

**TOWN OF ELLICOTT LOCAL LAW NO. 2
OF THE YEAR 2020**

**A LOCAL LAW ESTABLISHING
PERMITS AND REGULATIONS FOR
EXCAVATION AND CONSTRUCTION IN THE
TOWN RIGHT-OF-WAY**

**BE IT ENACTED BY THE TOWN COUNCIL
OF THE TOWN OF ELLICOTT
AS FOLLOWS:**

Chapter 126: Streets and Sidewalks – Article I Openings, Excavations and Pavement Cuts

§126-1 Purpose

The Town Council of the Town of Ellicott hereby finds that the existing laws which apply to right-of-way, street and driveway openings are inadequate and do not vest the Superintendent of Highways with sufficient authority to insure that work is done in a proper manner. The Town Council therefore finds that it is necessary to adopt this article in order to establish general standards governing the issuance of permits for sidewalk, right-of-way, street and driveway openings as provided in Town Law §130(7).

§126-2 Permit required for construction or excavation in a Town of Ellicott street, sidewalk or right-of-way

- (a) It shall be unlawful for any person to open, dig up, cut, remove, lower, raise, create new access or egress to or from any street, highway or any other way alter any street, sidewalk, right-of-way or portion thereof without first having obtained a permit authorizing the work as hereinafter provided.
- (b) Any municipality or utility provider maintaining pipes, lines or other underground facilities in or under the surface of any street may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately, provided that the permit could not reasonably and practically have been obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the office of the Highway Superintendent is open for business and said permit shall be retroactive to the date when the work was begun.
- (c) The provisions of this article shall not be applicable in those instances where the highway is maintained by the State of New York, the County of Chautauqua and the Villages of Celoron and Falconer.

§126-3 Applications for permit; deposit

- (a) Application, in writing, shall be filed in duplicate with the Superintendent of Highways upon application forms which he shall provide or in such other manner as he shall proscribe, which shall include the name or names of the owners for whom the work is to be done and the name or names of the contractors who are to perform the work for which the street, sidewalk, right-of-way is opened; the dimensions of the breadth or width, length and depth of such opening; and contain a short statement of the purpose for which the street is to be opened. If requested, the application shall be accompanied by a plan or map showing in detail the location of the proposed opening of the highway or highways therein identified. The application shall also be accompanied by the non-refundable fee to be paid to the Town of Ellicott. The application fee will be set forth in the Town of Ellicott schedule of fees.
- (b) All applicants shall furnish a refundable case deposit or bond equal to the amount of the estimated cost of restoring the pavement cut or other excavation to be made by the permittee. The sum is to be deposited with the Clerk of the Town of Ellicott.
- (c) The amount of the security deposit shall be set forth in the Town of Ellicott schedule of fees. Any cash deposit shall be returned to the applicant or the bond exonerated within ten (10) business days upon final inspection and approval of the permitted work by the Superintendent of Highways. Public utilities may be exempt from the deposit requirement if a satisfactory agreement between the utility and the Town is in place. Should the Superintendent of Highways determine after a final inspection of the permitted work that the street, sidewalk or right-of-way has not been returned to its original condition he or she will cause notification of the defective condition to be given to the applicant either orally or in writing. Upon receiving notification of the defective condition the applicant shall have ten (10) days or twenty-four (24) hours if the defect is determined to be a dangerous defect that may affect the health, safety or welfare of the public to remediate the defective condition and restore the street, sidewalk or right-of-way to its original condition. Failure to restore the street, sidewalk or right-of-way to its original condition within the proscribed period will cause the applicant's deposit to be forfeited and to become the property of the Town of Ellicott or alternatively to provide the basis for payment demand of the bond that has been posted as a deposit.
- (d) The application for an excavation permit must be accompanied by an insurance certificate of comprehensive general or commercial general liability insurance policy issued to the permittee by an insurance company licensed by the State of New York to issue such policy and naming the Town

of Ellicott as an additional insured. Such insurance shall not be less than a combined single limit for bodily injury and property damage of \$1 million per occurrence. The policy must also include coverage for potential liability incurred by permittee in performing the work covered by the permit. The Town Attorney shall approve the policy or certificate before any work is commenced.

- (e) Upon compliance with all of the foregoing requirements a permit shall be issued by the Superintendent of Highways of the Town of Ellicott.

§126-4 Commencement of Work

Work for which a permit has been issued shall commence within twenty (20) days after the issuance of the permit. Failure to commence the permitted work or completing the permitted work within the allotted time period specified by the permit may result in the termination of the permit by the Superintendent of Highways. The Superintendent of Highways will give notification of the cancellation to the permittee either oral or written notice. Upon cancellation of the permit the permittee may seek a replacement permit by submitting a new application for a permit along with the necessary fee and deposit as required by the terms of this law.

§126-5 Permits nontransferable

Permits are not transferable and the permitted work shall only be performed at locations specifically designated in the permit.

§126-6 Expiration of permits

Every permit shall expire at the end of the period of time set forth in the permit. If the permittee shall be unable to complete the work within the specified time, he shall, within three (3) business days prior to the expiration of the permit, present in writing to the Superintendent of Highways a request for an extension of time, setting forth therein the reasons for the requested extension. If, in the opinion of the Superintendent, such extension is necessary and not contrary to the public interest, the permittee may be granted additional time for the completion of the work. The extension if granted shall be in writing, signed by the Superintendent of Highways.

§126-7 Stop work orders

- (a) Authority to issue. The Superintendent of Highways or his designated representative shall be authorized to issue stop work orders pursuant to this section. The stop work order shall be issued to halt:
 1. Any work for which a permit is required pursuant to this law which is being performed without the required permit, or under a

permit that has become invalid, has expired, or has been suspended or revoked.

2. Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Highway Superintendent, without regard to whether such work is or is not work for which a permit pursuant to this law is required, and without regard to whether a permit has or has not been issued for such work.

§126-8 Default in performance

Defective work by the permittee or his contractor shall be corrected at the direction of the Town Highway Superintendent by the Town Highway Department or by a contractor of the Town Highway Superintendent's choosing. The permittee shall be liable for the cost of the aforescribed remedial work. The permittee shall be liable for repairs under this section for a period of three (3) years from the original completion date of the permitted work activity.

§126-9 Protection of excavations

Any person making an excavation covered by this article shall erect a suitable barrier or guard for the protection of persons using the streets or sidewalks and, in addition thereto, shall set up and maintain during the hours of darkness sufficient lights or flares to properly illuminate the area and shall also take all necessary precautions for the protection of the Town and public service companies or municipal districts and adjoining property owners and any others which might be endangered by such excavations or the work incident thereto and shall comply with all directions given by the Superintendent of Highways with respect to such barriers, lights, flares and protective measures. All signs used at night shall be reflectorized with wide angle, flattop, reflective sheeting. All devices used both day and night shall be mounted a minimum of five (5) feet above the crown of the pavement. Traffic control devices shall be placed at least one hundred (100) feet in advance of obstructions to adequately warn and direct traffic. The Superintendent of Highways reserves the right to order the correction of any unsafe condition and the installation of additional signs, lights or other traffic control devices. Any opening found not to be properly protected shall immediately be properly protected by the Town and the cost thereof charged against the cash deposit or bond hereinbefore deposited by the applicant.

§126-10 Inspection of completed work

The permittee shall notify the Superintendent of Highways either orally or in writing when the permitted work activity has been completed. Upon receiving notice of completion of work the Superintendent of Highways shall cause an inspection to be made of the completed work. The Highway Superintendent or his representative shall provide to the permittee written notification of his approval of

the completion of the permitted work activity. The permittee shall be responsible for the proper protection of the site until receipt of the Notice of Completion issued by the Highway Superintendent.

§126-11 Regulations and specifications for permit

(a) Construction

1. The work authorized by this permit shall be performed under the supervision and to the satisfaction of the Town Highway Superintendent or his representative.
2. Proper sheeting and bracing must be installed in trenches where there is a possibility of caving of the banks.
3. All permittees shall comply with OSHA and PESH requirements for the work being performed. No opening shall be permitted until New York State Code 53 requirements are met.
4. Trenches in the shoulder of the pavement are to be back filled with type #4-2 inch gravel in six (6) inch lifts mechanically tamping each lift. The work shall be so carried on that not over three hundred (300) linear feet of trench shall remain open at any time, unless otherwise authorized by the Superintendent of Highways.
5. All pavement cuts shall be saw cut. Any cut within the pavement must be back filled with type #4-2 inch gravel in six (6) inch lifts mechanically tamping each lift. A minimum base of three (3) inches of type 3 binder and one and one half (1 ½) inches of type 7F top coat plant mixed bituminous macadam shall be used to return the pavement to proper elevation to match the existing highway. In the event plant mixed bituminous macadam is not available cut must be filled with three (3) inches ready mix concrete to return the pavement to proper elevation to match the existing highway until such time as plant mixed bituminous macadam is available.
6. Roadway is to be returned to its original conditions including shoulders, ditches, drains and driveways.
7. Permittee shall remove any mud and debris from the pavement, shoulders and ditches immediately.
8. No town signs, guide posts or guide railing for traffic control device shall be disturbed.

9. Any ditch work shall be done to the specification of the Highway Superintendent.
10. All surplus excavated material and debris shall be cleaned up and removed from the site of the work upon completion of the work by the permittee, leaving the site of the work in a neat and orderly condition.
11. Driveway and shoulder construction within the highway right-of-way shall slope to drain away from the edge of the pavement at least $\frac{3}{4}$ inch per foot to the ditch line. Headwalls on driveway pipes are not allowed and pipes eighteen (18) inches or larger must have end sections. Concrete driveways must include a agreed upon width strip of bituminous macadam between concrete and road surface.
12. Where topsoil, seeded areas or sod are disturbed in the excavating, the permittee shall restore the ground surfaces to the same conditions.
13. Manhole covers, frames and other structures placed within the roadway limits shall be of sufficient weight and strength of a suitable type and stability approved by the Superintendent of Highways and shall be set flush with the surface of the pavement.

§126-12 Enforcement

The Town of Ellicott Police are authorized to enforce the provisions of this article and to issue appearance tickets for any violations of this chapter.

§126-13 Winter work

- (a) During the "winter work season," which is hereby defined as November 15 through April 1, road opening permits will be issued only of emergency work. In the event that an emergency exists and a permit is necessary, the backfill of all road openings, including shoulder openings, shall be made in accordance with the procedures given in this section.
- (b) In shoulders, the final nine (9) inches of material shall be approved and then thoroughly compacted to the contour of the road and shoulder.
- (c) For openings in the pavement, a temporary pavement restoration shall be made by placing two (2) layers of dust-bound crushed stone, each of a compacted thickness of four (4) inches, on the prepared subgrade, thoroughly compacting these layers in accordance with the proper procedures for a base course and then placing a smoothed layer of 4,000

pound concrete mix, six (6) inches in thickness on top. No frozen material shall be placed in the excavation. As early in the spring as weather and ground conditions permit, sufficient temporary pavement shall be removed as will allow for its replacement with the normally required pavement.

- (d) Notwithstanding anything which may appear to the contrary in the permit application and regulations, the applicant, by accepting the permit, assumes all responsibility for the safe maintenance of the subject opening(s) from November 15 through April 1 and further assumes all liability for damages resulting from or in any way connected with the subject opening(s) during this period.

§126-14 Penalties for offenses

- (a) Any person found guilty of a violation of any provision of this chapter shall be punished by a fine of up to \$1,000.00. Any person found guilty of a second offense of any provision of this chapter within eighteen (18) months of the date of the first conviction shall be punished by a fine of not less than \$1,000.00 and not more than \$2,500.00. Any person found guilty of a third offense of any provision of this chapter within eighteen (18) months of the date of the second conviction shall be punished by a fine of not less than \$2,500.00 and not more than \$5,000.00. Any person found guilty of a fourth or subsequent offense of any provision of this chapter within eighteen (18) months of the date of the third conviction shall be punished by a fine of not less than \$5,000.00 and not more than \$10,000.00. The continuation of an offense against the provision of the article shall constitute, for each date the offenses is committed, a separate and distinct offence hereunder.
- (b) The application of the above penalty shall not be held to prevent the enforced removal of the prohibited conditions and/or the exercise of any civil rights or remedies set forth in this article or in any other provision of law.