL Chapter 166: Section 22 is required. See "Other Required Approvals" above. Generally, Class III ROW Permits require Board of Selectman approval.
7. Activities classified as requiring **Trench Permits** include, but are not limited to specific cases in which the statute M.G.L.c.82A and the "Excavation and Trench Safety" regulations promulgated in 520 CMR 14.00 et seq. (as amended) apply, but the said activity does not fall under one of the permit classes above. Some examples of this would be test pits, observation test holes, removal of underground tanks or chambers, etc.
8. Any work which involves the disturbance, including but not limited to the cut, puncture, or excavation of a paved roadway, a Life Cycle Maintenance Cost (LCMC) will be appropriately administered. The cost is a function of the area being disturbed and the condition of the paved surface. For a breakdown of how this fee is calculated please refer to page 3.

Additional Approval

Historic District

If proposed work is located within a Historic District, contact the Historic District Commission at 978-318-3299.

Natural Resources

The applicant shall file with the Division of Natural Resources for any work defined under the Wetland Protection Act MGL Chapter 131 §40 and/or the Town of Concord Wetland Bylaw.

Public Shade Trees

If the work requires the removal of or shall otherwise seriously impact a public shade tree, contact the Tree Warden at 978-318-3232.

Traffic Management

It is the responsibility of the applicant to schedule police details in accordance with the Town of Concord Regulations and Bylaws. A traffic management plan must be submitted with this permit, upon which the safety officer and Town Engineer will review the plan. For information or to schedule details, contact the Concord Police Department at 978-318-3400.

Town of Concord Board of Selectmen

It is the responsibility of the applicant to ensure compliance with Board of Selectman approval with regards to a "Pole and/or Conduit Petition" pursuant to MGL Chapter 166: Section 22. The issuance of this permit does not absolve the applicant of securing the approval mentioned above; should it apply to the work proposed in this application, contact the Office of the Selectman at 978-318-3001.

Building Department

A building permit is required when you do any structural work and or the following: reroofing, replacement windows & decks, additions,

some interior alterations, sheds, garages, above and inground swimming pools, docks, stairways, fences over 6 feet in height and any new construction. If you have any questions regarding a building permit, call the Building Department at 978-318-3280.

Planning Board

The applicant shall contact the Planning Division for any projects that require:

- approval by the Zoning Board of Appeals
- a Site Plan Review
- approval under the Subdivision Rules and Regulations

Engineering Division and US Environmental Protection Agency

For any construction activity that disturbs greater than one acre of land, or disturbs less than one acre if part of a larger common plan, a Storm Water Pollution Prevention Plan (SWPPP) is required to be developed and submitted to the Town Engineer for approval. A copy of the SWPPP to be submitted in conjunction with the NOI filing with the EPA will meet this submittal requirement. The SWPPP must be in compliance with "**Town of Concord: Design Standards and Construction Specifications**".

It is the responsibility of the applicant to obtain all other approvals required to perform the work prior to the issuing of a Right-of-Way Permit. Failure to obtain all necessary Permits as required by the Town of Concord's "Private Digging of Roadways" bylaw, and/or obtaining proper approval, and/or failure to comply with the terms and conditions the applicant will be subject to a fine for each offense. Three (3) documented incidents of poor quality work or failure to comply with these regulations shall result in the suspension of the privilege to work within the public right-of-way for the remainder of the permit season. The Public Works Director and the Town Engineer, or their designee shall be the enforcement officer. Approval of proposed work by any other Town Departments does not automatically imply approval of a Right of Way Permit Application.

Terms and Conditions

1. **All work performed and materials used shall conform to current Town standards and specifications as shown and described in the booklet entitled "Town of Concord: Standard Details & Specifications" as revised and is available upon request.**
2. The permittee will conform to all the requirements of the laws of the Commonwealth and the Bylaws and regulations of the Town of Concord now and hereafter in force.
3. The permittee will conform to M.G.L. Chapter 82, Section 40, also known as the Digsafe Law.
4. This permit may be revoked at any time.
5. All work must comply with all current ADA (Americans with Disabilities Act) and Mass. Architectural Access Board (MAAB) Requirements.
6. Roadways having received full width treatment (overlay, reconstruction, etc) will be placed under a five (5) year moratorium. Applicants requesting to make roadway punctures within the five (5) year moratorium term will be subjected to additional fees. (Please review pages 3-4 for applicable fees). This applies to Class 2 permits or utility services **only**. **Utility main extensions** will not be permitted within roadways under moratorium.
7. Except in the event of a situation posing an immediate threat to public safety or in the case of severe hardship, all work involving open cutting and/or construction within a public way shall be performed within the period from **April 1st to November 15th** of any year. **No work within the Town's right-of-way shall commence during the weekend (Saturday-Sunday) and holiday hours.** Any exceptions from this term may be approved at the sole discretion of the Engineering Division.
8. The permit shall expire at the end of the construction period specified in #7 unless otherwise authorized in writing by the Town Engineer or his/her duly authorized agent. The permit shall become void upon expiration. For outstanding permits that require an extension, the permittee shall request an extension in writing to the Town Engineer. Approval shall be at the sole discretion of the Town Engineer. Following the approval of the extension, the decision will be made to require a new application and fee to be filed.
9. **The permittee will notify the Concord Public Works (CPW) Engineering Division office at (978) 318-3210 24 hours prior to the commencement of any work associated with the permit.**
10. The permittee will restore that portion of the right-of-way to be opened, occupied, or obstructed under this permit to a condition equal to or better than that prior to disturbance and to the satisfaction of the CPW. **Failure to do so will result in the suspension of future ROW/Driveway Permits until the deficiencies in the work are remedied.**
11. No work by the applicant shall alter existing drainage patterns. CPW may require existing & proposed survey spot grades to ensure that this requirement is met, at the applicant's expense.
12. All excavations made and obstructions erected by the permittee shall be properly delineated with barrels and construction fence and the zone be properly marked with safety signage during the entire time that the right-of-way is occupied or obstructed. All safety devices shall conform to the current Manual on Uniform Traffic Control Devices and shall be placed as approved through the Traffic Management Plan supplied by the Permittee.
13. Excavations made across public ways shall not extend more than half of the length of the paved travel way, nor shall the construction impact the safe and convenient passage of all pedestrians, vehicular traffic and emergency motor vehicles for the duration of the project.
14. From the beginning of twilight and throughout the night until sunrise, the permittee will place and maintain over or near the area opened, occupied, or obstructed and over or near any material which he has placed upon the right-of-way, a lighted barrier properly positioned and sufficient to protect travelers from injury and to the satisfaction of the CPW.
15. The permittee will provide for a police detail as required by and to the satisfaction of the Public Safety Officer of the Town of Concord.
16. The permittee will deliver up this permit to the Town Engineer or his/her duly authorized agent at any time upon demand on or before the expiration of the time fixed in this permit or any extension thereof for completing the work.
17. The permittee will provide proof of liability insurance to indemnify and save harmless said Town of Concord from any and all

loss, damage and expense which it may sustain by reason of any act of omission or commission suffered or done by the permittee hereunder.

18. Before placing any obstruction in the street and before performing any work authorized by this permit, the permittee will execute and deliver to said Town of Concord a certified bank check or a bond in such amount and in such form and with such surety or sureties written by a surety company licensed to currently do business under the laws of the Commonwealth of Massachusetts as may be required by the Public Works Commission for the faithful performance and observance of the requirements, terms and conditions of this permit. All work classifying as requiring a Class 1 or Class 2 permit or less than 1,500 square feet of disturbance will require a certified bank check or bond in the amount of \$5,000.00. All work classifying as requiring a Class 3 permit or work greater than 1,500 square feet will require further review of the scope of work by the Town Engineer to assess the bond amount accordingly.
19. No wires, pipes, conduits, structures or property monumentation now in the public right-of-way shall be disturbed by the permittee without the consent of the PWC, CPW, or other officer of the Town having charge of or supervision over the same and, in case any such wires, pipes, conduits, or structures are disturbed or injured by the licensee, he will restore the disturbed or injured wires, pipes, conduits, or structures in a manner satisfactory to such PWC, CPW or officer of the Town.
20. All material excavated from trenches or excavations shall be removed from the site of work except if proper approval has been granted by the CPW-Engineering Division representative that the material can be used as backfill. At no time shall a trench be backfilled without a CPW-Engineering Division representative present
21. All work involving open cutting a public street must be patched with Hot Mix Asphalt on the same day that the cut is performed unless otherwise approved by CPW. Any excavations that are to remain open during the work shall be covered with a steel plate secured at the edges by hot mix asphalt ramps.
22. If your application is denied due to a waiver not granted by the Public Works Director from a requirement, you may request in writing to appeal the said decision to the Public Works Commission. This appeal shall be addressed to the Town Engineer. Contact this office for further instructions.
23. Trenches or roadway punctures in streets that are under moratorium, the trench shall be back filled with Controlled Density Fill (CDF), and the asphalt patch shall be blended with the surrounding pavement utilizing infrared pavement micro-surfacing technology to the satisfaction of the Town Engineer.

Life Cycle Maintenance Cost Analysis

These instructions accompany our "Right of Way Permit Application", as described in #8 of the Guidelines for the Applicant section of the permit application. Please contact us at 978-318-3210 if you have any questions.

1. Any applicable Life Cycle Maintenance Costs (LCMC) will be calculated at the time of review by the Town Engineer or his/her duly authorized agent. The payment of these fees will be required before the issuance of a permit. The following formula shall be used to calculate the life cycle maintenance cost (LCMC):

$$(L \times W \times UC + \$400.00) \times PCI = LCMC$$

Where: **L** = Length of trench (feet)

W = Width of trench (feet)

UC = Unit Cost to reconstruct roadway (dollars per square foot). **UC**=\$4.00/s.f. for all projects.

PCI = Pavement Condition Index (expressed as a percentage) of road prior to start of construction, as determined by the Engineering Division.

For example, a 200 foot long utility trench is proposed in a road that is 2 feet wide. The PCI of this road is 77, the full width overlay unit cost, as determined by the Engineering Division is \$4.00/s.f. Therefore the LCMC would be:

$$(200' \times 5' \times \$4.00/sf + \$400.00) \times 0.77 = \$3,388.00$$

Fee approved by Public Works Commission 03/13/2013

*See Terms and Conditions #6-Regarding Road Moratorium

2. The Town Engineer or his/her duly authorized agent, may waive the LCMC if it is determined to be in the best interest of the Town. Situations where this may be appropriate include but are not limited to new utility service connections constructed directly prior to road reconstruction by the Town or its Contractor(s):

Moratorium Excavation Fee

The Concord Public Works (CPW) has implemented a town-wide **five (5) year** roadway moratorium on streets that have received full width pavement treatment (overlay, reconstruction, etc). If an applicant chooses to puncture within a roadway under moratorium the applicant will be assessed a Moratorium Excavation Fee in addition to the LCMC.

Moratorium Excavation Fee	
Yr < 1	\$2,500.00
Yr < 2	\$2,000.00
Yr < 3	\$1,500.00
Yr < 4	\$1,000.00
Yr < 5	\$500.00

Request for Waiver

If the applicant is unable to meet any requirements of the permit, the applicant may request a waiver from that requirement or permit decision in writing to the Public Works Director. Where such action is in the public interest and not inconsistent with the intent and purpose of the ROW and/or Driveway Permit Program, the Director may at his/her sole discretion, waive strict compliance with its rules and regulations. The Director shall provide a written response granting or denying the requested waiver.

Excavation and Trench Safety Certification

CONDITIONS AND REQUIREMENTS PURSUANT TO M.G.L.C.82A AND 520 CMR 7.00, and 520 CMR 14.00 et seq. (as amended) By signing the "Contractor/Excavator Certification", the applicant understands and agrees to comply with the following:

- i. No trench may be excavated unless the requirements of sections 40 through 40D of chapter 82, and any accompanying regulations, have been met and this permit is invalid unless and until said requirements have been complied with by the excavator applying for the permit including, but not limited to, the establishment of a valid excavation number with the underground plant damage prevention system as said system is defined in section 76D of chapter 164 (DIG SAFE);
- ii. Trenches may pose a significant health and safety hazard. Pursuant to Section 1 of Chapter 82 of the General Laws, an excavator shall not leave any open trench unattended without first making every reasonable effort to eliminate any recognized safety hazard that may exist as a result of leaving said open trench unattended.
- iii. Excavators should consult regulations promulgated by the Department of Public Safety in order to familiarize themselves with the recognized safety hazards associated with excavations and open trenches and the procedures required or recommended by said department in order to make every reasonable effort to eliminate said safety hazards which may include covering, barricading or otherwise protecting open trenches from accidental entry.
- iv. Persons engaging in any trenching operation shall familiarize themselves with the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et.seq, entitled Subpart P "Excavations".
- v. Excavators engaging in any trenching operation who utilize hoisting or other mechanical equipment subject to chapter 146 shall only employ individuals licensed to operate said equipment by the Department of Public Safety pursuant to said chapter and this permit must be presented to said licensed operator before any excavation is commenced;
- vi. By applying for, accepting and signing this permit, the applicant hereby attests to the following: (1) that they have read and understands the regulations promulgated by the Department of Public Safety with regard to construction related excavations and trench safety; (2) that he has read and understands the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CMR 1926.650 et.seq, entitled Subpart P "Excavations" as well as any other excavation requirements established by this municipality; and (3) that he is aware of and has, with regard to the proposed trench excavation on private property or proposed excavation of a city or town public way that forms the basis of the permit application, complied with the requirements of sections 40-40D of chapter 82A.
- vii. In the event the Permitting Authority is notified of an unattended trench during a time when the permit holder is unavailable, and the Authority determines that a police detail is required to make the trench safe for the protection of the general public, the permit holder shall be assessed and be responsible to the Town for the cost of providing the police detail.
- viii. In the event that the Permitting Authority determines that a trench is unattended and unsafe, the Permitting Authority may take such action to backfill, barricade or cover the trench and the permit holder shall be assessed the costs associated with the action, including any overtime costs for the Town of Concord employees or Town-authorized contractors.
- ix. Whenever a permit holder is making multiple trenches related to the specific utility for which the original permit was issued over the course of a single project, the Permitting Authority may choose to issue a blanket permit allowing the permit holder to add to the list of trench locations as the permit holder becomes aware that a trench is required. The permit holder shall advise the Permitting Authority of the addition of each new trench.
- x. Excavators engaging in any trenching operation who utilize hoisting or other mechanical equipment subject to M.G.L. c. 146 shall only employ individuals licensed to operate said equipment by the department of public safety pursuant to M.G.L. c 146 and the permit shall be presented to the licensed operator before excavation is commenced.
- xi. The approved permit shall be posted in plain view on the site of the trench.**

By signing the right of way application form, the applicant, owner, and excavator all acknowledge and certify that they are familiar with, or, before commencement of the work, will become familiar with, all laws and regulations applicable to work proposed, including OSHA

regulations, g.l. c. 82a, 520 cmr 7.00 et seq., and any applicable municipal ordinances, by-laws and regulations and they covenant and agree that all work done under the permit issued for such work will comply therewith in all respects and with the conditions set forth below.

The undersigned owner authorizes the applicant to apply for the permit and the excavator to undertake such work on the property of the owner, and also, for the duration of construction, authorizes persons duly appointed by the municipality to enter upon the property to monitor and inspect the work for conformity with the conditions attached hereto and the laws and regulations governing such work.

The undersigned applicant, owner and excavator agree jointly and severally to reimburse the municipality for any and all costs and expenses incurred by the municipality in connection with this permit and the work conducted thereunder, including but not limited to enforcing the requirements of state law and conditions of this permit, inspections made to assure compliance therewith, and measures taken by the municipality to protect the public where the applicant owner or excavator has failed to comply therewith including police details and other remedial measures deemed necessary by the municipality.

The undersigned applicant, owner and excavator agree jointly and severally to defend, indemnify, and hold harmless the municipality and all of its agents and employees from any and all liability, causes or action, costs, and expenses resulting from or arising out of any injury, death, loss, or damage to any person or property during the work conducted under this permit.