

**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.

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) "Code Enforcement Administrator (or C.E.A.)" shall mean the Code Enforcement Administrator as 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, extending from the property line on one side of the right-of-way to the property line on the other side of the right-of-way.
- 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.
- E) "Town" shall mean the Town of Windham, New Hampshire.

SECTION IV : REGULATIONS:

- A) No structures or objects including permanent or portable buildings, signs, lights, displays, fences, walls, or sanitary facilities may be placed or erected on, over or under the highway right-of-way without express permission of the Board of Selectmen or their designee.
- 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 or their designee.
- 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) The installation, construction and maintenance of utility poles and wires shall be governed by the provisions of RSA 231:159 et seq.

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 Road Agent and the C.E.A. 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. 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 may, but need not, apply for permission from the Selectmen to remain. In the event that permission is not applies for, the structure or use shall be permitted to remain subject to the following:

- A) That they are not deemed to be a danger to the public. The C.E.A. 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 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 C.E.A. shall have the concurrence of the Police Chief in this determination.
- B) That the owner accept 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 is 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 item upon notice, the Road Agent 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.
- D) Any person notified by the C.E.A. to remove a structure or object from the right-of-way may apply to the Board of Selectmen for a permit, provided they have not already been denied such permission.

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

The C.E.A., 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 C.E.A. in his determination. In doubtful situations, the C.E.A. 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 C.E.A., shall be responsible for administration and enforcement of this ordinance.
- B) Removal of items within the right-of-way shall be done by the Road Agent on direction from the C.E.A.
- C) The Road Agent, Fire Department, and Police Department shall report to the C.E.A. any structure within the right-of-way erected 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 McMahan**
Board of Selectmen

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

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