

**TOWN OF CHARLOTTE**  
**TOWN HIGHWAY RIGHT-OF-WAY ACCESS AND USE ORDINANCE**

Revised, F Tegatz 7/22/15

SECTION 1 – Authority

This Ordinance is adopted as a civil ordinance pursuant to the authority set forth in 24 V.S.A. Chapter 59 and is further authorized by 19 V.S.A. §§ 303, 1111; 24 V.S.A. §§ 2291(3), (6), (7); 30 V.S.A § 2502 and other applicable provisions of Vermont law granting the Town power to control the use of town highway rights-of-way and protect the same.

SECTION 2 – Purpose

This Ordinance shall guide the Selectboard in addressing landowner- and utility-initiated improvements within and their use of town highway rights-of-way and is intended to prevent unsafe conditions and preserve the Town’s ability to maintain and improve public roads, and comply with State and Federal regulations as necessary-

The Town of Charlotte Selectboard hereby adopts this Ordinance to: (1) fulfill its statutory duty to issue permits for use of town highway rights-of-way and its responsibility to adequately protect and promote the safety of the traveling public; (2) maintain safe and reasonable levels of service on existing town highways; (3) provide for adequate and appropriate life safety services; and (4) safeguard the public investment in the existing highway system, and(5)monitor water quality as it is introduced into Public waters.

SECTION 3 – Use of Town Highway Right-of-Way Prohibited

It shall be unlawful to:

- A.
  - 1. Develop, construct, regrade or resurface any driveway, entrance, or approach, or build a fence or building, deposit material of any kind within, or
  - 2. In any way affect the grade of a highway right-of-way; or to
- B.
  - 1. Obstruct a ditch, culvert, or drainage course that drains a highway, or
  - 2. Fill or grade the land adjacent to a highway so as to divert the flow of water onto the highway right-of-way; or
- C.
  - 1. To install pipes or wires of any kind or nature, or
  - 2. To install or plant trees, plants, woody vegetation, shrubs or other landscaping, or

3. To locate or erect signs, posters or displays, or
4. To place overhead lines of telegraph, telephone and electric wires, as well as two-way wireless telecommunications facilities over, upon, through or within a town highway right-of-way without obtaining a Highway Access and Public Right-of-Way Use Permit from the Selectboard.
5. To add an additional source of water or to or increase the amount of water from an existing source into the town drainage system.

#### SECTION 4 – Permit Required

A Highway Access and Public Right-of-Way Use Permit, approved by the Selectboard, is required for:

- A. All driveways, entrances, curb cuts, approaches (“access points”);
- B. Fences, structures and buildings;
- C. Drainage alterations, ditches, culverts or fill;
- D. Plantings of trees, plants, shrubs, woody vegetation or shrubs;
- E. Signs, posters, or displays;
- F. Installing pipes and wires of any kind or nature; or
- G. Placing overhead lines of telegraph, telephone and electric wires, as well as two-way wireless telecommunications facilities, over, upon, through or within a town highway right-of-way.
- H. Increasing the flow of water in any ditch or pipe into the Town drainage system

No construction or installation may take place in the town highway right-of-way until the Selectboard has issued a Highway Access and Public Right-of-Way Use Permit.

Notwithstanding the requirement to obtain a Highway Access and Public Right-of-Way Use Permit, the permittee agrees by acceptance of its Permit that he, she or it shall be responsible for the removal or relocation of any driveway, entrance, approach, fence, building, structure, ditch, culvert, drainage course, fill, trees, plants, woody vegetation, shrubs, other landscaping, utility poles, pipes, lines, mains, wires and any other object within the town highway right-of-way authorized pursuant to said Permit, and all costs and fees related thereto, if such relocation or removal is made necessary by maintenance, improvement or relocation of the roadway or public utilities within the town highway right-of-way.

#### SECTION 5 – Timing of Application

- A. For new or amended projects associated with minor subdivisions, a Highway Access and Public Right-of-Way Use Permit shall be obtained after the Planning Commission's sketch plan review and before an application is submitted for final plan review.
- B. For new or amended projects associated with major subdivisions, a Highway Access and Public Right-of-Way Use Permit shall be obtained after the Planning Commission's preliminary plan review and before an application is submitted for final plan review.
- C. For all other projects, a Highway Access and Public Right-of-Way Use Permit shall be obtained prior to commencement of the construction or installation for which such Highway Access and Public Right-of-Way Use Permit is required.

### SECTION 6 – General Provisions

The following standards shall be met prior to the issuance of a Highway Access and Public Right-of-Way Use Permit:

- A. Any proposal for activity within a town highway right-of-way that requires a Highway Access and Public Right-of-Way Use Permit shall be reasonable under the circumstances, with due consideration given to safety, maintenance of reasonable levels of service on existing highways and protection of the public investment in the existing highway and drainage infrastructure.
- B. Any proposed driveway, entrance, curb cut or approach within a town highway right-of-way shall be allowed only as necessary to provide reasonable access to and from the subject property. For reasons of safety, costs and aesthetics, the Selectboard shall allow only one access point for a single property, except where the applicant demonstrates, to the satisfaction of the Selectboard, undue hardship, unusual topography or that multiple access points will result in improved safety. For the purpose of this Ordinance, "undue hardship" shall be defined to mean that compliance with the standards of this Section 6 is unreasonably burdensome taking into consideration the nature of the proposed project, its cost, the impact of the proposed project on the town highway right-of-way and any other criteria the Selectboard deems reasonable.
- C. If a property has frontage on more than one road, access points shall be located on the road having lower traffic volumes, except where the applicant demonstrates, to the satisfaction of the Selectboard, undue hardship, unusual topography or that access from the road with higher traffic volumes will result in improved safety.
- D. Access points shall be designed to minimize impacts on agricultural soils and operations, wildlife habitat, wetlands and scenic areas.
- E. Any additional lots created from the lot for which an access point is approved may be required to use the same access point, except where the applicant demonstrates, to the

satisfaction of the Selectboard, undue hardship, unusual topography or that a second access will result in improved safety.

- F. Driveways and other access points shall comply with all applicable codes and standards, the Recommended Standards for Access Roads and Driveways, adopted by the Charlotte Planning Commission on September 2, 1997, and by the Vermont Agency of Transportation standard sheets, B-71 - Standards for Residential and Commercial Drives, A-76 - Standards for Town and Development Roads, as amended. Applications shall be in compliance with the foregoing standards as well as the terms and provisions of the Town's Municipal Plan, and Land Use Regulations (zoning and subdivision bylaws), as amended.
- G. The siting of fences, drainage improvements, landscape alterations, berms, vegetation, signs and other structures within a town highway right-of-way shall not impede the Town's ability to maintain, repair, reconstruct, excavate, fill, pave, plow, sand and salt the public roadway and associated drainage.
- H. The siting of fences, drainage improvements, landscape alterations, berms, vegetation, signs and other structures within a town highway right-of-way shall not interfere with sight distances along a public roadway, or obstruct visibility to or from an access point on a public roadway.
- I. The siting and dimensions of structures, fences and signs shall be consistent with the Charlotte Land Use Regulations, as amended.
- J. The placement, installation, construction and maintenance of utility lines, wires, poles, pipes, mains and conduits over, upon, through or under a town highway right-of-way shall be subject to the application procedures contained in Section 7 and standards of Section 11, below.
- J.K. The introduction of water to the Town drainage system may require, at the discretion of the Selectboard, an engineered study delineated the volume and quality of the water to be introduced into the system.

#### SECTION 7 – Procedure

- A. Applicants may obtain a Highway Access and Public Right-of-Way Use Permit Application Form from the Town Planning and Zoning Office. A complete application form shall be submitted to the Town Planning and Zoning Office, together with the required application fee. The applicant shall be required to bear the cost of the public warning of the warned public hearing on the application and the cost and responsibility of notification of adjoining landowners, described in Section 7(B), below.

All applications shall include a description of the proposed project, with the location of the property, including the parcel identification number and E-911 address if available,

the anticipated scope of clearing, excavation and/or fill, and any other information deemed necessary by the Selectboard to allow it to fully understand the proposal.

Applications shall also include a sketch of the project with scaled dimensions, distances to the nearest driveways and intersections in two directions, and locations of all existing and proposed structures, utilities, septic systems and replacement areas, wellheads, surface water, easements and property lines with dimensions. Where unique circumstances exist, including the presence of steep slopes, or where an applicant is requesting an exception from the general requirements of this Ordinance, the Selectboard may, in its discretion, require a professionally prepared design and/or a plan stamped by a Vermont licensed engineer.

If the applicant is not the owner of record of the property, the application must include the signature of, or a letter from, the owner of record authorizing the application.

- B. The Planning and Zoning Office shall forward complete applications to the Selectboard for review. A warned public hearing before the Selectboard shall be scheduled within thirty (30) days after the application is deemed administratively complete by the Chair of the Selectboard or his or her designee. Adjoining property owners, including the owners of properties that would be contiguous to the property that is the subject of the application but for the interposition of a highway or other public right-of-way, shall be notified of the hearing in writing. The applicant may be required to demonstrate proof of delivery to adjoining landowners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address supported by a sworn certificate of service.
- C. A copy of the application shall also be forwarded to the Road Commissioner. The Road Commissioner shall conduct a site visit to the project location and make an assessment of the proposal. The assessment shall include at least the following:
1. A determination as to whether a culvert is needed, and if so required, its dimensions;
  2. The current sight distances along the public roadway at the location of the proposed access point, structure or use for which a Highway Access and Public Right-of-Way Use Permit is required;
  3. An evaluation of the prospective impact of the proposed access point, structure or use for which a Highway Access and Public Right-of-Way Use Permit is required, on sight distances along the public roadway, if any; and
  4. An evaluation of the prospective impact from the access point, structure or use for which a Highway Access and Public Right-of-Way Use Permit is required, on the Town's ability to maintain, repair, reconstruct, excavate, fill, pave, plow, sand and salt the public roadway and associated drainage.

The Road Commissioner shall provide his/her assessment and recommendation regarding the application to the Selectboard at or in advance of the Selectboard's hearing.

- D. If the application is associated with a proposed subdivision, a copy of the application shall be forwarded to the Chair of the Planning Commission. The Planning Commission shall provide its assessment and recommendation regarding the application, if any, to the Selectboard at or in advance of the Selectboard's hearing. The Selectboard may also request a recommendation from the Planning Commission when the subject property is not being subdivided.
- E. The applicant or a designated representative shall attend the scheduled hearing in person. If the applicant chooses to send a representative to the hearing, the applicant shall submit a letter to the Selectboard at or in advance of the hearing authorizing such representation.
- F. The Selectboard shall render a decision on the application within thirty (30) days of closing the hearing and notify the applicant of the decision. In granting a Highway Access and Public Right-of-Way Use Permit, the Selectboard may impose any reasonable conditions and safeguards that it deems necessary to fulfill the purpose(s) of this Ordinance.
- G. Highway Access and Public Right-of-Way Use Permits shall be recorded in the Town of Charlotte Land Records after projects have been constructed, installed and inspected by appropriate Town officials (see "Section 8 – Inspections" below).
- H. If the construction, installation or land development authorized by a Highway Access and Public Right-of-Way Use Permit has not commenced within two years of the date of the issuance of the Permit, the Highway Access and Public Right-of-Way Use Permit shall expire unless noted otherwise.

#### SECTION 8 – Inspections

The applicant shall notify the Road Commissioner at least two business days (excluding Saturdays, Sundays and federal and state holidays) in advance of any construction, installation or land development authorized by a Highway Access and Public Right-of-Way Use Permit issued pursuant to this Ordinance. No activity authorized by a Highway Access and Public Right-of-Way Use Permit may commence within a public right-of-way without prior notification to the Road Commissioner. The applicant shall also notify the Road Commission and the Selectboard or its agent after completion of the construction, installation or land development. The Road Commissioner and the Selectboard or its agent will conduct a post-construction site visit and sign the bottom of the Permit certifying that the project was constructed or installed appropriately and in accordance with the Highway Access and Public Right-of-Way Use Permit. Where an engineered study is required, the engineer may be required approve and verify the project has been installed according to plan. ~~and~~ The Highway Access and Public Right-of-Way Use Permit shall then be recorded in the Town of Charlotte Land Records on behalf of the applicant as provided in Section 7(G), above.

The Town shall provide the necessary form for applying for a Highway Access and Public Right-of-Way Use Permit.

SECTION 10 – Temporary Highway Accesses

Temporary highway accesses may be considered independent of the procedure established by Sections 6 and 7 hereof. However, temporary highway accesses require a recommendation from the Road Commissioner and Selectboard approval. Requests for temporary highway access approval should be sent to the Chair of the Selectboard in the form of a letter stating the purpose of the access and justifying the need. After receiving a recommendation from the Road Commissioner, the Selectboard will conduct a site visit and invite the applicant to present the request at a routine Selectboard meeting for a decision. Temporary requests will be granted for a specific length of time and for a specific purpose, such as for construction or agricultural vehicle access. In granting temporary access approval, the Selectboard may impose any reasonable conditions that it deems necessary to fulfill the purpose(s) of this Ordinance.

SECTION 11 – Utilities

Subject to 30 V.S.A. §§ 223, 224 and Chapter 71, the placement, installation, construction and maintenance of utility lines, wires, poles, pipes, mains and conduits over, upon, through or under a town highway right-of-way shall require a Highway Access and Public Right-of-Way Use Permit in accordance with the procedure established in Section 7 hereof. The placement, installation, construction, maintenance, relocation and removal of utility lines, wires, poles, pipes, mains and conduits over, upon, through or under a town highway right-of-way shall not interfere with the repair or maintenance of any town highway or the public convenience in traveling upon or using the same and shall be in conformance with 19 V.S.A. § 1111(c) and (d).

SECTION 12 – Enforcement and Civil Penalties

A. Any person who violates the provisions of this Ordinance or the terms of a Permit issued hereunder may have any Permit suspended pursuant to 19 V.S.A. § 1111(g), and the Town may bring an action in its name in a court of competent jurisdiction against the person to collect civil penalties and to restrain by temporary or permanent injunction the continuation or repetition of the violation pursuant to 24 V.S.A. Chapter 59.

B. An Issuing Municipal Official has the authority to recover a waiver fee, in lieu of a civil penalty, in the following amounts, for any person who declines to contest a municipal complaint and pays the waiver fee:

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|-------------------|-------|
| 1. First offense  | \$50  |
| 2. Second offense | \$100 |
| 3. Third offense  | \$150 |
| 4. Fourth offense | \$200 |

- 5. Fifth and subsequent offenses \$250

C. An Issuing Municipal Official has the authority to recover civil penalties in the following amounts for each violation of this Ordinance:

- 1. First offense \$100
- 2. Second offense \$200
- 3. Third offense \$300
- 4. Fourth offense \$400
- 5. Fifth and subsequent offenses \$500

D. Each day the violation continues shall constitute a separate violation.

E. In addition to the enforcement procedures available before the Judicial Bureau, the Town has the authority to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law:

F. In the case of an incomplete or failed installation, the Town may complete or correct the permitted work at the sole expense of the permittee.

SECTION 13 – Liability

A property owner and applicant receiving a Highway Access and Public Right-of-Way Use Permit under this Ordinance agrees by receipt of such Permit to indemnify, defend and hold harmless the Town of Charlotte, its elected officials, board members, officers, employees and agents from any claims for losses, damages, judgments, liabilities, costs and expenses (including attorneys’ fees and costs) relating to any claim, action, suit, injury or damage that may occur as a consequence of work performed within a town highway right-of-way under the authority of any Highway Access and Public Right-of-Way Use Permit issued pursuant to the provisions of this Ordinance. Any damage to the Town’s facilities, utilities, property or appurtenances as a consequence of work performed shall be repaired by the Town at the expense of the property owner and applicant, unless otherwise agreed to in writing.

SECTION 14 – Severability

If any part or provision of this Ordinance shall be deemed invalid by a court of competent jurisdiction, that portion of the Ordinance shall be severable, and the invalidity of said part or provision shall not invalidate any other part or provision of the Ordinance.

SECTION 15 – Civil Ordinance

As provided in Section 1, above, this Ordinance shall be a civil ordinance pursuant to 24 V.S.A. Chapter 59.

Adopted: \_\_\_\_\_

