

# Town of Upper Marlboro

14211 School Lane • Upper Marlboro, Maryland 20772

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## BOARD OF COMMISSIONERS FOR THE THE TOWN OF UPPER MARLBORO

ORDINANCE: 2017-04  
SESSION: Town Worksession  
INTRODUCED: August \_\_, 2017

**AN ORDINANCE REGARDING STREET CONSTRUCTION AND UTILITY CUTS REQUIRING THAT A PERMIT BE OBTAINED AND CERTAIN FEES PAID PRIOR TO A PERSON, PUBLIC OR PRIVATE UTILITY OR CONTRACTOR CUTTING, DIGGING OR EXCAVATING WITHIN A ROADWAY OR OTHERWISE ALTERING, IMPROVING OR PERFORMING WORK WITHIN A PUBLIC RIGHT OF WAY UNDER THE JURISDICTION OF THE TOWN, AND BY REQUIRING THAT ANY WORK OR RESTORATION PERFORMED BE SUBJECT TO INSPECTION BY AN AGENT OF THE TOWN AND THAT SAID WORK, RESTORATION OR IMPROVEMENTS ADHERE TO CERTAIN STANDARDS AND SPECIFICATIONS SET FORTH IN THIS ORDINANCE, AND BY PROVIDING FOR CERTAIN FINES AND PENALTIES FOR VIOLATING THIS ORDINANCE, AND GENERALLY RELATING TO THE REGULATION AND CONTROL OF STREETS AND SIDEWALKS.**

WHEREAS, under Section 82-63 of its Charter the Town of Upper Marlboro (the “Town”) has control of all public ways in the Town except such as may be under the jurisdiction of the Maryland State Roads Commission or the County Commissioners for Prince George’s County, and subject to the laws of the State of Maryland and the Charter, the Town may do whatever it deems necessary to establish, operate, and maintain in good condition the public ways of the Town; and

WHEREAS, the Town is further authorized by Section 82-16(2)(oo) of its Charter with the authority to remove all nuisances and obstructions from the streets, lanes and alleys and from any lots adjoining thereto, or any other places within the limits of the Town; and

WHEREAS, the Commission is further authorized by Section 82-16(1) of its Charter with the power to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or this charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town’s property, rights, and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of the Town and visitors thereto and sojourners therein; and

WHEREAS, the Commission finds that utility cuts, like other surface patches, and any other alterations or improvements may cause damage that reduces the level of service, degrades the lifespan of the Town's streets and sidewalks, or may otherwise interfere with the public's use of the public ways; and

WHEREAS, the Board of Commissioners finds it to be in the best interest of the Town to address a compelling need to supplement or revise the Town's street and sidewalk related ordinance provisions in order to conserve resources, prevent waste and protect the health, welfare and safety of the public by regulating the manner in which public utilities, contractors and other permittees enter into, alter the existing state and character of the Town's public ways, or make certain repairs thereto; and

WHEREAS, the Board hereby intends to substantially adopt the existing County ordinances and regulations governing this subject matter as its own with certain restatements, clarifications and amendments contained herein below; wherefore, this Ordinance shall be read and interpreted together with the referenced County legislation, regulations and specifications.

**NOW, THEREFORE,** the Board of Commissioners of the Town of Upper Marlboro, State of Maryland, does ordain and enact as follows:

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**STREET CONSTRUCTION AND UTILITY CUTS ORDINANCE 2017-04**

- SECTION 1:** STREET CONSTRUCTION AND UTILITY CUTS
- SECTION 2:** ADOPTION OF COUNTY LAW
- SECTION 3:** REGULATORY SCOPE
- SECTION 4:** DEFINITION OF UTILITY
- SECTION 5:** PATCHING STANDARDS
- SECTION 6:** WSSC'S EXEMPTION
- SECTION 7:** ACCEPTANCE OF IMPROVEMENTS OR REPAIRS
- SECTION 8:** PERMIT REQUIRED, FEES, APPLICATION FORMS, AND RECORDS
- SECTION 9:** AUTHORITY TO HIRE TOWN ENGINEER TO SUPERVISE OR INSPECT STREET IMPROVEMENTS
- SECTION 10:** ENGINEERING FEE
- SECTION 11:** SUNDAY AND HOLIDAY WORK

- SECTION 12:** RESPONSIBILITY FOR DAMAGES
- SECTION 13:** COMPLIANCE WITH SAFETY REQUIREMENTS
- SECTION 14:** CONFLICT OF LAWS AND WAIVERS
- SECTION 15:** COMPLIANCE WITH SAFETY REQUIREMENTS
- SECTION 16:** PENALTIES FOR VIOLATION
- SECTION 17:** ADMINISTRATIVE AND JUDICIAL REVIEW

**SECTION 1. STREET CONSTRUCTION AND UTILITY CUTS**

It shall be unlawful for any person or persons, firm or corporation to dig up, cut, excavate, break, destroy or in any way injure any sidewalk, curb, gutter, driveway, street or roadway within the Town of Upper Marlboro and under its jurisdiction without first obtaining a permit so to do from the Board of Commissioners.

**SECTION 2. ADOPTION OF COUNTY LAW**

The Board of Commissioners of the Town of Upper Marlboro hereby adopts by reference herein the ordinance, as amended from time to time, entitled “the Road Ordinance of Prince George’s County, Maryland” codified in Subtitle 23 of the Prince George’s County Code, and further adopts herein, the minimum standards for street construction and repairs applicable to utility companies installing or maintaining utility facilities or improvements in the public ways as found in a document known as the “Prince George’s County Policy and Specification for Utility Installation and Maintenance,” as amended, sometimes further referenced herein as the “County Specifications Manual,” attached hereto and incorporated by reference herein as Appendix A and made available for inspection at the Town Hall, as well as the Prince George’s County Specifications and Standards for Roadways and Bridges, and the Md. SHA Standard Specifications for Construction and Materials. Any references to officials or agents of the County Government found in County law adopted herein shall be construed to apply to the applicable officials or agents of the Town Government.

**SECTION 3. REGULATORY SCOPE**

Except as otherwise stated in this Ordinance, from and after the effective date of this ordinance, no person, or entity including but not limited to a private or public utility company, or contractor shall grade, install, cut, construct, or re-construct any surface material, subsurface material, paving, drainage structure, curb, gutter, sidewalk, driveway entrance, retaining wall, step, or any other structure within the right-of-way of any public street, road, highway, avenue, lane, alley, or public way under the jurisdiction of the Town unless said person or entity shall first obtain a permit from the President of the Board of Commissioners or his designee, and complies with all applicable provisions of this Ordinance and referenced law.

**SECTION 4. DEFINITION OF UTILITY**

A utility is defined as an organization franchised by the county, municipal or state government or otherwise authorized by law to install, operate and maintain facilities in public rights-of-way for the purpose of distribution of fuel or energy, for communication, or the distribution of a public water supply and collection and conveyance of sanitary sewage or storm water.

#### **SECTION 5. PATCHING STANDARDS**

The technical standards for acceptable temporary and permanent utility patching in flexible asphalt pavement for the Town shall be the same as those found in Standards 300.18 and 300.19, along with the mill and overlay requirements for roadways under the 5-year moratorium period, Attachment 6, as published in the County Specifications Manual.

#### **SECTION 6. WSSC'S EXEMPTION**

Pursuant to Section 27-101 et seq. of the Md. Public Utilities Article of the State Code, the Washington Suburban Sanitary Commission ("WSSC"), as a state agency, is generally considered exempt from this Ordinance; however, WSSC is required by State statute to provide advance notice of its projects and to repair and leave the public roadway in the same or a superior condition to that existing before the public roadway was disturbed and furthermore to pay all costs for returning the public roadway to the same or superior condition.

#### **SECTION 7. ACCEPTANCE OF IMPROVEMENTS OR REPAIRS**

Upon completion, any construction, improvements, repairs or other activity as certified by the Town as being in full compliance with this Ordinance and the County Specifications Manual, and notification thereof to the Town, the road, sidewalk, or whatever work was performed in the right-of-way shall be deemed to be accepted for maintenance by the Town from and after the acceptance date.

#### **SECTION 8. PERMIT REQUIRED, FEES, APPLICATION FORMS, AND RECORDS**

(A.) A permit as required by this Ordinance obtained from the Town Clerk or his designee may be issued, the regulatory fees for which shall be established herein or amended by the Town Board of Commissioners by written resolution adopted from time to time. Any applicant obtaining a Town construction permit involving abutting real property, in addition to any permits required of this Section, shall receive a credit for any additional permits issued under this Ordinance.

(B.) Unless the Board establishes such fees or fee schedule by resolution, all applicable fees found in County law as incorporated herein shall be calculated pursuant to the applicable County provision or County Specifications Manual using the Town's version of the utility permit fee calculation sheet, which is a modified attachment of said County Specifications Manual. The various permit fees are initially established as follows:

(1) Special Utility Permit Fee – This permit typically covers completely new utility pipeline or facility construction and includes an administrative and inspection fee, a moratorium fee, if applicable, and any required engineering fee as follows:

- (I) Administrative and Inspection Fee – A \$250.00 flat or lump sum fee, plus \$2.00 per linear feet of installed utility within the paved area, \$.50 per linear feet for underground work outside the improved roadway, or plus \$.20 per liner feet for aerial utility facility installations;
- (II) Moratorium or Impact Fee - \$10.00 per linear foot of roadway cut paid for disturbance of streets less than five years old since paving; and
- (III) Engineering Fees – a variable lump sum as described in Section 10.

(2.) Maintenance Utility Permit Fee – This permit typically covers routine maintenance or repairs of existing facilities, which may be paid upon permit issuance or on a quarterly or other periodic basis in the form of an escrow account maintained by the Treasurer, and includes an application and processing fee, an administration and inspection fee, and any engineering fees as follows:

- (I) Application and Processing Fee - \$250.00;
- (II) Administrative and Inspection Fee - \$125 for small cuts (i.e., < 100 sq. Ft.), \$300 for large cuts including other fees as further described in Section 3.3.2 of the County Specifications Manual; and
- (III) Engineering Fees – A variable lump sum as described in Section 10.

(3.) Extension fee – The Special Utility Permit shall be issued for a standard duration of 90 calendar days. A \$100.00 fee shall be paid to extend the duration of a Special Utility Permit.

(C.) Any forms, applications, form letters, schedules, documents, worksheets, templates, or permit fee calculation sheets prepared or used by the County Government pursuant to County law, as incorporated by reference in this Section, may be modified for use by an applicant, subject to further modification and approval by the Town for conformity to this Section, when applying for any permits required by this Ordinance.

(D.) The Town Code Enforcement Officer or his designee shall cause to be obtained and maintained photographs of the proposed and finished work areas in order to document the before and after condition of the effected municipal property. These photographs shall be maintained by the Town Records Custodian with the permit file pursuant to the Town’s approved Records Retention Schedule.

**SECTION 9. AUTHORITY TO HIRE TOWN ENGINEER TO SUPERVISE OR INSPECT STREET IMPROVEMENTS**

The President of the Board of Commissioners or his designee is authorized to employ the services of an engineer for purposes of supervising or inspecting any street improvements described in this

Ordinance, and may require as a condition of granting a permit under this Ordinance that all street improvements be subject to the supervision or inspection of the Town's designated engineer.

#### **SECTION 10. ENGINEERING FEE**

In making application for authorization to allow work within a Town right-of-way, and a permit as provided in this Ordinance, the applicant shall designate whether or not the work will be performed under the supervision of his or its own licensed engineer. If the applicant has the service of his or its own engineer, he shall, in addition, pay to the Town the sum of three percent (3%) of the total cost of such improvements to cover the actual expense of inspection of the improvements by the Town. If the applicant does not have the services of an engineer, he shall pay to the Town the sum of six percent (6%) of the total cost of such improvements to cover the expense of preparing plans and specifications and for supervision and inspection of the improvements by the Town. Any surplus or unused balance of this fee shall be refunded to the applicant once the project is certified and accepted by the Town. Should the Town incur additional costs for engineering services exceeding the amounts stated herein, the Treasurer may invoice the permittee after giving reasonable notice and an opportunity to alter the extent of its maintenance project or improvements, if practical. These fee requirements are in addition to the various permit fees established by this Ordinance and which altogether or in part may be waived or modified by the Town Board of Commissioners by written resolution, or motion recorded in the journal.

#### **SECTION 11. SUNDAY AND HOLIDAY WORK**

(A.) No work shall be permitted on Sunday, except in cases of emergency, and then only to such extent as it is absolutely necessary and with written permission of the President of the Board of Commissioners. The permit holder shall not be permitted to work on any days which are legal Town holidays as designated by the Board of Commissioners, unless granted permission by the President. If a permittee desires to work on any such legal holidays, permission shall be sought from the President in writing at least three (3) days in advance of such holiday. The request shall state the place where such work is to be conducted.

(B.) Work hours. No work shall be performed after 6:00 p.m. or before 7:00 a.m. without prior written approval by the President.

#### **SECTION 12. RESPONSIBILITY FOR DAMAGES**

The permit holder shall assume all responsibility for damages sustained to persons or property due to the carrying on of work, and shall be responsible for all accidents to persons and property, saving and holding the Town harmless from all damages resulting from any accidents which may occur to the construction operations. The permittee is responsible for the repairs of damages prior to release of any applicable bond. If the Town is made a party to any action because of the granting of a permit to the permit holder, the permit holder shall be required to pay all costs and fees incurred by the Town, including the legal fees of the Town Attorney or other legal counsel.

#### **SECTION 13. COMPLIANCE WITH SAFETY REQUIREMENTS**

(A.) The person or entity to whom a permit is issued pursuant to this Ordinance and any agents, servants and subcontractors shall comply with all written requirements of the President of the Board of Commissioners directed to the permittee, either before or during the course of construction or work, which are deemed necessary in the interest of public safety or for the avoidance of unnecessary inconvenience to the public during such construction.

(B.) The permittee shall have the legal duty to provide for the following, whether or not included in the written requirements of the President:

- (1.) Proper lighting and barricading of excavations or other hazards at all times;
- (2.) Adequate access, including snow removal from the road to driveways and sidewalks abutting occupied residences;
- (3.) Control of dust conditions, as directed by the inspector;
- (4.) Correction of muddy or soft subgrade by placement of temporary gravel or stone thereon;
- (5.) Prompt removal of any dirt and debris from streets in and adjacent to the work area during the construction period, as directed by the inspector; and
- (6.) Other measures, as directed by the inspector or Chief of Police, to ensure the public safety.

#### **SECTION 14. CONFLICT OF LAWS AND WAIVERS**

Except as otherwise provided in this Ordinance, in any case where a provision of this Ordinance is found to be in conflict with a provision of any road construction, zoning, building, grading, housing, fire, safety, health or any other ordinance or code of this Town, Prince George's County, or the State of Maryland existing on the effective date of this Ordinance, the provision which establishes the higher standard for the promotion and protection of the health, safety and welfare of the public shall prevail. The Board of Commissioners may expressly grant waivers from the strict application of this ordinance.

#### **SECTION 15. APPROVAL OF THE PLANNING COMMISSION, SANITARY COMMISSION OF PRINCE GEORGE'S COUNTY OR OTHER ENTITIES**

If any design for anticipated work covered by the application for a permit required by this Ordinance requires further approval by the Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission, "Miss Utility", the Maryland Department of the Environment, Prince George's County, or the Prince George's County Soil Conservation District, the applicant shall certify to the Town that the proposed application for work has been properly approved by said agencies or entities and that the work shall conform to all other applicable municipal, county, state and federal laws, rules, regulations and ordinances.

#### **SECTION 16. PENALTIES FOR VIOLATION**

(A.) Any person or entity making street improvements or repairs as described in this Ordinance without first obtaining the authorization and permit, in violation of the provisions of this Ordinance, which is declared to be a misdemeanor, shall, upon conviction thereof, be subject to a

fine of not more than one thousand dollars (\$1,000) or imprisonment of not more than six (6) months, or both.

(B.) The following violations of this Ordinance shall be considered municipal infractions:

- (1.) Knowingly submitting a false or incomplete permit application;
- (2.) Failure to respond to a corrective order issued by a Town official or inspector;
- (3.) Construction which does not comply with an approved plan, specification or permit;
- (4.) Working on work days or during work hours prohibited by this Ordinance;
- (5.) Working during the period of a stop work order; and
- (6.) All other violations of provisions of this Ordinance.

(C.) Except as stated in Subsection A of this Section, violations of this ordinance shall be considered a municipal infraction and are subject to the maximum fine for a municipal infraction permitted by the Town Charter. Each day a violation continues is deemed a separate offense and is subject to an additional citation and fine.

(D.) In addition to any other fine, penalty, or remedy, a violator may be required to remove or restore, within five (5) calendar days of the date of notification of the violation, any structure, alteration, addition or excavation, erected or commenced, and constituting the basis of the violation, and if so required, upon expiration of such five (5) days, each additional day during which that person shall not have so removed or restored the same, shall constitute a further and separate violation subject to such fine.

(E.) The Town also may correct or abate any such condition, or discrepancy at the violator's expense and, after obtaining a judgment from the court, certify any costs thereof to the County Finance Office to be collected in the same manner as taxes.

## **SECTION 17. ADMINISTRATIVE AND JUDICIAL REVIEW**

(A.) A decision of the President of the Board of Commissioners or other official of the Town under this Ordinance may be appealed for error to the Town Board of Commissioners.

(B.) Except as stated herein, any person aggrieved by a decision of the Board of Commissioners with regard to an application for a permit filed under the provisions of this Ordinance and who appeared before the Board in person, by an attorney, or in writing, shall have the right to appeal the decision of the Board to the Circuit Court for Prince George's County, Maryland under the provisions of Title 7, Chapter 200 of the Maryland Rules of Procedure.

(C.) Denial of a refund of any fee paid to the Town as required by this Ordinance may be appealed pursuant to Title 13 of the Tax-General Article of the Annotated Code of Maryland to the Maryland Tax Court.

AND BE IT FURTHER ENACTED AND ORDAINED by the Board of Commissioners of the Town of Upper Marlboro, Maryland that said Board may set the fines, penalties, and fees associated with violating this Ordinance from time to time by resolution.

AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that any prior ordinances adopting and enacting any provision of this Ordinance or any other ordinance or resolution previously adopted pertaining to a subject or subjects embodied by the title of this Ordinance or the provisions found in conflict herein shall be deemed repealed and superseded by the provisions of this Ordinance, and should a previously enacted ordinance cover a provision or subject that is not covered by this Ordinance, it shall remain in full force and effect unless it directly conflicts with the express language of this Ordinance.

AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this Ordinance shall become effective at the expiration of twenty (20) calendar days following approval by the Board of Commissioners.

AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this Ordinance shall be posted in the Town Hall office, and it or a fair summary thereof, shall be published once in a newspaper of general circulation in the Town.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

THE TOWN OF UPPER MARLBORO,  
BOARD OF COMMISSIONERS

\_\_\_\_\_  
Nancy C. Clagett, Commissioner

\_\_\_\_\_  
Linda Pennoyer, Commissioner

Attest:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
James Storey, President