

* **Cross References:** Cemetery trustees created, § 2-41; composition and powers and duties of the cemetery trustees, § 2-71 et seq.; public works department, § 2-347 et seq.; buildings and building regulations, Ch. 4; animals, Ch. 3; fire prevention and protection, Ch. 6; health, Ch. 7; nuisances, § 7-16 et seq.; housing, Ch. 8; license and regulation of occupations and businesses, Ch. 9; peddlers, solicitors and itinerant vendors, § 9-151 et seq.; taxicabs, § 9-261 et seq.; mobile homes and manufactured housing and mobile home parks, Ch. 10; solid waste, Ch. 12; city sanitary landfills, § 12-51 et seq.; subdivisions, Ch. 14; traffic and vehicles, Ch. 15; specific street regulations, § 15-31 et seq.; stopping, standing and parking, § 15-56 et seq.; bicycle regulations, § 15-101 et seq.; subdivisions, Ch. 14; traffic and vehicles, Ch. 15; utilities, Ch. 16; zoning and land use, Ch. 17.

Art. I. In General, §§ 13-1--13-25

Art. II. Streets, §§ 13-26--13-50

Art. III. Excavation, §§ 13-51--13-80

Art. IV. Parks and Recreation, §§ 13-81--13-130

Div. 1. Generally, §§ 13-81--13-110

Div. 2. Operation of Off Highway Recreational Vehicles 13-111--13-120

Sec. 13-111. Operation of Snowmobiles

Sec. 13-112. Operation of OHRV's

ARTICLE I.

IN GENERAL

Sec. 13-1. Pets prohibited on city properties including parks, school yards, playgrounds and at Community events.

(a) *Prohibited.* All pets to include all dogs, cats, and other household pets as well as all exotic animals as defined by State law RSA 207:14 and further defined as controlled or non-controlled under the State of New Hampshire Administrative Rules of Fish and Game Chapter 800; PART 804 POSSESSION OF WILDLIFE; Section Fis 804.01 Definitions and Section Fis 804.02 Non-controlled Species are hereby prohibited on city properties, including parks, school yards, playgrounds and locations of community events. This prohibition includes pets under the control of their owner/keeper by leash or other means except for working (guide) dogs which are permitted.

(b) *Fines and penalties.* Any owner/keeper found violating any provision of this section shall be guilty of a violation and upon conviction shall be fined \$100.00 for each offense and shall be responsible for any and all cost incurred as a result of their violation.

(c) *Working Dog exception.* This ordinance shall not apply to any dog that is a certified dog assisting a person with a disability.

(d) *Enforcement.* The police department shall be charged with the enforcement of this section. (Ord. No. 1983-5, §§ II--V, 6-6-83)

Cross References: Animals, Ch. 3.

Sec. 13-2. Consumption of alcoholic beverages in public.

No person shall drink any alcoholic beverages or alcoholic liquor as defined in RSA 175:1 upon any public street, or any public highway, public sidewalk, municipal parking lot or municipal park within the limits of the city; provided, however, that the police commission may grant permission to any person for the use of alcoholic beverages within the confines of a public park in connection with any gathering or function on such conditions as it may deem advisable. (Code 1977, § 6:1101)

Sec. 13-3. Curfew regulations adopted.

The provisions of RSA 31:43a et seq. insofar as they relate to the curfew regulations are hereby adopted. (Code 1977, § 6:901)

Sec. 13-4. Obstructions on public ways.

(a) No person or commercial or private property owner or entity shall put or place or cause to be put or placed by mechanical means or otherwise in or on any street, lane, bridge, alley, sidewalk or other public place in the city, any house dirt, ashes, garbage, household refuse, shreds, shavings, filth, suds, offal, bark, brush, sawdust, grass or rubbish of any nature. No person or commercial or private property owner or entity shall deposit or cause to be deposited any snow or ice on or against any fire hydrant, street, lane, bridge, alley, sidewalk, or other public rights of way except in a manner as provided for in paragraph (b) of this Section. Additionally excepted will be that the city, during the snow plowing process, may store snow upon selected sidewalks until such time as scheduled snow removal by the city occurs.

(b) A person may deposit or place snow from private property either along the street side of their property line or along the property line of property owners either across the street or to either side, so long as these property owners have given written permission to do so. All such snow must be placed in a smooth manner along the existing snow banks and will not interfere with the public ways by protruding into the roadway or creating traffic hazards or obstructions to any neighboring properties.

(c) No person or commercial or private property owner or entity shall deposit, place, shovel, or plow snow in such a manner as to block passage of municipal equipment or pedestrian traffic on public sidewalks that are designated by the City as routinely plowed sidewalks. These sidewalks shall be listed in the City's Snow Removal Policy, streets or rights of way.

(d) No person or commercial or private property owner or entity shall deposit, place, shovel or plow snow in such a manner as to hinder or interfere with the ability to see pedestrian or vehicle traffic.

(e) Persons or commercial or private property owners of the removed snow are solely responsible for their actions or the actions of any agent involved in the snow removal process.

(f) Any person or commercial or private property owner or entity deemed to be in violation of this section shall be liable for costs incurred by the city to have such obstructions or deposits removed. All bills will be subject to the same liabilities of interest penalties and liens in relation thereto as in the collection of taxes.

(g) Any person or commercial or private property owner or entity found violating any element of this section shall be subject to a fine of not less than \$50 plus penalty assessment, plus other costs as defined in subsection (f) above. Each violation shall be deemed a separate offense. Second violations will be subject to a \$100 fine plus penalty assessment, with subsequent violations assessed with a maximum fine of \$1,000 plus penalty assessment.

(Code 1977, § 6:106; Ord. No. 44, 2-15-82; Ord. of 1-3-89; Ord. of 2-3-92(1)) (Ord 4-7-03)

Section 13-4a. Roadside Mementos.

As long as such mementos do not, when erected, constitute any type of hazard as determined solely by the City Police Chief and/or Public Works Director, limited roadside mementos may be erected in the City of Berlin by friends and/or family after conferring with the Public Works Director along the outside edge of a public right of way near the location of a fatal accident. Such mementos shall be marked with the date of death, and it shall be the responsibility of the friends and/or family that erected such mementos to maintain them and then to completely remove them and properly dispose of them prior to the expiration of 90 days from the date of the death of the loved one. The Public Works Director or the Police Chief may cause such mementos to be removed at any time he/she feels such material has become a hazard to the travelling public. If the friends and/or family who erected the mementos have not removed all such materials within the above mentioned 90 day period, the Public Works Director will cause such material to be removed and disposed of without notice or any other obligation to the friends and/or family. Any friends and/or family who place these mementos in the public ways understand that by doing so they are giving up any claim to have any such materials protected or maintained by the City in any way and that the City may at any time as reviewed above remove and dispose of such materials without any notice or obligation whatsoever to the friends and/or family. (Ord. 8-3-09)

Sec. 13-5. Awnings, shades, signs, advertisements restricted.

(a) No person shall place or establish any awning or shade before his or her place of business or dwelling house, over any part of any street or sidewalk, unless it shall be composed of cloth and safely fixed and supported by strong iron rods or railings, so as not to inconvenience pedestrians, and so that the lowest part of the support or frame work of such awning or shade shall be at least seven (7) feet above the sidewalk and the lowest part of the cloth of such awning or shade shall be at least six (6) feet, six (6) inches above the sidewalk.

(b) No sign or other fixture or construction shall be placed on or supported from any sidewalk or street. No person shall establish or maintain any sign, advertisement, or other construction over any part of any street, lane, alley, or sidewalk unless such sign, advertisement or other construction, shall be safely and securely fixed and supported and the lowest part thereof at least eight (8) feet above the sidewalk. No such sign, advertisement or other construction shall be established or maintained without first having obtained a permit from the city engineer and building inspector. Persons applying for a permit to erect a sign or

advertisement shall state in writing its size and weight, the nature of the material of which it is to be constructed and the manner in which it is to be supported.

(Code 1977, § 6:107; Ord. of 3-16-98(3))

Sec. 13-6. Malicious mischief to flora.

No person shall willfully or mischievously break down, or climb upon, or in any manner commit any injury to any of the trees, shrubbery, or flowers growing, or planted upon, any of the public streets, sidewalks, grounds or parks of the city.

(Code 1977, § 6:108)

Sec. 13-7. Damage to trees.

No person shall without the permission of the city engineer, cut, prune, break, climb, injure or remove any living tree in a public street or sidewalk or cut, disturb or interfere in any way with the roots of any tree on a public street or sidewalk or spray with any chemicals or insecticides any tree in a public street or sidewalk or place any rope, sign, poster or other fixture on a street or guard in a public street or sidewalk or injure, misuse or remove any device placed to protect such tree on a street or sidewalk.

(Code 1977, § 6:109)

Sec. 13-8. Planting of shade, ornamental trees.

No shade or ornamental tree or shrub shall be planted in any of the public streets or sidewalks of the city until such tree or shrub shall first have been approved and the place where it is to be planted, designated by the city engineer and a permit granted therefore.

(Code 1977, § 6:110)

Sec. 13-9. Placing hazardous materials on streets.

No person shall put or place, or cause to be put or placed in or upon any street, lane, alley or other public place in the city, any ashes, glass, crockery, scrap, iron, nails, tacks, or any other articles which would be liable to injure or damage the tires or wheels of automobiles or other vehicles which have wheels with rubber or pneumatic tires.

(Code 1977, § 6:114)

Sec. 13-10. Construction, repair of driveways.

Owners of land adjoining a public street or sidewalk desiring to establish or repair any portion of a driveway giving access to their land but within the limits of the street or sidewalk, shall petition the planning board and the office of the city engineer for consent to the establishment or repair of such portion of the driveway as lies within the limits of the street or sidewalk. The office of the city engineer may give written permission for the establishing or repairs of the driveway. As far as practical, all owners of land desiring driveways, before sidewalks are constructed, shall notify the planning board and the office of the city engineer where such driveways are to be located before such walks are constructed.

(Code 1977, § 6:115)

Sec. 13-11. Use of public sidewalks.

(a) No person shall encumber the public sidewalk or street before their place of business, or elsewhere, with any boxes, shelves, stands, merchandise, display cases, or other such things unless they have obtained a sidewalk permit from the city clerk.

(b) The city clerk may issue a sidewalk permit to any local merchant who wishes to use the public sidewalk, in front of their business for the purposes of displaying or advertising merchandise, goods or services. Each applicant must present to the city clerk at the time of application a certificate of insurance demonstrating that they have property, casualty or general business liability insurance in effect to cover said activity. The sidewalk permit shall be good for six (6) months from the date of issue and may be reissued if the permittee has not violated this section.

(c) The applicant may use a maximum of two (2) feet, adjacent from the edge of their property or building and up to the full width of their store or property onto the public sidewalk. The permitted use of the public sidewalk may not restrict the safe and unobstructed travel (viatic use) of all pedestrians. All items, displays and merchandise shall be secured so as not to create a safety hazard and must be removed from the public sidewalk at the end of each business day, but no later than nine o'clock each night, unless otherwise extended by a simple vote of the city council.

(d) Any merchandise, displays, racks and the kind left over night or occupying space beyond the designated area in (c) above shall be considered prima facie evidence of a violation of this section. Any more than two (2) violations shall constitute a forfeiture of the permit for the balance of the permits term.

(Ord. of 3-16-98(3))

Secs. 13-12--13-25. Reserved.

ARTICLE II.

STREETS*

* **Cross References:** Specific street regulations, § 15-31 et seq.; stopping, standing and parking, § 15-56 et seq.

Sec. 13-26. Projections from buildings.

It shall be unlawful for any person to build upon the front walls of any building, any portico, porch, bay window, balcony or any other projection over the sidewalk or street; provided, however, that electric signs may be erected on the front walls of any building in the city, providing these signs are fastened to the building and do not project out over five (5) feet from the same, and not less than twelve (12) feet above the sidewalk, providing a permit has first been obtained from the building inspector and the work done under his supervision.
(Code 1977, § 6:201)

Sec. 13-27. Proximity of billboards to buildings.

No person shall erect, or maintain any billboard within ten (10) feet of the street line or the front building line of the next building adjoining farthest from the street line, that is used as a public building, dwelling, tenement house, hotel, office or store building.
(Code 1977, § 6:301)

Sec. 13-28. Construction of billboards.

All billboards shall be independently supported on substantial posts and be thoroughly braced and anchored against wind pressure. Such billboards shall be erected on such posts at a distance of not less than three (3) feet from the ground.
(Code 1977, § 6:302)

Sec. 13-29. Permit--For billboard operations; required.

No person shall erect or maintain any billboard in accordance with sections 13-27 and 13-28 without a written permit from the office of city engineer for that purpose.
(Code 1977, § 6:303)

Sec. 13-30. Same--Application, duration.

All applications for a permit required by section 13-29 shall be in writing and signed by the applicant. They shall designate the places where billboards are to be erected and shall contain such conditions and restrictions as the city council may require. All permits shall continue in force for one (1) year from the first day of each April unless sooner revoked.
(Code 1977, § 6:304)

Sec. 13-31. Permit for fence, retaining wall, etc.

No person shall build or erect any fence, retaining wall, or other structure on the line between his property and any street, sidewalk, or other public property of the city without having first obtained from the office of the city engineer a written permit to build or erect such structures, and they shall be constructed in accordance with the requirements of the city engineer.
(Code 1977, § 6:401)

Sec. 13-32. Operation of portable concessions.

(a) It shall be unlawful for any person to operate any portable concession, particularly so-called lunch carts on any street or city-owned land within the limits of the city at any time unless application is made to and permission is granted by the city council.

(b) This section shall not be applicable to persons operating a selling van and merely making temporary stops.
(Code 1977, §§ 6:1401, 6:1402)

Sec. 13-33. Building numbers.

All property owners shall be required to display their designated address numbers on the address sides of their building(s) in a clearly visible area. Such display must be at least three (3) inches in size and may be either numerical or alphabetical representations of the assigned

address number in a contrasting color, and the preferenced location to be on the address side of the house or building.
(Ord. of 2-17-92)

Section 13-34. Tourist Oriented Directional Signs

No non-governmental signs shall be erected or maintained on a City street (within a City right-of-way), except for directional signs as defined hereinafter. (Ord. of 4-7-08)

Section 13-35. Eligibility Criteria

To be eligible for a Tourist Oriented Directional Sign under this ordinance, an institution must be located in the City of Berlin and be a business, service, or activity facility as defined by the State of NH DOT Bureau of Traffic manual titled, "Tourist Oriented Directional Signs dated January 1, 2006 (hereinafter "the manual"). (copies of this manual are available for review at City Hall in the Public Works & Planning Departments) (Ord. of 4-7-08)

Section 13-36. Application for Permit

(a) An applicant requesting an initial permit for a Tourist Oriented Directional Sign shall provide the following information on a form furnished by the Public Works Department:

1. The name, address, and telephone number, or other means of contacting the applicant during regular business hours;
2. The name of the street where the proposed sign is to be located;
3. The hours of the day and days of the week that the facility is open to the public;
4. Whether there are restrictions placed upon the facility which would limit its use by a member of the traveling public;
5. The text proposed for the sign;
6. A sketch showing the proposed location of the sign indicating distances from easily found reference markers, such as intersecting highways or roads, highway mileage markers, or utility poles. Please provide information from each marker, such as the road number, mile marker number, or utility pole identification numbers;
7. Whether the applicant owns, leases, or maintains an outdoor advertising device in the state, either under its own name, or under the name of any entity in which the applicant holds a controlling interest;
8. The signature of the applicant, including the title and authority of the person signing if applying for a partnership, trust, corporation, or limited liability company;
9. The date of the signature; and
10. The permit fee of \$75.00

(Ord. of 4-7-08)

Section 13-37. Expiration of permits.

- (a) Any permit issued shall expire on the April 1 next following the date of issuance;
 - (b) A permit for a Tourist Oriented Directional Sign shall not be transferable. In the event that a permitted business or entity is transferred to a new owner, a new original initial application shall be submitted for review and approval; and
 - (c) All permittees shall comply with the requirements of the Public Works Director set forth in this policy for manufacture, installation, and maintenance of the sign and its support structure.
- (Ord. of 4-7-08)

Section 13-38. Multiple Panel Installation and Order of Position.

- (a) A Tourist Oriented Directional Sign shall contain no more than three sign panels, each of which must be of the same dimensions.
 - (b) If an applicant seeks to add a panel to a previously erected sign, such applicant shall bear the costs required to:
 - 1. Furnish and install longer, higher, or additional support posts; and
 - 2. Replace any previously installed panel or panels that are smaller than the proposed panel, so that the entire finished installation will be of a uniform dimension.
 - (c) The order of position for Tourist Oriented Directional Signs in a single installation shall be:
 - 1. Top, straight ahead;
 - 2. Middle, left turn;
 - 3. Bottom, right turn.
- (Ord. of 4-7-08)

Section 13-39. 2-Sign Limitation.

Any business, service, or activity facility as defined by “the Manual” that applies for a Tourist Oriented Directional Sign shall be permitted for no more than two such signs in total within in the urban compact. (Ord. of 4-7-08)

Section 13-40. Sign Panel Design.

- (a) Upon approval of a request for signage, the applicant shall work with the Public Works Director to design, fabricate, and install a Tourist Oriented Directional Sign panel that:
 - 1. Guides a road user to the applicant’s service;
 - 2. Is fabricated to the performance standards set in the MUTCD of the Federal Highway Administration as adopted by the State of New Hampshire; and
 - 3. Is installed in a location and in a manner that does not infringe upon the private property rights of citizens, create a hazard to the safety of road users, or an unreasonable burden on the maintenance of the highway.
 - (b) The message of the sign may contain any or all of the following elements, as mutually determined by the applicant and the Public Works Director:
 - 1. A standard service symbol, in accordance with Appendix A of the MUTCD;
 - 2. A textual message in a maximum 2 lines of text; and
 - 3. Direction and distance information.
 - (c) The language, arrangement and spacing of the textual message shall be limited as follows:
 - 1. The text must be submitted to the Public Works Director for review prior to fabrication of the sign panel;
 - 2. Product names, slogans, telephone or fax numbers, street addresses, electronic mail or Internet addresses, Ham Radio call numbers, or messages that resemble any official traffic control device shall not be permitted;
 - 3. If necessary to distinguish between two institutions with the same or a similar name, a descriptive term may be added, as determined on a case-by-case basis;
 - (d) The distance and directional element shall be arranged, sized, and spaced as directed by the Public Works Director in order to maintain compliance with the MUTCD and to assure that the road user will not be confused by the directions given.
- (Ord. of 4-7-08)

Section 13-41. Sign Panel Materials and Fabrication Standards.

The specifications for sign panel materials and quality of fabrication are set forth in Appendix A of the MUTCD.
(Ord. of 4-7-08)

Section 13:42. Sign Post and Fastener Material Requirements.

The specifications for signpost and hardware materials are set forth in Appendix A of the MUTCD.
(Ord. of 4-7-08)

Section 13-43. Sign Installation Requirements.

- (a) The specifications for installation of signposts and sign panels are set forth in Appendix A of the MUTCD.
 - (b) All costs for sign panel and post installation are the responsibility of the applicant. In the event a sign panel or posts must be replaced due to theft, damage, destruction, or wear and tear, all costs for the installation of the replacement items are the responsibility of the applicant.
 - (c) Sign posts shall not be set until the sign location has been declared free of conflicting underground utilities by DigSafe, Inc.
- (Ord. of 4-7-08)

Section 13-44. Applicant responsible for all costs.

An applicant who receives a permit for a Tourist Oriented Directional Sign shall pay the City of Berlin for all costs incurred for purchasing and installing any such sign and the posts that hold it up. Applicant shall also be responsible for any cost of repair incurred by the City in the event the sign or signposts are damaged.
(Ord. of 4-7-08)

Section 13-45. Renewal Permit.

(a) Renewal of a permit for a Tourist Oriented Directional Sign shall be requested annually between January 1, and February 28 on a form furnished by the Department, providing the following information:

- 1. The name, address, and telephone number of the applicant;
- 2. The name or route number of the state highway where the sign is located;
- 3. A statement that the activity continues to be eligible under the category approved in the original application;
- 4. The date of the application;
- 5. The signature of the applicant and capacity if signing on behalf of a partnership, trust, corporation, or limited liability company; and
- 6. A renewal permit fee of \$25.00

(Ord. of 4-7-08)

Section 13-46. Revocation of a Permit and Removal.

(a) A permit to maintain a Tourist Oriented Directional Sign may be revoked and the sign panel removed for any of the following reasons:

- 1. Any change in the business, service, or activity facility as defined by "the Manual" that causes it to be in non-conformity with this policy or the controlling statutes;
- 2. Failure to renew a sign permit on an annual basis;
- 3. Any changed condition necessitated by construction, reconstruction, maintenance or reclassification of the highway;

4. The sign has been in non-conformity with the specifications contained herein for more than one year;
(Ord. of 4-7-08)

Section 13-47. Removal.

The Public Works Director shall remove and transport for storage any Tourist Oriented Directional Sign that remains in place more than 30 days after an order by the Public Works Director to remove the sign has become final. Reasonable care shall be exercised during such removals. However, the Public Works Director shall not be responsible for damage to any device occasioned by removal, transport or storage, nor will the Public Works Director be responsible for storage over 30 days.

(Ord. of 4-7-08)

Section 13-48. Appeal

(a) An applicant who disagrees with the decision of the Public Works Director to deny, not renew or revoke a permit to install and maintain a Tourist Oriented Directional Sign, may appeal such decision to the City Manager within 30 days after notice of the decision is provided to the applicant.

(b) Unless an appeal is filed, the denial, revocation or non-renewal of a permit for a Tourist Oriented Directional Sign shall become final 30 days after notice of the decision is provided to the applicant.

(Ord. of 4-7-08)

Secs. 13-49--13-50. Reserved.

ARTICLE III.

EXCAVATION*

* **Editors Note:** An ordinance adopted May 20, 2002, repealed §§ 13-51--13-66 and added §§ 13-51--13-78 as herein set out. Formerly, such sections pertained to similar provisions and derived from Ord. No. 31, § 6:101, 6:101.1--6:101.9, 7-20-81.

Sec. 13-51. Intent and purpose.

The purpose of this article is the regulation of the use of public rights-of-way in the interest of public safety and convenience, and the operation and protection of public works infrastructure. Excavation and restoration standards are required to preserve the integrity, operational safety, and function of the public right-of-way.

(Ord. of 5-20-02)

Sec. 13-51.1. Separability.

The invalidity of any section or provision of this article shall not affect the validity of this article as a whole, or of any other section or provision of this article.

(Ord. of 5-20-02)

Sec. 13-51.2. Rule of precedence.

Wherever the provisions of any other ordinance or duly promulgated rules or regulations impose stricter standards than are required by this article, such provisions or rules shall govern. (Ord. of 5-20-02)

Sec. 13-52. Administration.

(a) The director of the public works shall establish rules and regulations governing public right-of-way excavations. A copy of the rules shall be delivered to the city council and city clerk on or prior to their effective date. (Ord. of 5-20-02)

Sec. 13-53. Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them. As defined terms they are capitalized throughout this excavation ordinance:

City shall mean City of Berlin and/or its public works department unless there is a different designation given by the city manager for the purposes of administration.

Dig-safe shall be the existing underground Facility damage prevention system defined by NHRSA 374:48-56 as may be amended from time to time, established by the American Public Works Association and the Utilities Location and Coordination Council to provide for safe underground excavation.

Director shall mean director of public works or the director's designee unless there is a different designation given by the city manager for the purposes of administration.

Emergency shall mean any event which may threaten public health or safety, including, but not limited to, damaged or leaking water or gas conduit systems, damaged, plugged, or leaking sewer or storm drain conduit systems, damaged underground electrical and communications facilities, or downed or seriously damaged overhead pole structures.

Excavation shall mean any operation in which earth, rock, or other material below the ground is moved or otherwise displaced, by means of power tools, power equipment or explosives and including grading, trenching, digging, ditching, drilling, augering, tunneling, scraping and cable or pipe driving, except tilling of soil and gardening or displacement of earth, rock or other material for agricultural purposes, and except installation and maintenance of signs performed by the city or department of transportation.

Facility shall mean pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire tower, pole, pole line, anchor, cable, junction box, or any other material, structure, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under, or over any public place.

Large excavation shall mean an excavation as defined in the rules and regulations established under section 13-52.

Licensed excavator shall mean any person who has been issued a license by the city to excavate in public places in the city.

Newly constructed, reconstructed or rehabilitated streets shall mean any street which has been newly constructed, reconstructed or rehabilitated within the past five (5) years, measured from the date of the street opening permit application.

Paved area shall mean an area with a paved surface of material such as hot-mixed asphalt, concrete, brick or stone or other manufactured pavers. These areas are typically referred to as streets, driveways, alleys, sidewalks, or walkways.

Permittee shall mean a person (including a corporate person) who has obtained a permit as required by this article.

Pole placement shall mean an excavation associated solely with a single placement or replacement of a utility pole.

Public place shall mean any public street, way, place, alley, sidewalk, park, square, plaza, or any other similar public property owned or controlled by the city and dedicated to public use, and any dedicated-but-unaccepted street or way.

Rules and regulations shall mean the rules and regulations promulgated under section 13-52.

Small excavation shall mean an excavation as defined in the rules and regulations established under section 13-52.

Substructure shall mean any pipe, conduit, duct, tunnel, manhole, vault, buried cable, or wire, utility system appurtenance, or any other similar structures located below the surface of any public place.

Technical Design Standards and Guidelines shall mean Technical Design Standards and Guidelines promulgated under section 13-52.

Utility shall mean the following utilities that provides utility service: electric, gas, water, cable, and telephone/telecommunications.

Whenever a city official is referenced in this article, it shall mean that city official or the city official's designee.
(Ord. of 5-20-02)

Sec. 13-54. Excavator license.

No person or utility shall excavate in a public place without holding a valid excavator's license and without first obtaining a street opening permit, as provided for in this article, for such work from the city. The public works department shall issue the excavator's license upon receipt of an application therefore and the annual license fee, upon satisfaction that the applicant is competent to carry on the business of excavating. Persons or utilities without a previous work history with the city may be required at the discretion of the director to submit references from responsible municipal officials from other municipalities. No person or utility possessing such license shall allow his or her name to be used by any person or utility, directly or indirectly,

either to obtain a permit or to do any work under this license; provided, however, that nothing herein shall be construed to prohibit a licensed excavator from doing such work through an authorized agent or employee who is directly and continuously supervised by him while in the performance thereof. A license issued to an excavator may be revoked after notice and hearing, if it is determined by the city that the licensed excavator has willfully disobeyed any portion of this article or the rules and regulations. The hearing shall be conducted by the City Manager. The Berlin Water Works shall be exempt from the provisions of this section that require an annual application and license fee. (Ord. of 5-20-02)(Ord of 11-15-04)

Sec. 13-55.1. Street opening permit required.

No person or utility shall make any excavation, modify, or fill any excavation excluding previously permitted locations in any public place without first obtaining a permit to do so from the city except as otherwise provided in this article or the rules and regulations. Any excavation within the city's streets, sidewalks, esplanades or other public right-of-way shall only be permitted in accordance with this Code or the rules and regulations. The granting of such a permit shall cover all required activities to conform with this article and the rules and regulations.

(Ord. of 5-20-02) (Ord of 11-15-04)

Sec. 13-55.2. Permit application.

(a) No street opening permit shall be issued unless a written application on a form provided by the city for the issuance of a street opening permit is submitted to and approved by the city. The written application shall contain such information as reasonably required by the public works department and as identified in the rules and regulations. Applications for large excavations shall be submitted at least thirty (30) calendar days prior to the anticipated excavation. Applications for small excavations shall be submitted at least two (2) business days prior to the anticipated excavation. The permit shall expire thirty (30) days from the date of issuance, absent a different expiration date set forth on the permit

(b) In order to protect underground facilities and public safety all permit applications must provide the city with documentation of the applicant's proper notification to the underground facilities damage prevention system. This will typically be provided by indicating the applicant's dig-safe number on the application

(c) In order to obtain a permit, the applicant must be current on all of its financial obligations to the city

(d) The applicant agrees to be responsible for the quality of the excavation work done within the municipal right of way pursuant to the scope of the permit. The applicant further warrants to the city that for a period of two (2) years following the completion date of the excavation, the applicant shall be responsible for any damage to underground utilities or structures, to above ground structures, or to the city's right-of-way improvements arising from settling or other causes related to or arising from the excavation work. (Ord of 11-15-04)

Sec. 13-56. General conditions.

(a) Permits shall be issued only after security acceptable to the public works department has been given to the city to insure the proper restoration and subsequent maintenance of the street, sidewalk, curb, esplanade, or other public right-of-way.

(b) Persons seeking to perform within the city right-of-way shall be either the applicant or co-applicant on a permit application for said excavation. Such excavation applicants shall be in possession of a current excavator license granted by the director.

(c) Permits shall be granted only if the applicant has properly notified all utilities, typically done by contacting Dig Safe, and obtaining an authorization number to proceed. Any conflicts with utilities shall be the sole responsibility of the applicant and shall be resolved to the utilities' satisfaction and per the city's Technical Design Standards and Guidelines.

(d) Issuance of a street opening permit shall not imply a waiver of other city permit requirements such as sealed drains, sewer or storm drain connections, sign installation, or building permits.

(e) The director has the right to deny permit applications if the street has been newly constructed, reconstructed, or rehabilitated; if excavation is proposed between the dates of November 15 and April 15; if a significant public safety hazard could result; as indicated in section 13-57 below; or for just cause. (Ord of 11-15-04)

Sec. 13-57. Annual work program to be submitted by utilities.

Each year on or before March first, each utility shall submit to the public works department its planned work program for the ensuing year, which shall not include emergencies defined in section 13-53 and normal house service lines. Thereafter, the city shall have the right to deny permit applications for excavations not specifically contained within each utility's respective planned work program, except for emergencies and house service lines. (Ord of 11-15-04)

Sec. 13-58. Duration.

Excavation work must be started no later than thirty (30) days from the date of issue of the street opening permit. After the expiration of this thirty-day period, such permit shall become null and void and shall have to be renewed. (Ord of 11-15-04)

Sec. 13-59. Fees and charges.

(a) Each street opening permit may be assessed two (2) fees: an administrative charge and a permanent pavement restoration charge.

(1) Administrative: This fee shall be established in an amount reasonably calculated to cover the city's direct cost of labor and necessary to administer this article and the rules and regulations for the rehabilitation of city streets primarily due to excavations. This fee shall include but shall not be limited to the city's direct cost of labor for engineering reviews, construction inspection and testing.

(2) Permanent pavement restoration: This fee shall cover the city's cost of permanently restoring the disturbed pavement area and shall be based on the final measured size of each permitted street opening.

(b) Upon permit application, the administrative charge, and estimated permanent pavement restoration charge shall be paid to the street openings clerk unless waived by

the public works department as provided below. No permit shall be issued without appropriate payment of fees. Utility applicants in good standing shall be granted the option of being invoiced by the city for these fees.

(c) All fees and charges collected by the public works department in the issuance of permits pursuant to this article shall be placed in a fund dedicated and utilized solely for the administration of this article and the rules and regulations, and the rehabilitation of city streets primarily due to excavations.

(d) Waiver of fees:

(1) No permanent pavement restoration fee will be assessed to permittee in large excavations, providing that the permittee shall submit for review and approval of the director plans and specifications for the said excavation, prepared by an engineer licensed in the State of New Hampshire. All plans and specifications shall meet the requirements of the director.

(2) The director may authorize waivers of permit fees for small excavations if special circumstances warrant such a waiver. (Ord of 11-15-04)

Sec. 13-60. Performance security.

Performance security in the form of a performance bond, letter of credit or cash, in a form and an amount acceptable to the director and the city's attorney, shall be required of all large excavation permit applicants in order to guarantee their performance. (Ord, of 5-20-02) (Ord of 11-15-04)

Sec. 13-61. Violations.

(a) Any person or utility failing to comply with or violating any provision of this article or the rules shall be served by the public works department with written notice stating the nature of the failure or violation and providing a reasonable time limit for the necessary corrective actions. Such person or utility shall, within the period of time stated in such notice, permanently cease or correct all failures or violations.

(b) In order to ensure public safety, the public works department shall have the right to verbally notify and require immediate corrective actions of any person or utility whose failure to comply with this article or the rules could cause a safety hazard.

(c) Any person or utility who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this article or the rules shall be guilty of a violation of this article.

(d) Any person or utility violating any of the provisions of this article or the rules shall be liable to the city for any expense, loss, or damage occasioned by the city by reason of such violation. The city may seek injunctive relief for the purposes of enforcing this article or the rules.

(e) Any violation of this article shall subject the permittee or the violator, as applicable, to a fine of up to five hundred dollars (\$500.00) per day for each day that said violation shall continue to exist.

(1) Any permittee or party who continues to violate any section of this article or the rules and fails to correct violations in a timely manner shall receive no further permits and will be invoiced for permanent repairs as appropriate until such time as the city is satisfied that the permittee or party shall have corrected all violations in compliance with the terms of this article and the rules and regulations.

(f) The city reserves the right to notify a permittee's insurance and/or bond carrier of repeated violations.

(Ord of 11-15-04)

Sec. 13-62. Failure to obtain permit.

Any person or utility found to be conducting any excavation activity within the public right-of-way without having first obtained the required permit(s) shall immediately cease all activity (exclusive of actions required to stabilize the area) and be required to obtain a permit before work may be restarted. A surcharge of five hundred dollars (\$500.00) shall be required in addition to all applicable permit fees. This provision shall not apply to excavations conducted for emergency action as discussed in section 13-72. (Ord of 11-15-04)

Sec. 13-63. Appeals process.

(a) Whenever a person shall deem themselves aggrieved by an order or decision made by the director in applying or interpreting this ordinance or any rules or regulations adopted by the director in furtherance of this ordinance, the person may file an appeal to the city manager within ten (10) days of the date of the order or decision, and the person shall be afforded a hearing on the matter before the city manager, and unless and until the appealed order is revoked, such order shall remain in force and be forthwith complied with by the person.

(b) In cases of applicability or interpretation of the rules, the city manager may revoke such order made by the public works authority.

(c) In cases where compliance with such order made by the public works authority would cause undue hardship, the city manager may extend the time limit of such order, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of the rules, subject always to the rule that the city manager shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.

(Ord of 11-15-04)

Sec. 13-64. Clearance for vital structures.

The excavation work shall be performed and conducted so as not to interfere with access to and operation of fire hydrants, fire stations, fire escapes, water gates, valve housing structures, underground vaults, manholes, catch basins, traffic signal cables and loops and all other vital equipment as designated by the city and/or dig-safe.

(Ord of 11-15-04)

Sec. 13-65. Protective measures and routing of traffic.

(a) Safe crossings. The permittee shall in general maintain safe crossings for two (2) lanes of vehicle traffic where possible and safe crossings for pedestrians at intervals of not more than two hundred (200) feet. If any excavation is made across any public street, alley or sidewalk, adequate crossings shall be maintained for vehicles and for pedestrians. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, a passageway at least forty-eight (48) inches in width shall be maintained along such sidewalk line.

(b) Barriers and warning devices. It shall be the duty of every permittee cutting or making an excavation in or upon any public place, to place and maintain barriers and warning devices necessary for safety of the general public. Traffic control in the vicinity of all excavations affecting vehicular, pedestrian and other traffic shall be subject to final review and approval of the director and police chief. Barriers, warning signs, lights, etc., shall conform to the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD). Warning lights shall be electrical markers or flashers used to indicate a hazard to traffic from sunset of each day to sunrise of the next day. Electrical markers or flashers shall emit light at sufficient intensity and frequency to be visible at a reasonable distance for safety. Reflectors or reflecting material may be used to supplement, but not replace light sources.

(c) Normalizations of traffic conditions. The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions as near normal as possible shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public.

(d) Closing of streets. When traffic conditions permit, the director, with the approval of the police and fire departments of the city, may give written approval (or by verbal approval in the case of emergency), permit the closing of streets and alleys to all traffic for a period of time prescribed by him or her, if in his or her opinion it is necessary. The written approval of the director may require that the permittee give notification to various public agencies and to the general public. In such cases, such written approval shall not be valid until such notice is given. In case of emergency work during non-business hours, the utility having such emergency shall contact the police and fire departments by phone before closing a street to traffic.

(e) Warning signs to channel traffic. Warning signs shall be placed in accordance with the applicable section of the most current edition of the MUTCD in advance of the construction operation to alert traffic within a public street, and cones or other approved devices shall be placed to safely channel traffic, in accordance with the instructions of the director, after his or her review of the proposed traffic control measures for the project.

(f) Interference with arterial streets. Construction activities (unless an emergency condition exists) shall not interfere with the normal flow of traffic on arterial streets of the city. A plan of arterial streets shall be kept at the office of the public works department.

(g) Shifting traffic to opposite side. The permittee may shift traffic to the opposite side of the roadway to maintain the above required lane width. The permittee may only make

such shift with the approval of the director and police chief following proper review of detour plans to insure adequate safe two-way traffic flow and proper number and placement of traffic control devices, including flaggers and/or police officers.

(Ord of 11-15-04)

Sec. 13-66. Relocation and protection of utilities.

The permittee shall not interfere with any facility without the written consent of the city and the owner of the facility. If it becomes necessary to relocate a facility, this shall be done by or with the written consent of its owner. No facility owned by the city shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across the work. The permittee shall secure approval of method of support and protection from the owner of the facility. In case any of the pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure, the permittee shall promptly notify the owner thereof. All damaged facilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this section that the permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the permittee. The permittee shall inform itself as to the existence and location of all underground facilities and protect the same against damage. (Ord of 11-15-04)

Sec. 13-67. Abandonment of structure.

(a) Whenever the use of a substructure is abandoned, except the abandonment of service lines designed to serve single properties, the person or utility owning, using, controlling, or having an interest therein, shall within thirty (30) days after such abandonment, file with the city a statement in writing giving in detail the location of the substructure so abandoned. If such abandoned substructure is in the way, or subsequently becomes in the way, of an installation of the city or any other public body, the owner of such substructure, after having been contacted by the excavator, shall establish if the substructure is abandoned and make the first cut or tap before allowing the substructure to be removed by the excavator.

(b) When gas or other flammable service to buildings is discontinued, the existing service line for such service shall be terminated at a point outside the building.

(Ord of 11-15-04)

Sec. 13-68. Protection of public property.

The permittee shall not remove, even temporarily any trees or shrubs which exist in a public place without first obtaining the consent of the appropriate city department or city official having control of such property

(Ord of 11-15-04)

Sec. 13-69. Restoration of paved areas.

All paved area restorations, including temporary and permanent work within any street, driveway, or sidewalk shall be performed in accordance with the city's Code of Ordinances and Technical Design Standards and Guidelines available through the director, and according to the rules and regulations promulgated by said authority pursuant to section 13-52 of this Code. The director may choose to waive specific repair requirements for just cause, including utility work being conducted prior to or in conjunction with a planned city/ NHDOT construction project.

(Ord of 11-15-04)

Sec. 13-70. Prompt completion of work.

After an excavation is commenced, the permittee shall carry out with diligence and expedition all excavation work covered by the street opening permit and shall promptly complete such work and restore the street or sidewalk as specified in this article and the rules and regulations enacted by the public works authority. The permittee shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel.

(Ord of 11-15-04)

Sec. 13-71. Urgent work.

When traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the city shall have the full power to order, at the time the permit is granted, that a crew and adequate facilities be employed by the permittee beyond normal working hours, including up to twenty-four (24) hours a day, to the end that such excavation work may be completed as soon as possible.

(Ord of 11-15-04)

Sec. 13-72. Emergency action.

Nothing in this article shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe which may be a threat to life or property, or for making emergency repairs, provided that the person making such excavation shall apply to the city for such a permit on the first working day after such work is commenced. Before any emergency excavation work is started, the person or utility excavating must take all reasonable steps to properly notify dig-safe for on the spot utility locations.

(Ord of 11-15-04)

Sec. 13-73. Noise, dust and debris.

Each permittee shall conduct and carry out excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. To the fullest extent practicable, the permittee shall take appropriate measures to reduce noise, dust, and unsightly debris in the performance of the excavation work. Excavation work, including the use of any tool, appliance, or equipment, shall be performed between the hours of 7:00 a.m. and 7:00 p.m. only, exclusive of emergency work. Time waiver requests may be submitted to the public works authority for work outside of this time period and will be subject to neighborhood

concerns. Excavation work shall not occur on Sundays, holidays or on major holiday weekends (including three-day weekends), unless expressly authorized by the public works authority or as a result of an emergency.

(Ord of 11-15-04)

Sec. 13-74.1. Preservation of monuments.

Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point, or a permanent survey bench mark within the city, shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the city and property owner to do so. Permission to remove or disturb such monuments, reference points or bench marks shall be granted only when no alternate route for the proposed substructure or conduit is available. If the city is satisfied that no alternate route is available, permission shall be granted only upon condition, by an agreement in writing, that the person or utility applying for such permission shall pay all expenses incident to the proper replacement of this monument by a licensed land surveyor registered in the State of New Hampshire.

(Ord of 11-15-04)

Sec. 13-74.2. Preservation of curbing.

No person or utility shall remove, damage, haul away or cause misalignment of any curbing, including radius curb and catch basin stones, for any reason whatsoever without first receiving written permission from the city. Any curb missing, damaged or misaligned shall be replaced or aligned by the city and will be charged to the permittee; provided, however, that the city, at its option, may allow the permittee to replace or realign that portion of curb damaged by the permittee's excavation. In such event, replacement or realignment shall be done in a manner and under specifications prescribed by the city and subject to inspection by the city and shall be completed within a period of thirty (30) days after such authorization to complete such work. If such replacement or realignment is satisfactory to the city, all charges therefor except for permit fees, long-term maintenance reserves, if applicable, and city inspection charges will be canceled. The permittee shall, for a period of two (2) years thereafter, be fully liable for all defects in materials and workmanship relating to such replacement or realignment and shall promptly repair or replace the same upon notice of the public works authority and to the satisfaction thereof.

(Ord of 11-15-04)

Sec. 13-74.3. Manholes and/or catch basins.

No person or utility shall remove, damage, haul away, or otherwise disturb any manhole and/or catch basin structure, frames, and/or covers owned by the city without first receiving written permission from the city. Any manhole and/or catch basin structure, frames and/or covers missing, damaged, or disturbed shall be repaired and/or replaced by the city, and the cost will be charged to the permittee.

(Ord of 11-15-04)

Sec. 13-75. Excavations during winter.

(a) No person or utility shall be granted a street opening permit or open any paved area from the time of November 15th of each year to April 15th of the following year unless an emergency or special condition exists and permission is obtained in writing from the city.

(b) Any person or utility wishing to obtain a street opening permit between these aforementioned dates shall first explain fully in writing the emergency situation or special condition existing to the city before a permit application will be considered for approval. If an emergency condition which could endanger life or property exists, excavation work shall not be delayed by this section; however, a written explanation shall be delivered to the city as part of the street opening permit application made in accordance with section 13-72. In the rare event that a non-emergency permit is issued between the aforementioned dates for an excavation into a paved area, a moratorium surcharge of five hundred dollars (\$500.00) will be added to the regular permit fee. This moratorium surcharge may be waived by the director if specific weather conditions exist and paved area restorations are in compliance with normal construction season standards, as described in the rules and regulations.

(c) For the purpose of this section, an emergency shall be defined as one of the following: damaged or leaking water or gas conduit systems, damaged, plugged or leaking sewer or storm drain conduit systems, damaged underground electrical and communications facilities, or downed or seriously damaged overhead pole structures; all remaining excavations will be considered non-emergency situations and may only be authorized upon written documentation of special circumstances.

(Ord of 11-15-04)

Sec 13-76.1. Inspections.

(a) The city shall make such inspections as are reasonably necessary in the enforcement of this article and the rules and regulations.

(b) The director may order such actions as it deems necessary to ensure that this article and the rules and regulations implementing it are not violated.

(Ord of 11-15-04)

Sec. 13-76.2 Testing requirements.

The city may order tests at the applicant's expense on any subsequent restoration of a street excavation in order to determine if the work has been or is being completed in accordance with city specifications and regulations

(Ord of 11-15-04)

Sec. 13-76.3. Maintenance of drawings.

Every person or utility owning, using, controlling or having an interest in substructures under the surface of the public way or public property, used for the purpose of supplying or conveying gas, electricity, communications, impulse, water or steam in the city, shall file with the city a map or set of maps each drawn to a scale of not less than one (1) inch to fifty (50) feet, showing in detail the location, depth, size and kind of installation, if known, of all new or renewed substructures. These maps shall be provided to the city no later than sixty (60) days after the completion date of construction in paper and, if available, digital file form acceptable to the public works authority.

(Ord of 11-15-04)

Sec. 13-77. Liability of city, insurance and indemnification.

(a) Liability of city. This article shall not be construed as imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of excavation work for which a street opening permit is required under this article, nor shall the city or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit, or the approval of any excavation work, In the case of a dedicated but unaccepted street or way, the issuance of any permit hereunder shall not be construed as an acceptance of said street or way by the city for highway or any other purposes.

(b) Insurance. For purposes of this section, every licensed excavator shall maintain at all times types and amounts of insurance coverage, not less than amounts as periodically set and adopted by the city manager, protecting the director, the director's agents and the city from all such claims for damages or injuries and naming the city as an additional insured. All such insurance shall include, without being limited to, endorsements for completed operations and special hazards/underground collapse, and shall be primary to any insurance or self insurance of the city. Evidence of such coverage shall be a condition precedent to the issuance of any license hereunder and shall be submitted in a form satisfactory to the director.

(c) Indemnification. The permittee, the utility and any of their agents or subcontractors shall indemnify and hold harmless the city and its agents from and against all damage, liability or costs, including reasonable attorney's fees and defense costs, arising out of and in any way connected with work done in conjunction with any permit issued by the city, or with respect to any excavation.(Ord of 11-15-04)

Sec. 13-78.1. Corrective actions to excavations and restorations.

(a) If any part of any excavation, including the excavation, backfilling and repairs fails to conform with the standards of this chapter and the rules, the city shall notify the permittee and require the appropriate corrective actions to be undertaken. Permittee shall take corrective action within twenty-four (24) hours after the issuance of notice if the failure could trigger tort liability or liability for a street insufficiency or defect, as defined in NHRSA 281:90, et seq, as amended from time to time. In all other instances, the permittee shall have a reasonable time as provided in section 18_76 to undertake corrective action.

(b) If the permittee fails to respond within the required time period, the city shall cause the necessary repairs to be accomplished, and shall. keep an account of the expense thereof, and in such case the permittee shall be billed an amount equal to one hundred fifty (150) percent of the whole of the expense incurred by the city, Bills rendered in accordance with this section shall be due and payable by the permittee immediately upon receipt. The city shall issue no further or new permits to the permittee until full payment of the billed costs has been received.

(c) If for any reason the city has to perform repair work to an excavation after the permittee's guarantee period has started, that guarantee period shall start over again upon completion of the repairs.(Ord of 11-15-04)

Sec. 13-79. Berlin Water Works Administration

The Berlin Water Works (BWW), as a separate agency of the City, is subject to all aspects of this Excavation Ordinance except as otherwise specifically provided below as follows, anything in this Excavation Ordinance to the contrary notwithstanding:

a) There is hereby established an Appeals Board whose sole function it shall be to issue rulings on the appeal of decisions, rulings, rules, regulations and orders issued or promulgated by the Director of Public Works as it concerns the administration and application of the Ordinance (including but not limited to technical, financial and administrative matters) to work performed by or on behalf of the BWW which work involves excavations in, on or under the City's streets and public ways. Either the BWW or the City, but no other party, may appeal to this Appeals Board. The Appeal Board's jurisdiction may be exercised only after the issue has been presented to the BWW and the City Manager in an effort to resolve the issue internally. The Appeal Board shall determine its own procedures by which it shall handle any matter; and the Appeal Board shall act as expeditiously as possible. The decision of the Appeal Board shall be final and binding upon the parties.

b) This Appeals Board shall be established as follows: The BWW shall select two (2) representatives from their body, the City Council shall select two (2) representatives and acting together these four (4) Appeals Board Members shall select a qualified member of the public to act as the fifth Member.

c) The language of Section 13.57 (as amended) regarding annual work program shall not strictly apply to the BWW.

d) The BWW shall not be required to make pre payments towards inspection fees. However, the BWW shall retain inspectors from an approved list of qualified individuals or otherwise mutually agreed to by the BWW and the City.

e) To the extent that in any given time period, when BWW Projects exceed the reasonable inspection capacity of the City's Engineering Staff, then the City shall retain the services of additional resident inspector(s) to assist the City Staff; and the BWW shall reimburse the City for the expenses of such additional inspector(s) on a pay as you go basis. The City shall select such additional inspector(s) from an approved list of qualified individuals or as otherwise mutually agreed upon with the BWW; and the BWW's agreement thereto shall not be unreasonably withheld.

f) The BWW shall require its employees, contractors and subcontractors working on its behalf to abide by all approved specifications regarding construction and repair within the City's streets and public ways, including but not limited to trench patching, as may be promulgated pursuant to this Ordinance(Ord of 11-15-04)

Secs. 13-80. Reserved.

ARTICLE IV.

PARKS AND RECREATION*

* **Cross References:** Recreation and parks commission created, § 2-41; composition and powers and duties of recreation and parks commission, § 2-126 et seq.; recreation and parks department, § 2-361 et seq.; bicycle regulations, § 15-101 et seq.

DIVISION 1.

GENERALLY

Sec. 13-81. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commission shall mean the recreation and parks commissioners.

Controlled drug shall mean any drug or drug derivative which is controlled in accordance with RSA 318, whether it be in use or in the possession of any person.

Department shall mean the recreation and parks department.

Director shall mean the recreation and parks director who administers the recreation and parks department.

Motor driven vehicle shall include any type of vehicle with a two- or four-cycle engine or a combustion cylinder engine or any electrical driven motor and that rides on any number of wheels or tracks.

Person shall mean individuals, male or female, singular and plural, firms, corporations, or any group or gathering of individuals.

Public park land shall mean all land, water and property administered by or under the jurisdiction of the department.

Refuse shall mean all types of solid and liquid waste including but not limited to disposable containers whether paper, plastic, glass or metal boxes, ashes, food stuffs, and all putrescible materials.

Rules shall mean the rules adopted by the department and on file with city clerk which are applicable to all property and park lands administered by and under the jurisdiction of the department and all amendments thereto.
(Code 1977, § 6:1301)

Cross References: Definitions and rules of construction generally, § 1-2.

Sec. 13-82. General authority of department.

The department will administer and control the use of park lands of the city in accordance with the provisions of this article.
(Code 1977, § 6:1302)

Sec. 13-83. Use and hours.

(a) Except as otherwise provided in this article, all park lands within the city shall be posted as follows:

Park Closes

1/2 Hour After Dusk

Opens at Dawn

(b) It shall be unlawful for any person to use or stay within any park property after the closing time without prior arrangements with the director. In the cases of community and memorial fields, they shall close to the public at the completion of their scheduled events.

(Code 1977, § 6:1302.2)

Sec. 13-84. Protection of property.

No person shall, upon the public park lands:

(1) Willfully destroy, deface, alter, change, or remove any monuments, marker, blaze marking or boundary line.

(2) Cut, break, mark upon or otherwise injure any building, equipment, lamp post, fence, gate, hedge or other structure.

(3) Deface, destroy, or remove any placard notice or sign posted upon park property.

(4) Cut, remove, or destroy any tree, sapling, seedling, bush or shrub, whether alive or dead, trim, girdle or deface or otherwise injure any tree or foliage.

(5) Remove sod, humus, earth, loam, boulders, gravel or sand without written permission from the director.

(6) Willfully set or cause to be set on fire, any tree, woodland, grassland upon or within public park lands.

(Code 1977, § 6:1303.1)

Sec. 13-85. Protection of wildlife.

No person shall hunt, trap, catch, wound or kill any bird or animal nor molest or rob any nest of any bird or den of an animal in or upon any land or water administered under the jurisdiction of the department. Provided, however, Jericho Lake Park land and water may be

used for access to hunting and fishing at specific times during the year in accordance with state fish and game regulations.
(Code 1977, § 6:1304.1)

Sec. 13-86. Vehicular traffic and parking.

It shall be unlawful for any person to:

- (1) Operate a motor driven vehicle of any kind or nature on park lands or sports fields except on designated roads or designated parking areas.
- (2) Bicycles may be operated upon such paths, trails, or roadways as may be posted allowing such use.
- (3) All vehicles, whether fully or partially motorized, shall not exceed the posted speed limit of fifteen (15) miles per hour while traveling in or upon public park lands' roadways or designated parking lots. This regulation does not pertain to snowmobiles traveling in or upon park lands' roadways and parking lots not maintained during the winter months.
- (4) Snowmobiles may be operated upon the designated trail as it crosses the various park lands and sports fields along the corridor proceeding from Mt. Jasper heading easterly to Hillside Avenue and into the Cole Street area.
(Code 1977, § 6:1305.1; Ord. No. 7, 3-20-78; Ord. of 12-14-92)

Sec. 13-87. Peddling and soliciting.

It shall be unlawful for any person to peddle, or solicit business of any nature whatever or to distribute handbills or other advertising matter, to post unauthorized signs on any lands, waters, structures or property administered by or under the control of the department. Authorization may be obtained by requesting same from the recreation and parks commission.
(Code 1977, § 6:1306.1)

Sec. 13-88. Hindering employees.

No person shall interfere with or in any way hinder any employee or agent of the department while performing his official duties.
(Code 1977, § 6:1306.2)

Sec. 13-89. Alcoholic beverages and drugs.

No person shall have in his possession any intoxicating beverage while in or upon the property administered by the department except for designated areas as established by the commission. No person shall upon the park land have in their possession, nor use any controlled drug.
(Code 1977, § 6:1306.3)

Sec. 13-90. Firearms.

No person shall at any time bring into or upon the properties of the department, nor have on his possession, nor discharge any type of rifle, gun or hand gun. This section does not apply

to any law enforcement official or their designate performing their duties, or to hunters in Jericho Lake Park during the hunting season as established by the state fish and game department.
(Code 1977, § 6:1306.4)

Sec. 13-91. Littering.

It shall be unlawful to discard or to deposit refuse of any kind or nature in or on the park lands or waters of the department except by placing such refuse in containers provided for such purpose.
(Code 1977, § 6:1306.5)

Sec. 13-91.1 Bickford Place Park

Anything to contrary in this Article notwithstanding, Bickford Place Park shall close each evening at 10pm unless an event scheduled through Parks and Recreation is occurring there in which case closing will occur at the end of the event. In addition, because of its close pocket park nature, there shall be No Smoking in Bickford Place Park at any time. (Ord. 10/15/2012)

Sec. 13-92. Emergency powers.

Nothing in this article shall:

- (1) Prohibit or hinder duly authorized agents of the department or any peace officers from performing their official duties.
- (2) Prohibit the recreation and parks commissioners or the director from establishing emergency rules required to protect the health, welfare and safety of the park users and to protect park property.
(Code 1977, § 6:1306.6)

Sec. 13-93. Penalty for violation.

Any person violating any provision of this article shall be deemed guilty of a violation and upon conviction thereof, shall be fined not more than fifty dollars (\$50.00) and the cost of repairs which must be made as a result of malicious destruction.
(Code 1977, § 6:1307.1)

Sec. 13-94. Trick or treating on Halloween.

- (a) *Time limits.* It shall be unlawful for any person to engage in the act of solicitation commonly known and referred to as "trick or treating," except between the hours of 5:00 p.m. and 8:00 p.m. upon the last day of the month of October.
- (b) *Age restrictions.* It shall be unlawful for any person to engage in the act of solicitation commonly known as "trick or treating" unless the "trick or treater" is under the age of fifteen (15) years.
- (c) *Penalty.* For the first violation of this section by any child, it shall be taken to its home by the police department and the parents or guardian shall be notified of the

penalty for any subsequent violation. Upon any subsequent violation by any child, the parents or guardians shall be guilty of a violation.
(Ord. No. 1, 10-17-77; Ord. of 10-19-92; Ord. of 10-6-97)

Sec. 13-95. Mt. Jasper

- a. The use of Off Highway Recreational Vehicles (OHRV's) is prohibited with the exception of snowmobiles on existing, designated trails.
- b. Rock and mineral mining and/or rock and mineral collection is specifically prohibited.
(Ord. 11-4-2014)
- c. Prior notice to Abenaki Nation of NH (current address of 262 Lancaster Road, Whitefield, NH 03598) is required prior to disturbing earth on or at the base of Mt. Jasper. (Ord. 6/3/2019)

Secs. 13-96--13-110. Reserved.

DIVISION 2. OPERATION OF OFF HIGHWAY RECREATIONAL VEHICLES

Sec 13-111. Operation of snowmobiles.

No person shall operate a snow traveling vehicle, which shall mean any vehicle propelled by mechanical power that is designed to travel over ice or snow supported in whole or in part by skis, belts, cleats, or low pressure tires, in or on any street, lane, bridge, alley, sidewalk or other public place in the city except as provided below:

The following exceptions shall be authorized to permit the establishment of a snowmobile trail that will cross municipal property at the base of Mount Jasper, along the outside perimeter fence of the running track proceeding along the Dead River, crossing the southwesterly portion of Memorial Field and permitting the crossing of Hillside Avenue at its intersection of Russell Street and the use of the easterly sidewalk on Hillside Avenue and between the rail crossing and the intersection of Hillside Avenue and Willow Street, then extending through the Dead River Park crossing over Cole Street at the Salvation Army driveway entrance to the easterly sidewalk on Cole Street being restricted to use the sidewalks to access the municipal parking lot east of Cole Street and service stations along Green Street.

The following exception shall be authorized to permit the establishment of a downtown snowmobile trail on the sidewalk on the south side of East Mason Street from the rail road bed at East Mason Street to the west crossing Unity Street and continuing along the south side sidewalk crossing both Mason Street Bridges to Main Street, ~crossing Main Street and continuing along the south side sidewalk of Mason Street to Pleasant Street, crossing Pleasant Street and continuing along the south side sidewalk of Mason Street to the southeast corner of Cole Street, turning south and continuing along the east side sidewalk of Cole Street to York Street, crossing York Street and continuing along the east side sidewalk of Cole Street to the point on the east side sidewalk of Cole Street immediately across the street from the entrance of the Dead River Park.

The following exception shall be authorized to permit the establishment of a branch of the aforementioned snowmobile trail which departs from the south side sidewalk of Mason Street at the Tondreau Parking Lot entrance and continues through the parking lot to the pedestrian bridge between the parking lot and the Public Service of New Hampshire Park on the Tondreau Peninsula, continuing across Public Service of New Hampshire park land to the Smith Hydro station at Glen Avenue, continuing across Glen Avenue to the Glen Avenue Park to a location between the gazebo and the tennis courts.

The following exception shall be authorized to permit the establishment of a snowmobile trail from the rail road bed as it intersects with the south side sidewalk of Coos Street, continuing east on the south side of Coos Street to Champlain Street, crossing Champlain Street and continuing on the south side of Coos Street to Burgess Street, crossing Burgess Street and continuing on the south side of Coos Street to Hillsboro Street, crossing Hillsboro Street and continuing on the south side of Coos Street to the intersection of Hutchins Street, ~crossing Coos Street from a point directly across from the south end of the Hutchins Street sidewalk at Coos Street, continuing northerly along the east side of Hutchins Street to the Dummer Yard and connecting to the State trail system at this location. ~Said trail shall travel over portions of the sidewalk and/or paved shoulder areas along Coos Street and Hutchins Street and shall cross all intersecting streets along Hutchins Street.

The speed limit on these 'exception' snowmobile trails is 10 mph. (Ord of 9-21-09)

Complaints regarding snowmobile use of these trails shall be received by the Traffic Safety Committee, which may recommend changes to the Council. The Council shall have the power to change the times of such snowmobile use by vote without amendment to this ordinance (Code 1977, § 6:801; Ord. of 12-14-92; Ord. of 11-29-93; Ord of 11-15-04)

Sec. 13-112. Operation of OHRV's

No person shall operate an OHRV, as defined by NH RSA 215-A:1, in or on any street, lane, bridge, alley, sidewalk or other public place in the city except as provided below:

1. In addition to the public trails at Jericho Mountain State Park, the following is an authorized municipal public OHRV trail within the City of Berlin:
 - a) The City of Berlin's roadways, within the urban compact, will be open to OHRV riders for the purposes of accessing the designated Connector OHRV Trail, (via the shortest possible route) as well as accessing local businesses and services. Riding on municipal streets for any other purpose is prohibited with the exception of Sec. 13-112 (4).
 - b) On City streets, OHRV signage and markings, as well as traffic signs and signals which must be obeyed by the OHRV operator. (Ord 5/15/2017)
 - c) The Berlin OHRV Connector Trail and the City of Berlin's roadways will be closed to OHRV riders when the Bureau of Trails declares that the snow machine trails are no longer useable. The connector trail will re-open on May 23, or a reopen date set by the State Trails Bureau. Berlin's roadways will reopen accordingly. (Ord. 4/02/2012)(Ord. 5/04/2015)

- d) OHRV Connector Trail - This authorized municipal trail runs where marked from the Jericho Mountain State Park to Route 110 and follows Route 110 southeasterly as it changes from Jericho Road to Wight Street. The trail continues to follow Wight St. to Hillside Avenue, for a short distance to York Street (determined by how the trail is actually marked and signed) where it continues easterly to Granite Street. The trail then turns onto Mason Street where it follows Mason Street southeasterly to East Mason Street where it continues southeasterly to Hutchins Street where it follows Hutchins Street northeasterly to Success Pond Road where it follows Success Pond Road to the Berlin/Success line. This authorized municipal trail includes the section of East Mason Street from the RR tracks east of Hutchins Street to Hutchins Street. (Ord. 9/20/2010) (Ord. 4/02/2012) (Ord 5/15/2017)
- e) Any person who violates the provisions of this article shall be guilty of a violation, punishable by a fine as follows: All violations are subject to a loss of OHRV operating privileges on City streets, NOT including the OHRV Connector trail. (Ordinance 2/17/2014)

First offense, \$100.00 fine.
Second offense, \$250.00 fine.
Third offense, \$500.00 fine.

- 2. OHRV users in the city must abide by all State and City laws when on designated trails on City streets and must abide by all motor vehicle traffic laws. However, all unlicensed operators shall be accompanied by a responsible adult who is 25 years of age or older and is a licensed driver (Pursuant to RSA Chapter 263). The person accompanying the unlicensed driver shall be liable for the violation of any provision of this section or rules adopted hereunder committed by such unlicensed driver. (Ord. 5/15/2017)
 - a) OHRV's must yield to pedestrians at all times. (Ord. 9-20-2010)
 - b) OHRV operators, when operating on the designated trail on City streets, shall ride single file in traffic in the paved travel lane (not gravel or paved shoulders).
 - c) There will be no OHRV riders on City streets between the hours of 10:00 p.m. through 6:00 a.m. unless authorized by the City Council during special events. (Ordinance 2/17/2014)
 - d) All OHRV's operating on designated trails on City streets must have working head and tail lights.
- 3. Complaints regarding OHRV use of these trails shall be received by the Traffic Safety Committee, who may recommend changes to the Council. The Council shall have the power to change the times of such OHRV use by vote without amendment to this ordinance. (Ord. 4-2-2012)
- 4. Anything above to the contrary notwithstanding, the City Council may, at any time by City Council motion, open or close some or all streets in the City to OHRV use for named special events not to exceed two consecutive days in length; or in the event of temporary OHRV trail obstructions or other matters determined by the Council to require temporary OHRV street use for a length of time determined appropriate by the Council. If and when such City Council approval is given, City street use by OHRV's shall still be subject to all of the requirements listed above for OHRV use of the authorized connector trail. (Ord. 5-21-2012) (Ord. July 16, 2012) (Ord. June 20, 2022)

Secs. 13-113 – 13-120. Reserved