

## **ORDINANCE:**

### **RIGHT-OF-WAY:**

#### **SECTION I : PURPOSE:**

The purpose of this ordinance is to govern the placing of objects or structures, or the conduct of activity within the public right-of-way, in order to lessen the danger to the traveling public, facilitate the maintenance of storm and surface water drainage systems, regulate underground and above ground utilities and protect the community's investment in public streets and roads. It is not the intention of this ordinance to prohibit the landscaping or beautification of the area between an owner's property and the paved portion of the right-of-way.

#### **SECTION II : AUTHORITY:**

The authority of the Board of Selectmen to adopt this ordinance is derived from RSA 41:11. See also, Stamper vs Town of Hanover, 118 N.H. 241 (1978).

#### **SECTION III : DEFINITIONS:**

- A) "Right of Way Agent" shall mean the person appointed by the Board of Selectmen or his duly authorized representative.
- B) "Right-of-Way" shall mean the area of land which constitutes a public way under RSA 229:1. This area shall include, but not be limited to, the area of any road as laid out, the area within the property lines of any land deeded to the Town for highway purposes, or the extent (including reasonable adjoining areas) of any public way established by prescription.
- C) "Selectmen" shall mean the duly elected Board of Selectmen of the Town.
- D) "Structure" shall mean any material placed or affixed to the land, including buildings, walls, fences, stones, signs, mailboxes, culverts and catch basins. It shall also mean any deposits (by hand or machine) of material such as fill, gravel, crushed stone, bark mulch, loam, or similar materials.
- E) "Emergency Work" shall mean that work over, under, or on the public right-of-way that requires immediate attention to clear a public way or reconnect a utility.
- F) "Town" shall mean the Town of Windham, New Hampshire.

#### **SECTION IV : REGULATIONS:**

- A) Except as otherwise provided herein, no structures or objects creating a safety hazard including permanent or portable buildings, signs, lights, displays, fences, walls, bark mulch piles, dirt piles or portable toilets may be placed or erected on, over, or under the highway right-of-way.

- B) No construction, excavation, clearing, dredging for installation of drainage or underground utilities may be conducted on, over, or under a public right-of-way without express permission of the Board of Selectmen.
- C) No temporary use or blockage of a street, road or other public way for parades, street fairs, etc. shall be permitted without the express permission of the Board of Selectmen.
- D) Any excavation, tree or brush clearing, or utility work within a Town right-of-way shall be conducted in accordance with State law, and shall require a permit from the Board of Selectmen.
- E) Except in cases where abutters retain rights to do so, any tree removal in a Town right-of-way shall require a permit from the Board of Selectmen.
- F) The installation, construction and maintenance of utility poles and wires shall be governed by the provisions of RSA 231:159 et seq.
- G) Any emergency work over, under, or on a public right-of-way shall require the person doing the emergency work to make every effort to obtain permission from either the Town Right-of-Way Agent or the Highway Agent. During normal business hours Monday through Friday and after normal hours, emergency work will require permission and review from the authorized agents. The details of the emergency and public safeguards shall be explained to the authorized agent prior to commencing work. Within 24 hours of the emergency work, the person or company that did the work shall submit written applications, insurance forms, financial escrow and fees to the Planning and Development Department for review and approval by the Right-of-Way Agent.

**SECTION V : REQUESTS FOR PERMISSION:**

Any request for a use governed by the Selectmen's permission shall be in writing directed to the Board. The Board shall solicit and accept comment from Town Departments including Police, Fire, the Highway Agent and the Town Engineer. In considering an application, the Selectmen shall be governed by the general premise that no use should ordinarily be allowed within the public right-of-way, and no activity which compromises safety, impedes free flow of traffic, or could result in increased municipal expenditure should be permitted. Although circumstances may prevent it, any request will generally be answered within sixty (60) days of application. No easement is created or inferred by the granting of a request but a revocable license for use thereof.

**SECTION VI: EXISTING STRUCTURES:**

Structures or uses in place as of July 6, 1992 will generally not be subject to forced removal, subject to the following:

- A) That they are not deemed to be a danger to the public. The Right-of-Way Agent shall determine whether a structure is a danger to the public by the following criteria:
1. The structure is not maintained in a safe manner.
  2. The structure is so located that it now impedes snow removal operations.
  3. The structure is so located that it impedes free flow of traffic.
  4. The structure is so located that it impedes the access to public property.
  5. The Right-of-Way Agent shall have the concurrence of the Police Chief in this determination.
- B) That the owner accepts all liability that may arise because of the said structure and agrees to indemnify the Town for all resulting damage or injury because of the presence of the structure in the right-of-way.
- C) That the owner agrees to remove the structure at his expense if the structure is deemed to be a danger to the public or is impeding highway or utilities work. If an owner fails to remove such an item upon notice, the Highway Agent or designee may be directed to remove same and the owner shall have no claim against the Town for reimbursement or loss caused by the removal and disposal of said structure. The cost of any structure removal action shall be billed to and borne by the owner.
- D) Any person notified by the Right-of-Way Agent to remove a structure or object from the right-of-way may apply to the Board of Selectmen for reconsideration and a public hearing on such action.

**SECTION VII : DETERMINATION OF THE RIGHT-OF-WAY:**

The Right-of-Way Agent, upon consultation of plans available and discussion with the Town Engineer, shall be responsible for determining the location of the Right-of-Way line. Any concerned property owner may submit, at his/her expense, a survey plan by a licensed land surveyor to assist the Right-of-Way Agent in his determination. In doubtful situations, the Right-of-Way Agent may require the installation of permanent bound markers.

**SECTION VIII : MAILBOXES, ETC.:**

Notwithstanding the provisions of Section IV and VI above, an individual may erect and place a receptacle for receipt of U.S. Mail and motor or rural delivery of daily or weekly newspapers without permission of the Selectmen. All such installations shall be sufficiently off the traveled way so as to assure public safety and facilitate snow removal. Design criteria of the U.S. Postal Service shall be adhered to with respect to size and placement of mailboxes.

The Town assumes no liability with respect to loss or damage to mailboxes or newspaper receptacles placed in the right-of-way unless such loss or damage is the result of intentional or willful conduct, or gross negligence.

**SECTION IX : ENFORCEMENT:**

- A) The Board of Selectmen by their designee, the Right-of-Way Agent, shall be responsible for administration and enforcement of this ordinance.
- B) Removal of items within the right-of-way shall be performed by the Highway Agent on direction from the Right- of- Way Agent.
- C) The Highway Agent or his/her designee, Fire Department, and Police Department shall report to the Right- of- Way Agent any objects or obstructions found placed within the right-of-way in violation of this ordinance, or any pre-existing structure they deem to be a danger to the public.

**SECTION X : ADOPTION AND EFFECTIVE DATE:**

This ordinance shall be adopted (or subsequently amended) following a public hearing by the Board of Selectmen, which shall be preceded at least seven (7) days by posting of the ordinance (or amendment) in two (2) public places and by publication in a newspaper of general circulation in Windham. This ordinance (or any amendment) shall be effective upon adoption and filing a certified copy with the records of the Town Clerk.

**Adopted by Board of Selectmen - July 6, 1992**

**Edward Milan**  
**Frederic Noyles**  
**Elizabeth Dunn**  
**Patrick Wallace**  
**Charles McMahon**  
Board of Selectmen

**Re-codified and affirmed by the Board of Selectmen - May 11, 1998**

**Charles E. McMahon**  
**Douglass L. Barker**  
**Carolyn B. Webber**  
**Margaret M. Crisler**  
**Galen A. Stearns**  
Board of Selectmen

**Amended Board of Selectmen - June 23, 2008**