

Chapter 11

STREETS AND ROADS*

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ARTICLE I. MUNICIPAL ROADS

DIVISION 1. GENERALLY

Sec. 11-1. Types of roads.

(a) *Town way.* Town ways are roads or streets generally created by some action of the municipality, such as dedication and acceptance, purchase and acceptance, eminent domain, or prescriptive use. Some town ways came into existence when state law transferred the ownership and responsibility for maintaining county roads to the town, but applies to only those county roads that had not been abandoned or discontinued before July 29, 1976. Town ways may also be created when the state reclassifies a road and turns it over to the town. A municipality must keep

***Editor's note**—Ord. No. C2001-29, adopted Nov. 8, 2001, amended provisions formerly set out as Arts. II and III of this chapter in their entirety to read as herein set out in Art. I, Divs. 1—5. Former Art. II, §§ 11-26, 11-27, pertained to streets and derived from Ord. No. C86-6, adopted July 3, 1986; and Ord. No. C96-10, adopted June 13, 1996. Former Art. III, §§ 11-41—11-43, pertained to streets and derived from Ord. No. C87-6, adopted Aug. 6, 1987. At the editor's discretion, provisions formerly designated as Arts. IV and V of this chapter have been redesignated as Arts. II and III.

Cross references—Motor vehicles and traffic, Ch. 9; one-way streets, § 9-66; streets designated as not a through street, § 9-67; stop intersections designated, § 9-68; yield intersections designated, § 9-69; dead end streets designated, § 9-70; children playing areas designated, § 9-71 et seq.; hidden driveways designated, § 9-73; speed limits designated, § 9-75; stopping, standing, parking regulations, § 9-91 et seq.

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town ways "in repair so as to be safe and convenient for travelers with motor vehicles" (23 M.R.S.A. Sec. 3651) and keep such ways passable if they become "blocked or encumbered with snow" (23 M.R.S.A. § 3201).

(b) *Public easement road or street.* A public easement road differs from a town way in that while the general public has a right of unobstructed access by motor vehicle or foot over a public easement road, the municipality is not obligated to maintain or repair the road. The town council may authorize the repair and maintenance of public easement roads, but is not required to do so (23 M.R.S.A. § 3105). When the town council does elect to maintain a public easement road, it is not required to do so to the same degree that it maintains a town way. The town is not liable for defects in or lack of repair to public easement roads (23 M.R.S.A. §§ 3651, 3655).

(c) *Private roads.* A privately owned road, commonly called a "private road", is a road over which neither the municipality, nor the general public has the right to pass by vehicle or on foot. In general, the town has no legal right to spend public funds to repair, maintain, or plow privately owned roads. In emergency cases, such as a house fire in winter, it is legal to send a snowplow down a privately owned road so that an emergency vehicle can get in, but the owner is responsible for ensuring that the road is sufficiently maintained to allow the plow to get through.

(d) *Status-quo roads.* This classification of municipal road was locally adopted in 1982; however, it is no longer used by the town. Roads in this classification were considered officially "discontinued", however, a limited amount of maintenance and upkeep was performed by the town. Town roads that were previously classified as "status-quo" have either been fully discontinued or accepted as public easement roads (see subsection (b) of this section).

(e) *State and state-aid roads.* These are roads owned by the state, however, different levels of maintenance are performed on the roads based on classification. Generally speaking, maintenance (culverts, construction, paving, etc) on this class of road is

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performed by the state department of transportation (DOT). However, the town may have responsibility to remove snow from portions of state and state-aid roads. Individuals should contact the town office or public works department for information concerning the agency responsible for snow removal on a particular state road within the town.
(Ord. No. C2001-29, 11-8-01)

Sec. 11-2. Creation of town streets and roads.

(a) *Dedication and acceptance.* By state statute, dedication and acceptance is a two-step process. First, the landowner/a must file with the town council a "petition, agreement, deed, affidavit or other writing" (23 M.R.S.A. § 3025) describing the property that the owner/s intends to dedicate (give) to the town for the purpose of creating a public road, and stating that the owner/s waives any claim for damages. Dedication may also be accomplished by the sale of lots with reference to an approved subdivision plan, that has been recorded at the registry of deeds, and shows or describes the property as a road. Second, the town council must vote to accept the dedication. Upon acceptance of the dedication the council will acquire a fee simple interest in the property unless the dedication document or acceptance order states otherwise. The acceptance order adopted by the council will state whether the road is accepted as a town way or as a public easement. In order to be accepted as a town way, a road or street must meet the road standards specified in section 11-41. However, even if a road is built to or beyond ordinance standards, the municipality has no legal obligation to accept it as a public easement or town way. When a road is presented to the town for acceptance as a town way, any initial costs for determining if the presented road meets town standards for acceptance shall be borne by the town. If additional inspections are requested by the party seeking acceptance, all costs for such inspection shall be the responsibility of that party. A road may not be accepted on a conditional basis, such as the occurrence of some future event or alteration of the existing road. The dedication and acceptance process will generally require the conduct of a public hearing and the publishing of required notice.

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(b) *Purchase and acceptance.* The town may obtain property for road purposes by purchase and acceptance. This differs from a dedication in that the landowner is paid for the property.

(c) *Eminent domain.* Eminent domain, also called "laying out and acceptance" or "condemnation", is a process which allows the town to purchase private land for public use, even if the landowner objects. Eminent domain can be used to create either a town way or a public easement road or street. Damages in an eminent domain proceeding are determined in accordance with 23 M.R.S.A. § 3029 and 23 M.R.S.A. § 154. Damages to which the landowner is entitled may include the fair market value of the land, as well as "severance damages". Severance damage is the reduction in value to the remaining land as a result of the taking. A party may appeal an eminent domain proceeding to superior court.

(d) *Prescriptive use.* A public road can be created by long-term public use, without any formal acceptance or taking by the municipality. A road created in this manner is called a "prescriptive easement", but should not be confused with the term "public easement". Depending upon the type of use that has been made of the road, a road created by prescriptive use can be a town way or a public easement road. A prescriptive use easement will not arise where the use is with the landowner's permission or agreement. Sporadic, minor repairs financed by the town are not enough to create a town way or public easement road or street. The fact that a town way is created by prescription rather than by a formal method does not reduce the town's maintenance obligation.

(e) *Acceptance of previously discontinued or abandoned roads.* Any road that was previously discontinued or abandoned by the town must meet the road standards outlined in this article prior to being considered for acceptance as a town way or public easement road (see subsection (a) of this section).
(Ord. No. C2001-29, 11-8-01)

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Sec. 11-3. Disposing of town roads and streets.

(a) *Discontinuance.* Discontinuance is a formal procedure established by Maine state law for the purpose of terminating the town way status of roads or streets, in whole or in part (23 M.R.S.A. § 3026).

- (1) *Procedure.* The following procedures will be used when seeking permanent discontinuance of a town way:
 - a. The town council must determine whose property abuts the road in question and the amount of damages that should be paid, if any.
 - b. The town council will provide "best practicable notice" of the proposed discontinuance to all abutting property owners and to the planning board. The notice will indicate the road (or portion of road) proposed for discontinuance, and the date, time and place of the meeting at which the council will discuss the matter.
 - c. The town council will meet to determine whether or not to order the discontinuance. This should be done at the meeting indicated in the notice sent to the abutters. This can be done at a regular meeting of the town council or can be done at a special meeting. In either case, the meeting is a "public meeting" subject to notice. If it is decided to proceed with discontinuance, an "order of discontinuance" should be prepared and signed.
 - d. The "order of discontinuance" signed by the town council must then be filed with the town clerk and a "notice of discontinuance" should be mailed to the abutting property owners along with a copy of the "order of discontinuance".
 - e. Following delivery of the formal "order of discontinuance" with abutting property owners, the town council must take final action on the discontinuance and damage awards, if any. Until this step is taken, the discontinuance action is incomplete. If the council rejects the order, the discontinuance fails.

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- f. If the discontinuance action is approved, the town clerk will record an attested "certificate of road discontinuance" at the registry of deeds.
- (2) Appeal of discontinuance. Any person aggrieved by the town's decision to discontinue (or by its failure to do so) may appeal to the superior court within thirty (30) days of the decision. Any person aggrieved by the town's measure of damages may appeal to the superior court within sixty (60) days after the town council approves the "order of discontinuance".
- (3) *Legal status of discontinued roads and streets.* Depending upon when a road was discontinued and the language of the discontinuance order or article, the town may retain a public easement over a discontinued road or a portion of the road. A discontinuance which occurred before September 3, 1965 and failed to specify that an easement was being retained resulted in no public easement and ownership of the way reverted to the abutting land owners. By contrast, a discontinuance occurring on or after September 3, 1965 terminates the town's maintenance obligation, but leaves a public easement automatically, unless the article or order authorizing the discontinuance specifically rejected retention of a public easement. The municipality has the option, but not the obligation to maintain such an easement.
- (b) *Statutory abandonment.* If a town way has not been kept passable for motor vehicles or maintained to any significant extent at public expense for a period of thirty (30) or more consecutive years, it may be presumed abandoned. After determining that a road meets the criteria of statutory abandonment, the town council shall hold a public hearing and act on an order of "determination of presumption of abandonment". If approved by a majority vote of the town council, the order should be filed with the registry of deeds. Once a road is formally declared abandoned, it is relegated to the same status as it would if it had been discontinued. If the abandonment occurred on or after September 3, 1965, a public easement remains unless otherwise noted in the abandonment order.
(Ord. No. C2001-29, 11-8-01)

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Sec. 11-4. Road closings and weight restrictions.

(a) *Closing roads to winter maintenance.* The town council may designate that certain roads or portions of roads be closed to winter maintenance. The term of closure for winter maintenance can range from one (1) to ten (10) years. Under this procedure, maintenance of selected roads (including town ways public easement roads) can be discontinued for specific months spanning the period November to April. Action by the town council to close selected roads to winter maintenance must be taken between May 1 and October 1. The procedure for closing roads for winter maintenance is as follows:

- (1) *Selection of road(s).* The town council, or upon petition by at least seven (7) voters, draw up a list of proposed roads for closure. Determination of whether or not to close a road to winter maintenance is generally based on population and use during the winter months.
- (2) *Public hearing.* The town council will schedule a public hearing to discuss the proposed winter closures. Notice of public hearing must be placed in some conspicuous public place at least seven (7) days prior to the hearing.
- (3) *Order for closure.* Following the public hearing the council will file with the town clerk an order specifying the road(s) (or portions thereof) to be closed to winter maintenance. The order must specify the months of non-maintenance and the number of years the closing order will be in effect. A winter closing can span a period of one (1) to ten (10) years; however, if the order fails to specify, the length of closing is one (1) year.
- (4) *Order approval.* Once the order is completed and filed with the town clerk, the town council must act on each order.

(b) *Temporary closings and weight restrictions.* Many roads are vulnerable to damage during certain times of the year. This provision allows the town council to authorize the road commissioner to close a road to all traffic, or to impose both temporary and permanent restrictions on the gross weight, speed, and operation of vehicles on town roads and bridges depending on the

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circumstances. Road weight restrictions generally do not apply to the operation of emergency vehicles, fuel deliveries, and utility trucks. In some cases, the town manager or public works director may authorize the issue of a permit for certain vehicles to operate on weight restricted town roads. Violation of a posting or permit is a traffic infraction punishable by a mandatory minimum fine of two hundred fifty dollars (\$250.00) (29-A M.R.S.A. § 2395). All funds collected from such fines are retained by the town.

- (1) *Closings for emergencies.* A police officer, on-scene commander of a fire fighting operation, director of public works, or the local emergency management director may initiate the emergency closure of a town road. The town manager and/or town council may also direct the closure of a town road or street for emergency purposes.
- (2) *Closing for special activities and events.* The town council is the sole approving authority for temporary closure of streets, roads, and municipal parking areas. Requests by citizens and organizations will be submitted in writing to the town council. The requests will be acted upon during a regularly scheduled meeting of the council.
- (3) A permit is required to operate a vehicle in excess of thirty-two thousand (32,000) pounds on the following roads: Owlsboro Road, Eaton Road, and Charleston Road Extension.
(Ord. No. C2001-29, 11-8-01; Ord. No. C2004-12, 5-13-04)

Secs. 11-5-11-8. Reserved.

DIVISION 2. ROAD MAINTENANCE AND REPAIR

Sec. 11-9. Obligation to maintain and repair roads.

The director of public works is charged with the responsibility to oversee all programs associated with the maintenance and repair of town ways and public easement roads. In this capacity he will also develop and maintain a long range plan of the maintenance and paving of the town's roads. He will also main-

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tain a current inventory of all town ways and public easement roads as well as historical information on all active and discontinued roads and streets.

- (1) *Town ways.* State law requires that town ways be kept open and in repair so as to be "safe and convenient" for travelers with motor vehicles (23 M.R.S.A. § 3651). Additionally, the town is required to remove snow from town ways and make them passable in a reasonable amount of time. Private individuals have no right to repair or reconstruct town ways. Such repairs may only be done by the town public works department, department of transportation, or their designated contractor.
- (2) *Public easements.* The town has broad discretion in deciding how to care for and maintain public easement roads and streets. The municipality is not obligated to maintain or repair a public easement road. Also, when the town actively maintains a public easement road it is not obligated to perform the level of maintenance required on a town way. The town is not liable for defects in or lack of repair to public easement roads (23 M.R.S.A. §§ 3651, 3655), but may be liable for injuries caused by negligent acts or omissions in its ownership, maintenance or use of vehicles or machinery and equipment on such roads.
- (3) *Privately owned roads.* Public funds or equipment may not be used to maintain privately owned roads.
(Ord. No. C2001-29, 11-8-01)

Sec. 11-10. Road maintenance, reconstruction, and paving.

The town conducts a seasonal road maintenance program which includes road repairs, major reconstruction projects, paving, ditching, culvert work, roadside brush cutting and tree removal, sidewalk and bridge maintenance, and sign replacement.
(Ord. No. C2001-29, 11-8-01)

Sec. 11-11. Winter road maintenance and snow removal.

(a) *Town ways.* The town is required to keep town ways passable if they become "blocked or encumbered with snow" (23 M.R.S.A. § 3201). Every attempt will be made by the town public

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works department to remove snow and ice from town ways in an expeditious manner. Generally speaking, the more heavily traveled roads will be cleared first.

(b) *Public easement roads.* The level of snow removal and winter maintenance on public easement roads will be determined by the town council. The town manager and public works director will annually conduct a review of all public easement roads to determine if the current level of winter maintenance should be changed. Maintenance of a road can be discontinued for a specific number of months from November to April, inclusive. Any recommended changes will be presented to the town council for review and action.

(c) *Privately owned roads.* Removal of snow from privately owned roads will generally not be performed with town equipment. There may be unique situations which could necessitate the use of town equipment, such as providing access for vehicles in the event of an emergency.

(d) *Sidewalks.* The obligation to remove snow from town ways also requires the removal of snow and ice from sidewalks; however, as a matter of prioritizing the use of personnel and resources the town will generally remove snow from sidewalks adjacent to town ways only after roads have been cleared and are safe for travel by motorists. The town is not liable for injuries caused by snow or ice or slippery conditions on sidewalks (23 M.R.S.A. § 3658).

(e) *Public access to town sand.* Residents are allowed limited access to the town road-sand stockpile. Quantities are limited to a maximum of two (2) hand-held buckets per person on any single visit to the site. Commercial use of sand from the town stockpile is absolutely prohibited. Individuals violating this policy will lose privileges to use this resource for a minimum of one (1) year. (Ord. No. C2001-29, 11-8-01)

Sec. 11-12. Culverts and driveways.

(a) *Culverts.* This section applies primarily to the installation and maintenance of culverts that underlie private driveways along town ways. Situations differ on public easement roads

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(depending on the level of maintenance determined by the town council) and on state/state-aid roads (a permit is required from the DOT). When a property owner abutting a town way wishes to install a driveway and/or culvert, the property owner must first acquire a permit and have a representative of the town public works department inspect the site (information pertaining to permits is provided in section 11-28). The size and type of all culverts installed on any town street or road must be approved by the public works director. The property owner is generally responsible for the purchase of the first culvert. The town is responsible for the culvert's installation as well as all follow-on maintenance and subsequent culvert purchase and installation. The town will provide for the purchase of the first culvert and subsequent replacement if the culvert is solely for the benefit of the road, and does not provide access to an abutter's property. To ensure proper drainage, culverts installed on collector roads (a road or street servicing at least fifteen [15] lots or dwelling units, or serving as a feeder to a major thoroughfare) must be a minimum of eighteen (18) inches in diameter, and culverts installed on all other streets and roads must be a minimum of fifteen (15) inches in diameter. If conditions dictate the culvert minimum size may be waived by the road commissioner on a case-by-case basis.

(b) *Driveways.* A person seeking to construct a new driveway or change an existing driveway location, grade or kind of use within the right-of-way of a town maintained road must acquire a permit from the town (see section 11-28). The town road commissioner is the approval authority for driveway permits. Factors such as line-of-sight, use, safety, and drainage will be considered in the evaluation of application for a driveway permit. A permit must be obtained from the state department of transportation (MDOT) if the driveway construction is planned to access a state/state-aid road.

(c) *Permit fees.* Persons seeking permits for the installation of culverts along town right-of-ways or construction of driveways that access town ways must pay a non-refundable fee of twenty-five dollars (\$25.00).

(Ord. No. C2001-29, 11-8-01; Ord. No. C2004-17, 7-8-04)

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Sec. 11-13. Ditches and drains.

Improper drainage is the leading cause of road deterioration. Ditches and drains are therefore critical aspects of road maintenance. The town has a legal duty to maintain and keep in repair the drains, culverts, and ditches it has established, regardless whether they are located on public or private property. No persons shall willfully cultivate plants, operate farm machinery, or deposit fill within municipal ditches, drains, or culverts. Persons interfering with the town's ditches, drains, and culverts are subject to a fine as specified in 23 M.R.S.A. § 3252, and 30A M.R.S.A. §§ 3401-3409.
(Ord. No. C2001-29, 11-8-01)

Sec. 11-14. Brush and tree removal.

The town's obligation to keep town ways "safe and convenient" (23 M.R.S.A. § 3651), includes the duty to remove roadside brush, trees, and grass that could pose a road safety problem. The town may, at its expense, remove healthy or dead trees located within the right-of-way if they pose a safety hazard to the traveling public, or impede the town's ability to maintain the road. If a tree is located in the right-of-way, but is not a safety hazard (in the determination of the public works director/road commissioner), then the town is under no obligation to remove it, even if the abutter requests that the tree be removed. If the reason for removing the tree is to protect an abutter's house or property, rather than the traveling public, then the abutter shall pay the costs of removal. Trees located outside the road right-of-way will generally not be removed by the town; however, the town may cut any limbs in the air or roots on the ground which intrude into the right-of-way, even if the tree trunk is outside of the right-of-way.
(Ord. No. C2001-29, 11-8-01)

Sec. 11-15. Sidewalks and bridges.

(a) *Sidewalks.* The town must maintain sidewalks existing within the right-of-way of a town way, and is responsible for injuries caused by defects in the sidewalk. However, municipalities are not liable for injuries caused by snow or ice or slippery conditions on sidewalks (23 M.R.S.A. § 3658). The town is not

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responsible for the maintenance of sidewalks on public easement streets and roads, and may not maintain sidewalks along privately owned roads.

(b) *Bridges.* Bridges in the town are maintained by either the town or the MDOT. State laws pertaining to bridges are found in 23 M.R.S.A. §§ 351-610-J. Generally, the party responsible for a particular bridge is the party responsible for the adjoining

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roadway. A listing of the agency responsible for maintaining specific bridges within the town is maintained by the town manager.

(Ord. No. C2001-29, 11-8-01)

Sec. 11-16. Work request/complaint procedures.

Individuals requesting road maintenance or wishing to lodge a complaint about road conditions, maintenance, or snow removal should call or visit the town office. When a work request or complaint is received it will be processed with copies distributed to the director of public works and town manager.

(Ord. No. C2001-29, 11-8-01)

Secs. 11-17-11-24. Reserved.

DIVISION 3. CONTROL OF ROADS

Sec. 11-25. Traffic and parking.

30-A M.R.S.A. § 3009 and Chapter 9, section 9-26 of this Code provides exclusive authority to municipal officers to enact ordinances regulating traffic and parking on municipal streets and roads. The town council also performs the function of the town traffic control board. Traffic regulation includes the authority to erect yield signs, stop signs and other traffic control devices; to designate ways and portions of ways as being closed to traffic, and to designate one-way streets. It also includes control of pedestrian traffic on public ways, establishment of cross walks, creation of "handicapped parking" spaces, establishment of parking restrictions and designation of "no-parking" areas.

(Ord. No. C2001-29, 11-8-01)

Sec. 11-26. Speed limits.

Beginning in 2001, municipalities were empowered with the authority to set speed limits on roads under their jurisdiction within certain guidelines (29-A M.R.S.A. § 2075(3)). The town's

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traffic control board has exclusive authority to designate speed limits on town ways and public easement roads. See Chapter 9 (Motor Vehicles and Traffic) of this Code for details.
(Ord. No. C2001-29, 11-8-01)

Sec. 11-27. Road boundaries.

One of the more common difficulties related to municipal roads is defining the legal boundaries of town ways and public easement roads. Most roads are wider than the traveled portion of the road, and include a non-traveled portion of the right-of-way. For example, a three-rod road is forty-nine and five-tenths (49.5) feet wide, but often only twenty-five (25) through thirty (30) feet is paved or graded for the passage of vehicles. When a road's boundaries cannot be clearly determined, the municipal officers may treat it as a three-rod road which is measured from the center of the traveled way (one and one-half (1½) rods on each side of the road's centerline).
(Ord. No. C2001-29, 11-8-01)

Sec. 11-28. Permits required.

(a) *Road opening permit.* A road opening permit shall be obtained from the director of public works/road commissioner before excavation work is done on any town way or public easement road. The latest date of opening will be October 15 unless a special permit is issued on a day-to-day basis. The person completing the permit (permittee) shall be liable for the acts of his/her agent and/or contractor for any damage done to both public and private property located above or below ground. A bond may be required in some cases. The town manager will determine whether or not a bond is required, and in what amount. The permittee is responsible for performing the following:

- (1) Provide proper barricading and lighting of the site so that all traffic, vehicular, pedestrian or other shall be adequately protected.
- (2) Insure the site is backfilled completely with gravel (except for the minimum amount of material necessary to immediately protect an underground pipe or conduit from damage) and completely remove material from roadway

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without damage to the way road surface. In the event the surface being opened was paved, the opening must be resealed with a grade and quantity of paving material that is approved by the public works director.

- (3) Insure that all excavated material (except the minimum necessary to immediately protect an underground pipe or conduit) be deposited outside of the roadway or transported from the scene of the work.

(b) *Driveway and culvert permit.* A person seeking to construct a new driveway, install a new culvert, or change an existing driveway location, grade, or kind of use within the right-of-way of a town maintained road must acquire a permit from the public works department. A representative of the public works department will visit the site prior to issue of the permit. In the case of culvert installations, the permit will specify the minimum diameter culvert to be used in the construction.

(c) *Failure to obtain a permit.* Performing work within the town right-of-way without obtaining the required permit may be subject to a fine up to one hundred dollars (\$100.00) per day for each day that the violation exists. All funds derived from such fines will be retained by the town.

(Ord. No. C2001-29, 11-8-01)

Sec. 11-29. Obstructions.

The town may be liable for injuries caused by obstructions on town ways. Therefore, the person responsible for creating the obstruction will insure its immediate removal. In the event the person responsible for creating the obstruction fails to remove it in a timely manner, the public works director/road commissioner or municipal officers have the authority to remove said obstruction and seek to recover the expense of removal from the responsible party. The following addresses the authority to remove obstructions on public roads:

- (1) *Criminal offense.* It is a criminal offense (a Class E crime, **up** to six months imprisonment and a fine of up to one thousand dollars (\$1,000.00)) to obstruct a public way after having been ordered by a law enforcement officer to remove the obstruction (17A M.R.S.A. § 505).

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- (2) *Water flow.* It is a civil violation (punishable by a fine of up to \$50 and costs for the first offense and up to one hundred dollars (\$100.00) and costs for the second) to obstruct the flow of water in ditches or drains along the public way (23 M.R.S.A. §§ 3252, 3253). Interference with ditches, drains or culverts that are under municipal control is punishable by a fine of up to five hundred dollars (\$500.00) and three (3) months imprisonment (23 M.R.S.A. § 3251).
- (3) *Snow and slush.* The placing of snow, ice, or slush in a public way that has not accumulated naturally constitutes illegal obstruction. Such action is subject to a fine of not less than twenty-five dollars (\$25.00) or more than five hundred dollars (\$500.00) per incident (29-A M.R.S.A. § 2396).
- (4) *Public nuisance.* Obstruction of a public way is considered a public nuisance and can be prosecuted as a civil action in superior court (17 M.R.S.A. § 2802).
- (Ord. No. C2001-29, 11-8-01)

Sec. 11-30. Naming streets and roads.

(a) *Purpose.* The purpose of this section is to enhance the easy and rapid location of properties by law enforcement, fire, and emergency medical services.

(b) *Authority.* This section is adopted pursuant to and consistent with municipal home rule powers as provided for in Article VIII, Part 2, Section 1 of the Constitution of the State of Maine and 30-A M.R.S.A. § 3001.

(c) *Administration.* The process of naming town roads is administered by the municipal addressing officer. The municipal addressing officer shall maintain all official records relating to road naming, and maintain an official map which depicts road names and numbers. The municipal addressing officer is authorized to and shall assign road names and numbers to all properties, both on existing as well as proposed roads, in accordance with the following criteria:

- (1) *Numbering system.* A record of assigned street numbers will be maintained by the municipal addressing officer.

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Whenever any residence or other structure is constructed or developed, it shall be the duty of the new owner to obtain an assigned number from the town. This shall be done at the time of issuance of either a building permit or an electrical installation form. Additionally, any prospective sub-divider shall show a proposed road name and lot numbering system on the preliminary plan submission to the town planning board. Approval by the planning board, after consultation with the municipal addressing officer, shall constitute the assignment of road names and numbers to the lots in the subdivision.

- (2) *Official road names.* The process required for the naming of roads applies to both public and private roads. A current master index for all town roads will be maintained by the municipal addressing officer. Names assigned by the municipal addressing officer may be changed by action of the town council. In the event an individual or group wishes to change the name of a road, they must first submit a written request to the municipal addressing officer. The request will be presented to the town council who must hold a public hearing prior to taking action on the requested road name change. No two (2) roads shall be given the same name (e.g. Pine Road and Pine Lane), and no two (2) roads should have similar sounding names (e.g. Beech Street and Peach Street).
- (3) *Official road name signs.* Road signs designating the street name shall be erected by the town for all roads listed in the master index. Following the effective date of this section, road signs shall be erected for all new roads, public or private, that are developed by construction of dwelling units so that two (2) or more dwellings are serviced by said road. On those roads so created, that are not public roads it shall be the responsibility of the property owners to pay for the initial road sign and installation of the same. Costs shall be apportioned equally among the owners of dwelling units on said road, except that a property owner who creates a road and intends to sell dwelling units shall be responsible for the initial road sign cost. Road signs and placement shall conform to the

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Manual on Uniform Traffic Control Devices used by the MDOT and will be acquired and installed by the town department of public works. Maintenance and replacement of any such new sign shall become the responsibility of the town.

(Ord. No. C2001-29, 11-8-01; Ord. No. C2006-3, 4-13-06)

Sec. 11-31. Traffic signs.

The town's traffic control board has exclusive authority for the placement of traffic control signs on town ways and public easement roads within the town. For additional information pertaining to the placement of traffic signs see Chapter 9 of this Code.

(Ord. No. C2001-29, 11-8-01)

Sec. 11-32. Street lights.

Approval of requests for the installation of new streetlights is subject to approval of the town council. Requests shall be submitted in writing to the town manager for review prior to presentation for council action. Requests must include a description of the general location, the utility pole number to which the light is to be attached, and justification for the request. Action on such requests will be undertaken via the ordinance adoption process as outlined in the Dexter Town Charter.

(Ord. No. C2005-3, 1-13-05)

Secs. 11-33-11-40. Reserved.

DIVISION 4. ROAD STANDARDS

Sec. 11-41. Town ways.

(a) *Acceptance criteria.* This section addresses minimum road standards applicable to any road presented to the town council for acceptance as a town way after January 1, 2002. The road acceptance process is described in section 11-2. In order to insure compliance with road standards, an inspection of the proposed town way will be accomplished by the town's road commissioner, or his/her designated representative, prior to consideration by the

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town council. An affidavit will be prepared and presented to the town council regarding results of the inspection and providing a recommendation to be considered in the council's decision.

(b) *Right-of-way.* All streets and roads shall have a minimum right-of-way of fifty (50) feet, except where it can be determined that the purpose and intent of this article can be served and unnecessary hardship would otherwise be produced, then this requirement may be reduced to forty (40) feet. Collector roads shall have a minimum width of traveled way of twenty-two (22) feet and all other streets and roads shall have a minimum width of traveled way of twenty (20) feet. The traveled way should generally be centered in the right-of-way.

(c) *Construction.* All streets and roads shall be constructed to the following minimum standards; however, the town council may set higher requirements if conditions warrant:

- (1) *Sub-base.* The sub-base shall be compacted and free of vegetation or other deleterious substances, and the entire sub-base shall be covered over with a geo-textile fabric, minimum five (5) ounces.
- (2) *Base.* The base course shall be constructed of eighteen (18) inches of material specified in the Maine DOT Standard of Specifications for Highways and Bridges, section 703.6, compacted, in place, with no particle exceeding two (2) inches in diameter.
- (3) *Width of base.* No less than sixty (60) per cent of the right-of-way width.
- (4) *Surface course.* The surface course shall be constructed of twelve (12) inches of material specified in the Maine DOT Standard Specifications for Highways and Bridges, section 703.6, compacted, in place, with no particle exceeding two (2) inches in diameter.
- (5) *Roadway crown.* The roadway shall be constructed with a cross slope of one-fourth (1/4) inch per foot of paved road width.

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- (6) *Grades.* To ensure proper drainage, all street grades shall not be less than one (1) per cent; and to secure proper drainage and for public safety, not more than eight (8) per cent unless this requirement is specifically waived.
- (7) *Intersections and curves.* Street intersections and curves (vertical and horizontal) shall be so designed as to permit adequate visibility for both pedestrian and vehicle traffic. Curves, in general, shall have a minimum radius of one hundred seventy-five (175) feet and no interchange shall be acceptable at less than ninety (90) degrees for collector roads and sixty (60) degrees for all other streets and roads. Street lines shall be drawn so that intersections shall have a twenty (20) foot minimum curve radius. Any deflection angle in a street line greater than ten (10) degrees shall require a curved street right-of-way. Unless specifically approved, the roadway shall be centered within the right-of-way.
- (8) *Dead ends.* Permanent dead end streets and roads shall be designed at the closed end with a minimum diameter for the street line of not less than one hundred ten (110) feet.
- (9) *Shoulder width.* All town streets and roads shall have a minimum shoulder width of four (4) feet, with a shoulder grade of one-fourth (1/4) foot.
- (d) *Paving.* All streets and roads with access onto an existing paved state or local road shall be paved with bituminous pavement (defined as two [2] inch Grade B binder to Maine DOT Specifications of section 403.07, and one and one-fourth (1 1/4) inch Grade C surface to Maine DOT Specifications of section 403.08). (Ord. No. C2001-29, 11-8-01)

Sec. 11-42. Public easement roads and streets.

The town council may consider a street or road for acceptance as a public easement. In such cases there is no specific criteria for the layout and construction of such roadways, but it is highly unlikely that a street or road would be considered for such status unless its condition met reasonable standards which would sustain safe vehicular passage, allow for adequate drainage, and

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provide clearances necessary for unimpeded access of maintenance and snow removal equipment. Once accepted, the maintenance and repair of such roads is at the discretion of the town council, and the town is not required to maintain such roads to the same degree as town ways. Prior to presentation to the town council for acceptance, the town road commissioner, or his/her designated representative, will inspect the road, or section of road to be considered. Based on his/her findings, an affidavit will be prepared for presentation to the town council to include a recommendation of whether or not to accept the roadway as a public easement road or street.

(Ord. No. C2001-29, 11-8-01)

Secs. 11-43-11-49. Reserved.

DNISION 5. LIABILITY

Sec. 11-50. Generally.

Municipal liability for road-related injuries and damage is governed primarily by the Maine Tort Claims Act and the Highway Liability for Damages Act.

(Ord. No. C2001-29, 11-8-01)

Sec. 11-51. Maine Tort Claims Act.

The Maine Tort Claims Act (14 M.R.S.A. §§ 8101-8118) provides municipalities with broad immunity from liability for negligent acts or omissions. However, there are exceptions to the general rule of governmental entity immunity, and where these exceptions exist, the Tort Claims Act sets a liability cap of four hundred thousand dollars (\$400,000.00) for the municipality and ten thousand dollars (\$10,000.00) for municipal employees individually. The Tort Claims Act contains two (2) road-related exceptions through which a municipality may be held liable, and they include situations relating to road maintenance and the operation of vehicles.

(1) *Road construction, cleaning, and repair.* Under this law, two (2) elements must exist for liability to apply: (1) there must be construction, street cleaning, or repair opera-

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tions performed in a negligent manner, and (2) the injury must arise out of and occur during such operations. Both the injury and the negligence must occur during the cleaning, repair, or construction operation. "Construction" includes the initial building or rebuilding of a bridge or road, as well as building or rebuilding of ditches, shoulders and other components of the road. "Repair" operations includes maintenance paving, ditching, shoulder work, culvert replacement, etc. "Cleaning" means the removal of debris from roads or sidewalks, but does not include snowplowing.

- (2) *Negligent operation of vehicles.* The municipality is liable for its negligent acts or omissions in the ownership, maintenance or use of motor vehicles. This law covers almost every type of vehicle or equipment used in connection with road activities, regardless of whether the vehicle is engaged in repair, construction, snowplowing, or other activities when the injury occurs.

(Ord. No. C2001-29, 11-8-01)

Sec. 11-52. Highway Liability for Damages Act.

23 M.R.S.A. §§ 3651-3655, commonly referred to as the "Pothole Law", requires municipalities to keep town ways in good repair. In this case, the town's liability arises from the physical condition of the road, and not the negligent use of vehicles or equipment. Three (3) factors must be established before the town can be held liable under the "Pothole Law". First, the defect which caused the injury must be on a town way. In this case the town's liability does not extend to public easement roads. Second, the injury or damage must be the result of a highway defect. Third, the town must have had at least 24 hours' prior notice of the defect in question, and failed to correct the problem. Slippery road conditions resulting from snow and ice build-up have been held not to be a "defect" within the scope of this law.

- (1) *Notice of defect.* To be held liable for an injury or damage resulting from a road defect, the town must have at least twenty-four (24) hours' notice (prior to the injury) of the defect. This notice need not be in writing, and it need not come from any particular individual; however, it must be

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made to a municipal official who is responsible for road safety. Notice must describe the nature and location of the defect with sufficient accuracy so as to allow the town to make proper repairs. A general complaint about poor road conditions will not constitute proper notice.

(Ord. No. C2001-29, 11-8-01)

Sec. 11-53. Sidewalks.

The town is responsible for the upkeep of sidewalks within the right-of-way of both town ways and state/state aid roads in the town. However, unless specified otherwise, the town is not responsible for the maintenance and upkeep of sidewalks in the right-of-way of public easement roads. As with roads, while the town must keep sidewalks clear of snow, it is not liable for injuries caused by snow and ice, or slippery conditions on sidewalks.

(Ord. No. C2001-29, 11-8-01)

Sec. 11-54. Mailboxes.

The town is not liable for damage done to mailboxes located in the road right-of-way. However, if available, the public works department will provide temporary mailbox posts until such time that a damaged post and mailbox can be erected.

(Ord. No. C2001-29, 11-8-01)

Secs. 11-55—11-60. Reserved.**ARTICLE II. SIGNS*****Sec. 11-61. Community message board.**

(a) *General.*

(1) *Title.* This section shall be known as the Dexter Community Message Board Ordinance.

***Editor's note**—Ord. No. C2002-23, adopted Sept. 12, 2002, enacted new provisions which in effect superseded former art. II of this chapter in its entirety. Former art. II, §§ 11-61—11-78, pertained to cemeteries and derived from: Ord. No. 77-2, §§ 1, 3—9, adopted June 12, 1977; Ord. of Oct. 5, 1978, §§ 6, 9; Ord. No. C8384-4, § 8(d), adopted May 3, 1984; Ord. No. 92-4, adopted March 5, 1992; Ord. No. C92-11, adopted Oct. 1, 1992; Ord. No. 93-16, 1-13-94; Ord. No. C95-6, adopted June 8, 1995; and Ord. No. C99-11, adopted July 8, 1999. Current provisions relative to cemeteries are set out as ch. 3.6 of the Code.

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- (2) *Authority.* The state department of transportation gives the municipality provision to adopt and administer by ordinance the hold time on the display of a changeable sign. The statute is 23 M.R.S.A., Part 1 State Highway Law, Chapter 21, § 1914, On Premises Signs.
- (3) *Purpose.* The purpose of this section is to provide for the Town of Dexter Community Message Board, located at 1 Main Street, to reduce the hold time for community message display. This is a change from the statutory hold time of twenty (20) minutes.
- (4) *Applicability.* This section shall govern the one (1) community message board placed on the police department building located at 1 Main Street.

(b) *Definitions.*

Changeable sign means an on-premises sign created, designed, manufactured or modified in such a way that its message may be electronically, digitally or mechanically altered by the complete substitution or replacement of one (1) display by another on each side.

Display means that portion of the surface area of a changeable sign that is, or is designed to be, or is capable of being periodically altered for the purpose of conveying a message.

Message means a communication conveyed by means of a visual display of text.

Time and temperature sign means a changeable sign that electronically or mechanically displays the time and temperature by complete substitution or replacement of display showing the time with a display showing the temperature.

(c) *Requirements.*

- (1) The display of the community message board may consist only of alphabetic or numeric text on a plain background and may not include any graphic, pictorial or photographic images.
- (2) The hold time for the display shall be such that the display shall not be in a "strobe" mode or otherwise be a

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distraction to motorists, but shall give enough time for motorists to read the current display before the next display is presented.

- (3) The policies for the types of messages allowed are available at the town office.

(Ord. No. C2008-2, §§ 1—3, 12-13-07; Ord. No. C2011-1, 3-10-11)

Sec. 11-62. Dedications.

A sign reading "Hod's Corner in memory of Horace "Hod" McKenney" will be placed near the intersection of Garland Road and Fern Road.

(Ord. No. C2010-9, 7-8-10)

Sec. 11-63. Traffic incident ordinance.

- (a) *Title, authority, purpose and definition.*

- (1) *Title.* This section shall be known and cited as the Traffic Incident Ordinance of the Town of Dexter, Maine, and will be hereinafter referenced to as the "ordinance".

- (2) *Authority.* This section is adopted pursuant to Title 30-A, M.R.S.A. § 3001 (Home Rule).

- (3) *Purposes.* The purposes of this section are:

- a. To protect the citizens/taxpayers of Dexter from potential expenses incurred through emergency services provided at incident scenes.
- b. To recover costs associated with incident scene traffic control, victim extrication, and clean up.
- c. To promote the health, safety, and general welfare of Dexter residents/taxpayers.

- (4) *Definitions.*

Costs: Expenses incurred in/of traffic control, extrication of victims, control of hazardous or other materials, control of fire, or overall scene safety.

Fault: The individual indicated of wrong doing as contained in a police incident report.

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Individual: Any person, corporation, partnership, firm, organization, or other legal entity.

Proceeds: Money obtained from an event or activity.

Resident of the Town of Dexter: Any individual domiciled in the Town of Dexter as of the date that the incident occurred and/or services were offered and or rendered.

Taxpayer: One that pays taxes or is subject to taxation.

Traffic incident: Any vehicle event to which the Town of Dexter Fire Department services were dispatched, or requested by Penobscot County Dispatch, written mutual aid agreement, or any other state or local agency.

(b) *Availability, conflicts, affective date and amendments.*

(1) *Applicability.*

- a. The provisions of this section shall govern all traffic incident scenes to which the Dexter Fire Department are dispatched or requested by the Penobscot County Regional Dispatch, written mutual aid agreement, or any state or local agency to: Control or confine hazardous materials; extinguish fire, or overall scene safety.
- b. This section shall be applicable to all individuals who receive emergency services provided by the Town of Dexter Fire Department at an incident scene, except those residents/taxpayers of the Town of Dexter as of the date that services were offered and/or rendered.

(2) *Responsibility.*

- a. Any individual, other than a resident/taxpayer of the Town of Dexter, who is deemed at "fault" will be responsible for the cost of any services as described in subsection(b)(1), "Applicability", and will be held responsible for the cost of those services offered and/or rendered.
- b. In the event that no fault is determined, the individuals who receive and/or had the services offered will be responsible for those costs.

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- c. At no time will any resident of the Town of Dexter/ taxpayer be held responsible or be billed for any costs incurred under the authority of this section.
 - d. The individuals shall have the burden of proving that they are residents/taxpayers of the Town of Dexter as of the date of the incident.
- (c) *Administering and collections.*
- (1) *Administering bodies and agents.*
- a. *Fire chief:* The Municipal Fire Chief of the Town of Dexter, or his/her designated agent, hereinafter called the fire chief, and shall be responsible for:
 - 1. It shall be the duty of the fire chief to issue all bills relating to this section within thirty (30) days from the date of the incident.
 - 2. A copy of such notices and fees collected shall be submitted to the municipal officers to be maintained as a record.
 - 3. The municipal officers shall have the authority to institute legal actions when the above action does not result in payment, or if payment is not received within sixty (60) days from the date that the bill was submitted to the individual. The municipal officers upon notice from the fire chief will have the option to institute any and all actions and proceedings which may be appropriate or necessary to enforce the provisions of this section in the name of the Town of Dexter.
 - b. It shall be the duty of the fire chief, to keep a complete record of all incident-billing transactions for the Dexter Fire Department. Including individuals involved in the incident.
 - 1. The fire department shall keep an up-to-date cost schedule for apparatus, equipment, materials, and manpower for billing purposes.

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(d) *Proceeds*. All proceeds collected shall be deposited into the fire department's equipment reserve account.
(Ord. No. C2012-6, §§ 1—3, 4-12-12; Ord. No. C2012-19, §§ 1, 2, 4, 10-11-12)

Secs. 11-64—11-95. Reserved.

ARTICLE III. RESERVED*

Secs. 11-96—11-98. Reserved.

***Editor's note**—Ord. No. C2003-13, adopted Apr. 10, 2003, repealed provisions formerly set out as art. III of this chapter. Former art. III, §§ 11-96—11-98, pertained to parks and recreation areas and derived from: Ord. No. C84-5, adopted July 5, 1984; Ord. No. C2001-17, adopted Aug. 9, 2001; Ord. No. C2001-19, adopted Sept. 13, 2001; and Ord. No. C2002-11, adopted June 13, 2002. Current provisions relative to parks and recreation areas are set out as ch. 13, art. IV of the Code.