



# Town of Berwyn Heights

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## ***ORDINANCE 118 - ROADS & PUBLIC RIGHT-OF-WAYS***

### **Section 1. Purpose and Authority.**

A. The purpose of this Ordinance is to establish standards for construction, maintenance, and other activities in the Town's roads and public right-of-ways, and to create a process of permitting, inspection and acceptance of work on Town property by persons and utilities, as well as to authorize fines and penalties for violations of the Ordinance standards.

B. The authority to provide for the protection of health, safety, comfort, convenience, or welfare of residents of and visitors to the Town are provided for in Section 401– General Powers, and in Section 402 – Specific Powers of the Town of Berwyn Heights Charter.

C. The authority to enact penalties and fines for violating Town Ordinances are provided for in Section 403 – Enforcement of the Town of Berwyn Heights Charter.

### **Section 2. Applicability of Ordinance.**

The provisions of this Ordinance and applicable rules and regulations shall govern the altering, building, construction, grading, improvement, maintenance, opening, patching, repair, restoration, and upgrading of roads, including bridges, catch basins, culverts, curbs, gutters, inlets, manholes, parking courts, parking lots, sidewalks, stormwater drainage or sanitary sewage collection facilities, underdrains, and all other infrastructure; repair, replacement, and upgrading to or installation of new utility infrastructure facilities; and vegetation management, including the trimming, pruning, replacing or removal of trees, shrubbery, plantings or vegetation in the public right-of-way.

### **Section 3. Definitions.**

Words and phrases used in this Ordinance shall have the usual meanings except words and phrases defined below:

1. “*Construction Design, Specifications, and Standards*”- Construction design, specifications and standards shall mean the plans applicable to the work to be covered by the permit.

B. “*Default*”- Default shall mean the condition in which a permittee has failed to complete the work covered within the scope of the permit, within the time prescribed in the permit or prescribed in this Ordinance, or any rule or regulation promulgated pursuant to this Ordinance if not stated in the permit.

C. “*Improve*”- Improve shall mean to alter, build, construct, grade, maintain, open, patch, repair or restore any street, road, infrastructure, or vegetation; repair, replacement, and upgrading to or installation of new utility infrastructure facilities; within the public right-of-way or any part thereof, whether acquired by dedication or by public use.

D. *“Permit”*– Permit shall mean an official document or certificate issued by the Town authorizing the performance of specified construction at a specified location within a specified time, together with all supporting documents, agreements, plans and specifications.

E. *“Permittee”*– Permittee shall mean a person or organization who has obtained a permit to improve any and all infrastructure, or perform vegetation management in the public right-of-way or any part thereof, whether acquired by dedication or by public use.

F. *“Person”*– Person shall mean a person, contractor, sub-contractor, corporation, partnership, publicly or privately owned utility, or agent of any of the aforementioned.

G. *“Road or Street”*– Road or street shall mean any alley, avenue, highway, lane, right-of-way, road, street, or appurtenant structure, including bridges, catch basins, culverts, curbs, gutters, inlets, manholes, parking courts, parking lots, sidewalks, stormwater drainage or sanitary sewage collection facilities, underdrains, all other infrastructure in the public right of way, or any part thereof, whether acquired by dedication or by public use.

H. *“Town Administrator”*– The Town Administrator shall mean any person appointed to that position or any person the Town Administrator designates to administer and enforce this Ordinance, or parts thereof.

I. *“Utility”*– Utility, whether publicly or privately owned, shall mean an organization franchised by the county or state government or authorized by law to install, operate and maintain facilities in the public right-of-way for the purpose of distribution of fuel or energy, for cable television or internet service, for communications, or for the distribution of a public water supply and collection and conveyance of sanitary sewage or storm water.

J. *“Vegetation”* - Vegetation shall mean trees, shrubbery, plantings, plants, grass, and other greenery growing in or into the public right-of-way.

K. *“Vegetation Management”*– Vegetation management shall mean to trim, prune, remove, or replace trees, shrubbery, plants, or vegetation in the public right-of-way or any part thereof, whether acquired by dedication or by public use.

L. *“Work”*– Work shall mean to alter, build, construct, grade, improve, maintain, open, patch, repair, restore or upgrade any street, road, infrastructure, or vegetation within the Town public right-of-way or any part thereof, whether acquired by dedication or by public use.

#### **Section 4. Standards.**

A. Except as otherwise provided in this Ordinance or applicable rule or regulation, in general, the construction design, specifications, and standards for road and street work shall be in accordance with the Prince George’s County, Maryland, General Specifications for Highway and Street Construction, as amended, and the Prince George’s County, Maryland, Policy and Specifications for Utility Installation and Maintenance, as amended.

B. In general, the design, construction, or repair of stormwater drainage facilities and sanitary sewage collections facilities shall be in accordance with the standards of the Prince George’s County, Maryland, Department of Environmental Resources and/or Maryland Department of Environmental Resources, as amended, or duly designated successor agency.

C. In general, the management of vegetation in the public right-of-way shall comply with the standards of the Maryland Department of Natural Resources, or duly designated successor, “best practices”, and the State of Maryland Roadside Tree Care Regulation COMAR, Title 08, Subtitle 07, Chapter (02), as revised and amended from time to time.

D. Building or Construction Operations - Every person having charge of building or construction operations shall remove or cause to be removed, at the expiration of each working day, from any alley, avenue, road, sidewalk, street or other public place adjacent to such building or construction operations, all broken brick, dirt, earth, sand, gravel, mortar, rubbish, shavings,

stones and all other litter that may have been deposited or accumulated thereon as a result of building or construction operations.

E. Grass on Unpaved Areas in the Right-of-Way - A thick stand of permanent grass shall be obtained on unpaved areas in the right-of-way by seeding or sodding. For seeded area there shall be at least four (4) inches of topsoil. For sodded areas the sod shall be placed on at least three (3) inches of topsoil.

F. Open Ditches - All open ditches or obstructions along public roads or property shall be protected by barricades of a design approved by the Town Administrator and shall have reflectorized portions and/or be suitably lit to be effective at night.

G. Clean Streets - No person shall dump or deposit any disposable item on any Town street or public property. No person shall drive or move any vehicle or truck within the Town, the wheels or tires of which carry onto or deposit upon any street, road, alley, avenue, lane or other public place mud, sticky substances, litter or foreign matter of any kind.

H. Growth of Foliage - No person shall allow the growth of foliage to extend its branches to cover any Town signs or obstruct the vision of any motorist and no hedges, shrubs, trees, bushes, vines or any type of plants shall be permitted to interfere with the function of any hydrant, water or gas meter, electric power lines, meters or transformers, or any other public utility valve or any drainage catch basin. Residents shall not trim back any vegetation interfering with electric power lines or transformers, but notify the Town to request the electric utility, or an authorized contractor, to perform the work.

#### **Section 5. Permit.**

A. Road and Street Work and Utility Permit – No person shall undertake to do any work in any road or street, or do any work on any public property within the corporate limits of the Town, or upon, in, or within the Town public right-of-way or any part thereof, whether acquired by dedication or public use, without first obtaining a permit from the Town.

B. Vegetation Management Permit - No person shall perform any vegetation management in the Town right-of-way without first obtaining a permit from the Town, other than routine yard maintenance of adjoining property.

C. The fee for the issuance of a permit shall be due upon the filing of a permit application.

D. A separate permit may be required of a utility for each new installation, major repair or modification to the utility system located within the paved portion of the right-of-way.

E. A separate Town permit shall be required for driveway aprons and driveway entrance/access points.

F. No permit shall be issued until the requirements of this Ordinance for an approved application, bond, paid fee(s), plans, and an on-site, pre-construction meeting have been met and approved by the Town Administrator.

G. No permit shall be transferable and may be revoked if any provisions thereof or of this Ordinance are violated. Willful refusal of any permittee to stop construction after receiving notice of such revocation shall be deemed a violation of this Ordinance.

H. A cash deposit of up to one thousand dollars (\$1,000.00) shall accompany permit applications which shall be returned upon completion of work acceptable to the Town without damage to public property or upon restoration of damage to public property. The Town Administrator shall have the authority to require larger deposits when circumstances warrant.

#### **Section 6. Permit Application.**

A. Application for permits required by this Ordinance shall be made on forms provided by the Town Administrator and shall be filed at least thirty (30) days prior to the desired construction start date. Application shall clearly define the nature and extent of any work to be done in the Town right-of-way or on any public property; provide construction plans showing the type and location of the work to be performed; provide an estimated construction cost of the proposed work or project; and the signature of the owner or authorized agent.

B. Additionally, when required by the Town Administrator, the application shall be accompanied by construction specifications and suitable tracings of the detailed plans of the work to be done.

C. Town Administrator may require plans of proposed work adequate to meet Town needs, providing proposed grade, sediment control plan (when appropriate) stormwater drainage plan, paving plan (with profiles thereof) and a vegetation management plan (if applicable) showing the location of vegetation to be trimmed, pruned, or removed and the location and type of tree, shrubs or vegetation proposed to be planted.

D. If, after review of the application, it appears to the Town Administrator that the proposed work conforms to the Town's standards, the Town shall notify the applicant that the permit has been "approved for issuance", state the amount of applicable fees, required bonds, and a tentative date for the on-site, pre-construction meeting.

E. Town Administrator may refuse to accept an application for a permit from any applicant who is or was in default on a previously issued permit, or who is the permittee listed on an expired permit which is not currently in the process of being extended.

**Section 7. Bonds, Letters of Credit or Three-Party Bank Deposit Agreements Required: Amount**

A. No work done in the public right-of-way requiring a permit as described in Sections 5 of this Ordinance shall be issued until the applicant, when required by the Town Administrator, has posted a bond, letter of credit or three-party bank deposit agreement.

1. A cash or performance security bond in favor of the Town of Berwyn Heights as required herein: The amount of the performance security bond shall be equal to the total cost of the project as estimated by the Town Administrator, including an additional twenty-five percent (25%) of the cost for contingencies, and shall be conditioned upon the satisfactory completion of all work covered by the permit; and

2. A maintenance bond which guarantees for a period of two (2) years to indemnify against defective workmanship or materials the work covered by the permit required by this Ordinance at time of acceptance by the Town in the amount of fifty (50) percent of the cost of the project and shall remain in full force and effect until written issuance of bond release by the Town Administrator; or

3. In lieu of the performance and maintenance bonds required by this Ordinance, a composite corporate or cash bond may be furnished, which will stipulate termination of performance bond requirements and initiation of maintenance bond requirements upon acceptance by the Town of work covered by the permit; and

4. A labor or materialmen's payment security bond for an amount not less than fifty percent (50%) of the total cost of the project, as estimated by the Town Administrator, for the protection of all persons performing labor or furnishing material or leasing equipment (to the extent of the fair rental value thereof) in the prosecution of the work defined in the permit. The payment security may be held for up to one (1) year after the date of final acceptance of all work covered by the permit.

B. Security may be provided by means of:

1. Cash;
  2. Bonds executed by surety or guarantee company qualified to transact business in the state and acceptable to the Town;
  3. Irrevocable Letters of Credit issued by a bank qualified to transact business in the state and acceptable to the Town;
  4. A three-party bank deposit agreement executed by a bank qualified to transact business in the state and acceptable to the Town and evidencing the deposit of the required sums and the funds may not be withdrawn without the written consent of the Town.
- C. Release of bonds or other security:
1. Bonds or other security to guarantee completion of work that required a permit described in Sections 5 of this Ordinance shall not be released until the work covered by such bonds and the permit has been accepted by the Town Administrator.

**Section 8. Commencement of Work.**

- A. No person shall begin work of any kind in the Town public right-of-way or public property until a permit for same has been issued by the Town Administrator.
- B. Work under said permit shall commence within sixty (60) days of the date of the permit, unless cause to the contrary is shown, and, thereafter, continued to the conclusion of all work pursuant to the permit.
- C. All permittees, including utilities, shall notify the Town Administrator at least seventy-two (72) hours prior to the commencement of any work in the Town public right-of-way. In the event that there is an interruption of the work for a period of more than five (5) days, the permittee shall notify the Town Administrator at the end of each interruption of intent to actively resume operations.
- D. In case of an emergency, such as a utility cut for a water main break or a gas line leak, notice shall be given to the Town Administrator as soon as possible, but not more than twelve (12) hours after the commencement of work.
- E. A copy of the permit shall be posted by permittee in a conspicuous place on each project site, when required by the Town Administrator.

**Section 9. Permit Duration.**

The duration of each permit will be computed on estimated project construction cost as follows. If the permit duration cannot be computed because the cost of the project is unknown, or is confidential, a permit for the minimum duration of 3 months shall be issued and extended as needed:

<b>Construction Costs</b>	<b>Permit Duration</b>
Up to \$50,000.00	3 months
From \$50,001.00 to \$100,000.00	4 months
From \$100,000.00 and over	6 months

**Section 10. Permit Extension.**

1. Permits shall automatically expire in accordance with the permitting schedule contained in Section 9, unless extended, in writing, by the Town Administrator. It shall be the responsibility of the permittee to apply for a renewal at least thirty (30) days prior to the expiration of the permit, which application shall contain the reasons for the requested renewal. Prior to the renewal of a permit, the permittee shall pay a permit renewal fee. Permits will be renewed in accordance with the original permitting schedule.
2. Where the Town Administrator determines that an additional cash deposit or bond

amount is necessary because of inflation or other factors, the permittee shall be required to post the additional cash deposit or bond in an amount determined by the Town Administrator before the extension of time is granted.

### **Section 11. Inspections Required.**

A. Inspection of all work done in the Town public right-of-way will be conducted and maintained at all times by the Town Administrator to assure compliance of the work with the issued permit.

B. Should the Town elect to use an outside third party inspection agency or engineering firm to perform the inspections, the permittee shall be responsible for payment of the third party inspection fees. In the event the permittee fails to pay the third party inspection fees, the Town shall withhold final approval of the work, release of permittee's deposit, performance security bond, labor or materialmen's payment, security bond, Letter of Credit, and/or third-party bank deposit agreements until inspection fees are paid.

C. No paving, catch basin, culvert, gutter, or sidewalk construction shall be started unless there has been a final inspection and approval of the sub-grade and concrete form work.

D. The construction work, materials, plans and specifications shall at all times be open to and available for inspection by duly authorized officials and employees of the Town.

1. Where permittee performs any work under or not under a permit without an inspection, such work shall be considered improper and such conduct on the part of the permittee or non-permittee may result in removal and replacement of all un-inspected construction at the permittee/non-permittee's expense.

2. Where permittee performs any work under a permit (with or without an inspection), and work does not comply with the standards of this Ordinance, the Town Administrator is empowered to issue written notice to require the work be removed and replaced by the permittee at his expense.

3. Permittee shall comply with all requirements of the Town Administrator directed to the permittee (either before or during the course of construction) which are deemed necessary in the interest of public safety, to avoid unnecessary inconvenience to the public during construction, or to insure compliance with Town standards and specification.

### **Section 12. Approval and Acceptance of Work.**

A. Final approval of any work in the public right-of-way under any permit shall be given by the Town Administrator, after a field inspection by the Town Administrator shows to the Town Administrator's satisfaction that the work conforms in all respects with the permit, and includes all works required thereby, and the Town Administrator shall certify final approval to the Town Council.

B. In the case of any utility cut in any catch basin, curb, gutter, paved road, sidewalk or underdrains, the person or utility making the utility cut shall be responsible to warranty and repair any defective work for a period of two (2) years from the date of the written notice to the Town Administrator of the completion of the work under the original permit.

### **Section 13. Authority of Town Administrator, Code Department and Police Department.**

A. Town Administrator, or designee, shall administer and enforce this Ordinance.

B. Town Administrator shall recommend amendments or revisions to the standards to the Town Council for adoption from time to time, as needed.

C. Town Administrator may disapprove the issuance of a permit for all or part of a proposed plan of work in the public right-of-way where work will negatively impact on properties in immediate surrounding area.

D. Town Administrator shall have the authority to issue an immediate “Stop Work Order” if the Town Administrator determines that the work being done does not meet Town standards or is creating a hazard or nuisance to the public.

E. The Town Administrator or any Town code compliance official or uniformed police officer is authorized to enforce Sections 4. D. through 4. H. of this Ordinance.

#### **Section 14. Damage to Public Property.**

1. No person shall damage any Town street, road or public property including trees or signs. All damage to public roads, public right-of-ways or public property shall be a civil liability.

B. If damage occurs to Town property, the cost of repair will be deducted from the cash deposit. In the event the cash deposit is insufficient to cover any such damage, the Town shall notify the person by certified mail of such damages and the cost of repair. If any charges remain unpaid after ninety (90) days from date of notification, such charges shall constitute a lien against the property and shall be collected as municipal taxes or recovered through legal recourse in the event the person does not own property in the Town of Berwyn Heights.

C. All permittees shall assume all responsibility for damages sustained to persons or property due to the carrying out of work under the permit and shall be responsible for all accidents to persons and property, holding the Town harmless from all damages resulting from any accidents which may occur during construction operations. If Town is made a party to any action because of the granting of a permit, the permittee shall be required to pay all costs and fees incurred by the Town, including legal fees.

2. Town reserves the right to take action against any bonds posted or take legal action, including action for injunctive relief in a court of competent jurisdiction, to cover or recover costs to repair and/or restore damage to Town or public property.

#### **Section 15. Issuance of a Lien or Legal Action.**

A. Whenever the Town has effected the removal of a hazard, or taken necessary corrective action to correct a problem within or adjacent to a public right-of-way, or has paid for the removal or corrective action, or has performed construction which was the responsibility of the permittee, adjacent property owner or other responsible person, the actual cost thereof, if not paid by the permittee, owner or person within thirty (30) days, shall be collected by initiating one or more of the following actions:

1. The recordation of a statement from the Town Administrator creating a lien against the adjacent property to be collected as delinquent taxes; or recovered through legal recourse in the event person does not own property in the Town of Berwyn Heights.

2. Action against any bonds posted by the responsible party where the permittee is responsible; or

3. Legal action including action for injunctive relief in a court of competent jurisdiction.

#### **Section 16. Violations**

• Any person who performs any work as described in Section 5 of this Ordinance in the public right-of-way, or any part thereof, without a valid permit or the required inspections or performs work in conflict with the standards set forth in Section 4 or the detailed construction

plans submitted and approved for work to be performed under the permit, or creates a situation within the right-of-way that requires corrective action, shall be in violation of this Ordinance.

- Any person who performs any work as described in Section 5 of this ordinance, and has been found to be in violation of this Ordinance, shall immediately take the corrective action specified by the Town Administrator in a written notice, such as reinstating where the permit has expired or has been suspended; obtaining a permit where none existed; correcting or removing work that does not comply standards set forth in Section 4; or correcting any situation that violates this Ordinance. Non-compliance on the part of the responsible person shall be a violation of this Ordinance.

C. Any person required by this Ordinance to have a permit who performs work which is in violation of the provisions of this Ordinance shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) per violation. Each day that a violation continues shall be deemed a separate offense and a separate fine.

D. Any violation of this Ordinance shall be considered a municipal infraction punishable by a fine of not more than one thousand (\$1,000.00) dollars per violation. Each day on which a violation continues is deemed a separate violation and is subject to an additional citation and fine.

E. The application of such penalty shall not preclude the enforced removal, abatement or correction of the conditions which were found to be in noncompliance. In addition, the Town may take those actions necessary to correct the situation, and all costs therefrom shall be billed to the responsible person or be recovered through legal recourse.

F. Notice of Violation. Whenever the Town Administrator determines that the requirements of this Ordinance have been violated, the Town Administrator shall notify the responsible person, owner or permittee, in writing, and detail the corrective action required and the amount of time within which the corrective work must be performed. Such notice may be delivered in person, or by the United States Postal Service at the last known address or the address shown on the real property tax records in the Treasurer's office for Prince George's County. Such notice, when delivered in person or by certified return receipt requested mail shall be deemed complete and sufficient.

G. Compliance and Penalties.

1. The permittee shall comply with all requirements of the permit, including sediment control, if required.

2. Where the permittee fails to comply with the requirements cited in the Notice of Violation, the following actions may result:

- i. A "Stop Work Order" may be issued by the Town Administrator. Such "Stop Work Order" shall constitute a suspension of the applicable permit, and shall prohibit the violator from doing any further work under the permit except such work as shall bring any previous work into compliance. When the permittee corrects the work to the satisfaction of the Town Administrator, in accordance with the applicable standards, the Town Administrator shall rescind the stop-work order in writing at which time the permittee may resume further work under the permit; or

- ii. The Town may complete the required work and charge the permittee on a cost basis, including the costs of administration and overhead.

3. Safety hazards: work in noncompliance. Safety hazards, or work which is determined not to be in compliance with the provisions of this Ordinance, which occurs within the public right-of-way as a result of the work performed by the permittee and the correction of which is considered urgent by the Town Administrator, shall be resolved by contacting the permittee. If that person cannot be contacted within twenty-four (24) hours, then the Town

Administrator shall be authorized to proceed with the necessary corrective action and bill the permittee accordingly for all costs incurred. Failure of the permittee to pay the amount billed within thirty (30) days may be sufficient grounds for suspension or revocation of the permit.

H. Persons violating Sections 4. D. through 4. H. are subject to a fine.

### **Section 17. Fees and Fines**

The fee and fine schedule for this Ordinance will be set from time to time by resolution of the Town Council.

### **Section 18. Right to Appeal**

A. Any person affected by any notice of violation or permit related issue may elect to appeal to the Town Council.

1. Any person affected by any notice of violation, which was issued in connection with the enforcement of any provision of this Ordinance, may request and shall be granted a hearing on the matter by the Town Council, provided that such person shall within ten (10) days after service of a notice of violation, files with the Town Council a signed written notice of appeal, requesting a hearing and setting forth a brief statement of the reasons thereof. Upon receipt of such notice of appeal, Town Council shall set a time and place for such hearing and shall hear said appeals as promptly as practicable.

2. Any person who disagrees with an action related to the issuance of a permit by the Town may request, and shall be granted, a hearing on the matter by the Town Council, provided the appeal is filed in writing within ten (10) days of such action. Upon receipt of the appeal letter, the Town Council shall set the time and place for a hearing, which shall be scheduled as promptly as practicable.

3. The Town Council, with a quorum present, shall hear appeals. After such a hearing, the Town Council may, by a majority of members present, affirm, amend, modify or withdraw the notice of violation or permit-related issue that has been appealed. Any person who shall fail, refuse or neglect to comply with the decision of the Town Council shall be guilty of violating the provisions of this Ordinance.

4. In the event a person wishes to contest the decision of the Town Council, he or she may notify the Town of his or her intent within ten (10) days after the rendering of the decision by the Town Council. If the appeal relates to a violation, the Town shall issue a municipal infraction citation to the aggrieved person who may request a hearing in the District Court of Maryland pursuant to the Municipal Infraction procedure. If the appeal relates to a permit issue, no municipal infraction citation will be issued and the matter will be referred to a court of competent jurisdiction. The decision of the Town Council in such a case shall be stayed, pending a decision by a court of competent jurisdiction. To the extent of this Section of the Ordinance, all violations of this Ordinance will be considered municipal infractions of the Town.

B. Failure to pay after adjudication or request of adjudication by the Town will result in the amount of any fine imposed being recorded as a lien against the property and collected in the same manner as delinquent Town taxes. In the event the delinquent person does not own property in the Town of Berwyn Heights, the Town may opt to not release any deposits, bonds, or other securities deposited upon issuance of a permit or recover through legal recourse in the event person does not own property in the Town of Berwyn Heights.

### **Section 19. Interpretation and Waiver**

The Mayor and Town Council of Berwyn Heights shall decide questions of interpretation of this Ordinance. Upon written request, the Mayor and Town Council may waive or vary

particular provisions of this Ordinance to the extent that the waiver is not inconsistent with the Annotated Code of Maryland and if the waiver would not threaten the health or safety of a resident or visitor in the Town.

**Section 20. Rules and Regulations**

The Town Council may pass such rules and regulations as are consistent with the purpose, intent and enforcement of this Ordinance.

**Section 21. Severability**

If any section or provision or parts thereof in this Ordinance shall be adjudicated to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of this Ordinance as a whole or any other section or provision or part thereof.

Adopted: October 10, 1982  
Effective: March 30, 1982  
Amended: August, 1984  
Amended: September 13, 2000  
Effective: October 31, 2000  
Amended: November 13, 2013

# ***ORDINANCE 118 - ROADS & PUBLIC RIGHT-OF-WAYS***

## **AN ORDINANCE PROVIDING FOR ENFORCEMENT OF COMMUNITY STANDARDS FOR THE USE AND MAINTENANCE OF THE PUBLIC RIGHT-OF-WAY**

### **Section 1. Purpose and Authority.**

A. The purpose of this Ordinance is to establish standards for construction, maintenance, and other activities in the Town's roads and public right-of-ways, and to create a process of permitting, inspection and acceptance of work on Town property by persons and utilities, as well as to authorize fines and penalties for violations of the Ordinance standards.

B. The authority to provide for the protection of health, safety, comfort, convenience, or welfare of residents of and visitors to the Town are provided for in Section 401– General Powers, and in Section 402 – Specific Powers of the Town of Berwyn Heights Charter.

C. The authority to enact penalties and fines for violating Town Ordinances are provided for in Section 403 – Enforcement of the Town of Berwyn Heights Charter.

### **Section 2. Applicability of Ordinance.**

The provisions of this Ordinance and applicable rules and regulations shall govern the altering, building, construction, grading, improvement, maintenance, opening, patching, repair, restoration, and upgrading of roads, including bridges, catch basins, culverts, curbs, gutters, inlets, manholes, parking courts, parking lots, sidewalks, stormwater drainage or sanitary sewage collection facilities, underdrains, and all other infrastructure; repair, replacement, and upgrading to or installation of new utility infrastructure facilities; and vegetation management, including the trimming, pruning, replacing or removal of trees, shrubbery, plantings or vegetation in the public right-of-way.

### **Section 3. Definitions.**

Words and phrases used in this Ordinance shall have the usual meanings except words and phrases defined below:

3. *“Construction Design, Specifications, and Standards”*- Construction design, specifications and standards shall mean the plans applicable to the work to be covered by the permit.

B. *“Default”*– Default shall mean the condition in which a permittee has failed to complete the work covered within the scope of the permit, within the time prescribed in the permit or prescribed in this Ordinance, or any rule or regulation promulgated pursuant to this Ordinance if not stated in the permit.

C. *“Improve”*- Improve shall mean to alter, build, construct, grade, maintain, open, patch, repair or restore any street, road, infrastructure, or vegetation; repair, replacement, and upgrading to or installation of new utility infrastructure facilities; within the public right-of-way or any part thereof, whether acquired by dedication or by public use.

D. *“Permit”*– Permit shall mean an official document or certificate issued by the Town authorizing the performance of specified construction at a specified location within a specified time, together with all supporting documents, agreements, plans and specifications.

E. “*Permittee*”– Permittee shall mean a person or organization who has obtained a permit to improve any and all infrastructure, or perform vegetation management in the public right-of-way or any part thereof, whether acquired by dedication or by public use.

F. “*Person*”– Person shall mean a person, contractor, sub-contractor, corporation, partnership, publicly or privately owned utility, or agent of any of the aforementioned.

G. “*Road or Street*”– Road or street shall mean any alley, avenue, highway, lane, right-of-way, road, street, or appurtenant structure, including bridges, catch basins, culverts, curbs, gutters, inlets, manholes, parking courts, parking lots, sidewalks, stormwater drainage or sanitary sewage collection facilities, underdrains, all other infrastructure in the public right of way, or any part thereof, whether acquired by dedication or by public use.

H. “*Town Administrator*”– The Town Administrator shall mean any person appointed to that position or any person the Town Administrator designates to administer and enforce this Ordinance, or parts thereof.

I. “*Utility*”– Utility, whether publicly or privately owned, shall mean an organization franchised by the county or state government or authorized by law to install, operate and maintain facilities in the public right-of-way for the purpose of distribution of fuel or energy, for cable television or internet service, for communications, or for the distribution of a public water supply and collection and conveyance of sanitary sewage or storm water.

J. “*Vegetation*” - Vegetation shall mean trees, shrubbery, plantings, plants, grass, and other greenery growing in or into the public right-of-way.

K. “*Vegetation Management*”– Vegetation management shall mean to trim, prune, remove, or replace trees, shrubbery, plants, or vegetation in the public right-of-way or any part thereof, whether acquired by dedication or by public use.

L. “*Work*”– Work shall mean to alter, build, construct, grade, improve, maintain, open, patch, repair, restore or upgrade any street, road, infrastructure, or vegetation within the Town public right-of-way or any part thereof, whether acquired by dedication or by public use.

#### **Section 4. Standards.**

A. Except as otherwise provided in this Ordinance or applicable rule or regulation, in general, the construction design, specifications, and standards for road and street work shall be in accordance with the Prince George’s County, Maryland, General Specifications for Highway and Street Construction, as amended, and the Prince George’s County, Maryland, Policy and Specifications for Utility Installation and Maintenance, as amended.

B. In general, the design, construction, or repair of stormwater drainage facilities and sanitary sewage collections facilities shall be in accordance with the standards of the Prince George’s County, Maryland, Department of Environmental Resources and/or Maryland Department of Environmental Resources, as amended, or duly designated successor agency.

C. In general, the management of vegetation in the public right-of-way shall comply with the standards of the Maryland Department of Natural Resources, or duly designated successor, “best practices”, and the State of Maryland Roadside Tree Care Regulation COMAR, Title 08, Subtitle 07, Chapter (02), as revised and amended from time to time.

D. Building or Construction Operations - Every person having charge of building or construction operations shall remove or cause to be removed, at the expiration of each working day, from any alley, avenue, road, sidewalk, street or other public place adjacent to such building or construction operations, all broken brick, dirt, earth, sand, gravel, mortar, rubbish, shavings, stones and all other litter that may have been deposited or accumulated thereon as a result of building or construction operations.

E. Grass on Unpaved Areas in the Right-of-Way - A thick stand of permanent grass shall be obtained on unpaved areas in the right-of-way by seeding or sodding. For seeded area there shall be at least four (4) inches of topsoil. For sodded areas the sod shall be placed on at least three (3) inches of topsoil.

F. Open Ditches - All open ditches or obstructions along public roads or property shall be protected by barricades of a design approved by the Town Administrator and shall have reflectorized portions and/or be suitably lit to be effective at night.

G. Clean Streets - No person shall dump or deposit any disposable item on any Town street or public property. No person shall drive or move any vehicle or truck within the Town, the wheels or tires of which carry onto or deposit upon any street, road, alley, avenue, lane or other public place mud, sticky substances, litter or foreign matter of any kind.

H. Growth of Foliage - No person shall allow the growth of foliage to extend its branches to cover any Town signs or obstruct the vision of any motorist and no hedges, shrubs, trees, bushes, vines or any type of plants shall be permitted to interfere with the function of any hydrant, water or gas meter, electric power lines, meters or transformers, or any other public utility valve or any drainage catch basin. Residents shall not trim back any vegetation interfering with electric power lines or transformers, but notify the Town to request the electric utility, or an authorized contractor, to perform the work.

#### **Section 5. Permit.**

A. Road and Street Work and Utility Permit – No person shall undertake to do any work in any road or street, or do any work on any public property within the corporate limits of the Town, or upon, in, or within the Town public right-of-way or any part thereof, whether acquired by dedication or public use, without first obtaining a permit from the Town.

B. Vegetation Management Permit - No person shall perform any vegetation management in the Town right-of-way without first obtaining a permit from the Town, other than routine yard maintenance of adjoining property.

C. The fee for the issuance of a permit shall be due upon the filing of a permit application.

D. A separate permit may be required of a utility for each new installation, major repair or modification to the utility system located within the paved portion of the right-of-way.

E. A separate Town permit shall be required for driveway aprons and driveway entrance/access points.

F. No permit shall be issued until the requirements of this Ordinance for an approved application, bond, paid fee(s), plans, and an on-site, pre-construction meeting have been met and approved by the Town Administrator.

G. No permit shall be transferable and may be revoked if any provisions thereof or of this Ordinance are violated. Willful refusal of any permittee to stop construction after receiving notice of such revocation shall be deemed a violation of this Ordinance.

H. A cash deposit of up to one thousand dollars (\$1,000.00) shall accompany permit applications which shall be returned upon completion of work acceptable to the Town without damage to public property or upon restoration of damage to public property. The Town Administrator shall have the authority to require larger deposits when circumstances warrant.

#### **Section 6. Permit Application.**

A. Application for permits required by this Ordinance shall be made on forms provided by the Town Administrator and shall be filed at least thirty (30) days prior to the desired construction start date. Application shall clearly define the nature and extent of any work

to be done in the Town right-of-way or on any public property; provide construction plans showing the type and location of the work to be performed; provide an estimated construction cost of the proposed work or project; and the signature of the owner or authorized agent.

B. Additionally, when required by the Town Administrator, the application shall be accompanied by construction specifications and suitable tracings of the detailed plans of the work to be done.

C. Town Administrator may require plans of proposed work adequate to meet Town needs, providing proposed grade, sediment control plan (when appropriate) stormwater drainage plan, paving plan (with profiles thereof) and a vegetation management plan (if applicable) showing the location of vegetation to be trimmed, pruned, or removed and the location and type of tree, shrubs or vegetation proposed to be planted.

D. If, after review of the application, it appears to the Town Administrator that the proposed work conforms to the Town's standards, the Town shall notify the applicant that the permit has been "approved for issuance", state the amount of applicable fees, required bonds, and a tentative date for the on-site, pre-construction meeting.

E. Town Administrator may refuse to accept an application for a permit from any applicant who is or was in default on a previously issued permit, or who is the permittee listed on an expired permit which is not currently in the process of being extended.

**Section 7. Bonds, Letters of Credit or Three-Party Bank Deposit Agreements**  
**Required: Amount**

A. No work done in the public right-of-way requiring a permit as described in Sections 5 of this Ordinance shall be issued until the applicant, when required by the Town Administrator, has posted a bond, letter of credit or three-party bank deposit agreement.

1. A cash or performance security bond in favor of the Town of Berwyn Heights as required herein: The amount of the performance security bond shall be equal to the total cost of the project as estimated by the Town Administrator, including an additional twenty-five percent (25%) of the cost for contingencies, and shall be conditioned upon the satisfactory completion of all work covered by the permit; and

2. A maintenance bond which guarantees for a period of two (2) years to indemnify against defective workmanship or materials the work covered by the permit required by this Ordinance at time of acceptance by the Town in the amount of fifty (50) percent of the cost of the project and shall remain in full force and effect until written issuance of bond release by the Town Administrator; or

3. In lieu of the performance and maintenance bonds required by this Ordinance, a composite corporate or cash bond may be furnished, which will stipulate termination of performance bond requirements and initiation of maintenance bond requirements upon acceptance by the Town of work covered by the permit; and

4. A labor or materialmen's payment security bond for an amount not less than fifty percent (50%) of the total cost of the project, as estimated by the Town Administrator, for the protection of all persons performing labor or furnishing material or leasing equipment (to the extent of the fair rental value thereof) in the prosecution of the work defined in the permit. The payment security may be held for up to one (1) year after the date of final acceptance of all work covered by the permit.

B. Security may be provided by means of:

1. Cash;

2. Bonds executed by surety or guarantee company qualified to transact business in the state and acceptable to the Town;

3. Irrevocable Letters of Credit issued by a bank qualified to transact business in the state and acceptable to the Town;

4. A three-party bank deposit agreement executed by a bank qualified to transact business in the state and acceptable to the Town and evidencing the deposit of the required sums and the funds may not be withdrawn without the written consent of the Town.

C. Release of bonds or other security:

1. Bonds or other security to guarantee completion of work that required a permit described in Sections 5 of this Ordinance shall not be released until the work covered by such bonds and the permit has been accepted by the Town Administrator.

**Section 8. Commencement of Work.**

A. No person shall begin work of any kind in the Town public right-of-way or public property until a permit for same has been issued by the Town Administrator.

B. Work under said permit shall commence within sixty (60) days of the date of the permit, unless cause to the contrary is shown, and, thereafter, continued to the conclusion of all work pursuant to the permit.

C. All permittees, including utilities, shall notify the Town Administrator at least seventy-two (72) hours prior to the commencement of any work in the Town public right-of-way. In the event that there is an interruption of the work for a period of more than five (5) days, the permittee shall notify the Town Administrator at the end of each interruption of intent to actively resume operations.

D. In case of an emergency, such as a utility cut for a water main break or a gas line leak, notice shall be given to the Town Administrator as soon as possible, but not more than twelve (12) hours after the commencement of work.

E. A copy of the permit shall be posted by permittee in a conspicuous place on each project site, when required by the Town Administrator.

**Section 9. Permit Duration.**

The duration of each permit will be computed on estimated project construction cost as follows. If the permit duration cannot be computed because the cost of the project is unknown, or is confidential, a permit for the minimum duration of 3 months shall be issued and extended as needed:

<b>Construction Costs</b>	<b>Permit Duration</b>
Up to \$50,000.00	3 months
From \$50,001.00 to \$100,000.00	4 months
From \$100,000.00 and over	6 months

**Section 10. Permit Extension.**

3. Permits shall automatically expire in accordance with the permitting schedule contained in Section 9, unless extended, in writing, by the Town Administrator. It shall be the responsibility of the permittee to apply for a renewal at least thirty (30) days prior to the expiration of the permit, which application shall contain the reasons for the requested renewal. Prior to the renewal of a permit, the permittee shall pay a permit renewal fee. Permits will be renewed in accordance with the original permitting schedule.

4. Where the Town Administrator determines that an additional cash deposit or bond amount is necessary because of inflation or other factors, the permittee shall be required to post the additional cash deposit or bond in an amount determined by the Town Administrator before the extension of time is granted.

**Section 11. Inspections Required.**

A. Inspection of all work done in the Town public right-of-way will be conducted and maintained at all times by the Town Administrator to assure compliance of the work with the issued permit.

B. Should the Town elect to use an outside third party inspection agency or engineering firm to perform the inspections, the permittee shall be responsible for payment of the third party inspection fees. In the event the permittee fails to pay the third party inspection fees, the Town shall withhold final approval of the work, release of permittee's deposit, performance security bond, labor or materialmen's payment, security bond, Letter of Credit, and/or third-party bank deposit agreements until inspection fees are paid.

C. No paving, catch basin, culvert, gutter, or sidewalk construction shall be started unless there has been a final inspection and approval of the sub-grade and concrete form work.

D. The construction work, materials, plans and specifications shall at all times be open to and available for inspection by duly authorized officials and employees of the Town.

4. Where permittee performs any work under or not under a permit without an inspection, such work shall be considered improper and such conduct on the part of the permittee or non-permittee may result in removal and replacement of all un-inspected construction at the permittee/non-permittee's expense.

5. Where permittee performs any work under a permit (with or without an inspection), and work does not comply with the standards of this Ordinance, the Town Administrator is empowered to issue written notice to require the work be removed and replaced by the permittee at his expense.

6. Permittee shall comply with all requirements of the Town Administrator directed to the permittee (either before or during the course of construction) which are deemed necessary in the interest of public safety, to avoid unnecessary inconvenience to the public during construction, or to insure compliance with Town standards and specification.

**Section 12. Approval and Acceptance of Work.**

A. Final approval of any work in the public right-of-way under any permit shall be given by the Town Administrator, after a field inspection by the Town Administrator shows to the Town Administrator's satisfaction that the work conforms in all respects with the permit, and includes all works required thereby, and the Town Administrator shall certify final approval to the Town Council.

B. In the case of any utility cut in any catch basin, curb, gutter, paved road, sidewalk or underdrains, the person or utility making the utility cut shall be responsible to warranty and repair any defective work for a period of two (2) years from the date of the written notice to the Town Administrator of the completion of the work under the original permit.

**Section 13. Authority of Town Administrator, Code Department and Police Department.**

A. Town Administrator, or designee, shall administer and enforce this Ordinance.

B. Town Administrator shall recommend amendments or revisions to the standards to the Town Council for adoption from time to time, as needed.

C. Town Administrator may disapprove the issuance of a permit for all or part of a proposed plan of work in the public right-of-way where work will negatively impact on properties in immediate surrounding area.

D. Town Administrator shall have the authority to issue an immediate “Stop Work Order” if the Town Administrator determines that the work being done does not meet Town standards or is creating a hazard or nuisance to the public.

E. The Town Administrator or any Town code compliance official or uniformed police officer is authorized to enforce Sections 4. D. through 4. H. of this Ordinance.

**Section 14. Damage to Public Property.**

2. No person shall damage any Town street, road or public property including trees or signs. All damage to public roads, public right-of-ways or public property shall be a civil liability.

B. If damage occurs to Town property, the cost of repair will be deducted from the cash deposit. In the event the cash deposit is insufficient to cover any such damage, the Town shall notify the person by certified mail of such damages and the cost of repair. If any charges remain unpaid after ninety (90) days from date of notification, such charges shall constitute a lien against the property and shall be collected as municipal taxes or recovered through legal recourse in the event the person does not own property in the Town of Berwyn Heights.

C. All permittees shall assume all responsibility for damages sustained to persons or property due to the carrying out of work under the permit and shall be responsible for all accidents to persons and property, holding the Town harmless from all damages resulting from any accidents which may occur during construction operations. If Town is made a party to any action because of the granting of a permit, the permittee shall be required to pay all costs and fees incurred by the Town, including legal fees.

4. Town reserves the right to take action against any bonds posted or take legal action, including action for injunctive relief in a court of competent jurisdiction, to cover or recover costs to repair and/or restore damage to Town or public property.

**Section 15. Issuance of a Lien or Legal Action.**

A. Whenever the Town has effected the removal of a hazard, or taken necessary corrective action to correct a problem within or adjacent to a public right-of-way, or has paid for the removal or corrective action, or has performed construction which was the responsibility of the permittee, adjacent property owner or other responsible person, the actual cost thereof, if not paid by the permittee, owner or person within thirty (30) days, shall be collected by initiating one or more of the following actions:

1. The recordation of a statement from the Town Administrator creating a lien against the adjacent property to be collected as delinquent taxes; or recovered through legal recourse in the event person does not own property in the Town of Berwyn Heights.

2. Action against any bonds posted by the responsible party where the permittee is responsible; or

3. Legal action including action for injunctive relief in a court of competent jurisdiction.

**Section 16. Violations**

- Any person who performs any work as described in Section 5 of this Ordinance in the public right-of-way, or any part thereof, without a valid permit or the required inspections or performs work in conflict with the standards set forth in Section 4 or the detailed construction plans submitted and approved for work to be performed under the permit, or creates a situation within the right-of-way that requires corrective action, shall be in violation of this Ordinance.

- Any person who performs any work as described in Section 5 of this ordinance,

and has been found to be in violation of this Ordinance, shall immediately take the corrective action specified by the Town Administrator in a written notice, such as reinstating where the permit has expired or has been suspended; obtaining a permit where none existed; correcting or removing work that does not comply standards set forth in Section 4; or correcting any situation that violates this Ordinance. Non-compliance on the part of the responsible person shall be a violation of this Ordinance.

C. Any person required by this Ordinance to have a permit who performs work which is in violation of the provisions of this Ordinance shall be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) per violation. Each day that a violation continues shall be deemed a separate offense and a separate fine.

D. Any violation of this Ordinance shall be considered a municipal infraction punishable by a fine of not more than one thousand (\$1,000.00) dollars per violation. Each day on which a violation continues is deemed a separate violation and is subject to an additional citation and fine.

E. The application of such penalty shall not preclude the enforced removal, abatement or correction of the conditions which were found to be in noncompliance. In addition, the Town may take those actions necessary to correct the situation, and all costs therefrom shall be billed to the responsible person or be recovered through legal recourse.

F. Notice of Violation. Whenever the Town Administrator determines that the requirements of this Ordinance have been violated, the Town Administrator shall notify the responsible person, owner or permittee, in writing, and detail the corrective action required and the amount of time within which the corrective work must be performed. Such notice may be delivered in person, or by the United States Postal Service at the last known address or the address shown on the real property tax records in the Treasurer's office for Prince George's County. Such notice, when delivered in person or by certified return receipt requested mail shall be deemed complete and sufficient.

G. Compliance and Penalties.

1. The permittee shall comply with all requirements of the permit, including sediment control, if required.

2. Where the permittee fails to comply with the requirements cited in the Notice of Violation, the following actions may result:

i. A "Stop Work Order" may be issued by the Town Administrator. Such "Stop Work Order" shall constitute a suspension of the applicable permit, and shall prohibit the violator from doing any further work under the permit except such work as shall bring any previous work into compliance. When the permittee corrects the work to the satisfaction of the Town Administrator, in accordance with the applicable standards, the Town Administrator shall rescind the stop-work order in writing at which time the permittee may resume further work under the permit; or

ii. The Town may complete the required work and charge the permittee on a cost basis, including the costs of administration and overhead.

3. Safety hazards: work in noncompliance. Safety hazards, or work which is determined not to be in compliance with the provisions of this Ordinance, which occurs within the public right-of-way as a result of the work performed by the permittee and the correction of which is considered urgent by the Town Administrator, shall be resolved by contacting the permittee. If that person cannot be contacted within twenty-four (24) hours, then the Town Administrator shall be authorized to proceed with the necessary corrective action and bill the permittee accordingly for all costs incurred. Failure of the permittee to pay the amount billed within thirty (30) days may be sufficient grounds for suspension or revocation of the permit.

H. Persons violating Sections 4. D. through 4. H. are subject to a fine.

**Section 17. Fees and Fines**

The fee and fine schedule for this Ordinance will be set from time to time by resolution of the Town Council.

**Section 18. Right to Appeal**

A. Any person affected by any notice of violation or permit related issue may elect to appeal to the Town Council.

5. Any person affected by any notice of violation, which was issued in connection with the enforcement of any provision of this Ordinance, may request and shall be granted a hearing on the matter by the Town Council, provided that such person shall within ten (10) days after service of a notice of violation, files with the Town Council a signed written notice of appeal, requesting a hearing and setting forth a brief statement of the reasons thereof. Upon receipt of such notice of appeal, Town Council shall set a time and place for such hearing and shall hear said appeals as promptly as practicable.

6. Any person who disagrees with an action related to the issuance of a permit by the Town may request, and shall be granted, a hearing on the matter by the Town Council, provided the appeal is filed in writing within ten (10) days of such action. Upon receipt of the appeal letter, the Town Council shall set the time and place for a hearing, which shall be scheduled as promptly as practicable.

7. The Town Council, with a quorum present, shall hear appeals. After such a hearing, the Town Council may, by a majority of members present, affirm, amend, modify or withdraw the notice of violation or permit-related issue that has been appealed. Any person who shall fail, refuse or neglect to comply with the decision of the Town Council shall be guilty of violating the provisions of this Ordinance.

8. In the event a person wishes to contest the decision of the Town Council, he or she may notify the Town of his or her intent within ten (10) days after the rendering of the decision by the Town Council. If the appeal relates to a violation, the Town shall issue a municipal infraction citation to the aggrieved person who may request a hearing in the District Court of Maryland pursuant to the Municipal Infraction procedure. If the appeal relates to a permit issue, no municipal infraction citation will be issued and the matter will be referred to a court of competent jurisdiction. The decision of the Town Council in such a case shall be stayed, pending a decision by a court of competent jurisdiction. To the extent of this Section of the Ordinance, all violations of this Ordinance will be considered municipal infractions of the Town.

B. Failure to pay after adjudication or request of adjudication by the Town will result in the amount of any fine imposed being recorded as a lien against the property and collected in the same manner as delinquent Town taxes. In the event the delinquent person does not own property in the Town of Berwyn Heights, the Town may opt to not release any deposits, bonds, or other securities deposited upon issuance of a permit or recover through legal recourse in the event person does not own property in the Town of Berwyn Heights.

**Section 19. Interpretation and Waiver**

The Mayor and Town Council of Berwyn Heights shall decide questions of interpretation of this Ordinance. Upon written request, the Mayor and Town Council may waive or vary particular provisions of this Ordinance to the extent that the waiver is not inconsistent with the Annotated Code of Maryland and if the waiver would not threaten the health or safety of a resident or visitor in the Town.

**Section 20. Rules and Regulations**

The Town Council may pass such rules and regulations as are consistent with the purpose, intent and enforcement of this Ordinance.

**Section 21. Severability**

If any section or provision or parts thereof in this Ordinance shall be adjudicated to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of this Ordinance as a whole or any other section or provision or part thereof.

Adopted: October 10, 1982  
Effective: March 30, 1982  
Amended: August, 1984  
Amended: September 13, 2000  
Effective: October 31, 2000  
Amended: November 13, 2013

**Section 1. Purpose and Authority**

- A. The purposes of this Ordinance are to establish standards for the maintenance of residential properties in the Town of Berwyn Heights, and to prevent conditions that threaten public health, safety or welfare of residents of, or visitors to, the Town of Berwyn Heights. The Ordinance also establishes a system of notifications and penalties for violations to enforce the standards and a process to appeal any penalties imposed.
- B. The authority to provide for the protection of health, safety, comfort, convenience, and welfare of Town of Berwyn Heights residents and visitors is provided in *Section 401 – General Powers* of the Charter of the Town of Berwyn Heights.
- C. The authority to enact such regulations is provided in *Section 402 - Specific Powers of the Council* of the Charter of the Town of Berwyn Heights.
- D. The authority to impose fees and penalties for violating the regulations is provided in *Section 403 - Enforcement* of the Charter of the Town of Berwyn Heights.

**Section 2. Applicability of Ordinance**

The provisions herein shall apply to all residentially zoned real property located within the corporate limits of the Town of Berwyn Heights, whether improved or unimproved.

**Section 3. Definitions**

In this Ordinance, the following words have the meanings indicated. Where terms are not defined, they shall have their ordinarily accepted meanings such as the context may imply.

- A. Abandoned, junked, wrecked, or non-road worthy motor vehicle means any motor vehicle which is unregistered, improperly registered, or which is without current State of Maryland license tags unless the State of Maryland expressly exempts such vehicles from registration requirements; bears the license tags of another vehicle; is disabled or inoperable; is dismantled or partially dismantled; is substantially damaged or in disrepair; or is unable to pass inspection by the Maryland Motor Vehicle Administration.
- B. Accessory structure means a building or structure, retaining wall, wall or fence that is incidental to the main building, located on the property.
- C. Agent means any person or company designated by the property owner to act for them.
- D. Bamboo means any of the tall, fast-growing grasses with woody stems found in tropical and subtropical to mild temperate regions that make up the subfamily Bambusoideae, family Poaceae.
- E. Debris means any quantity or combination of litter, rubbish, garbage, tree limbs or branches, or motor vehicle parts.
- F. Exterior property area means all areas external to improvements on the property or on unimproved property including the Town right-of-way and adjacent street curb and gutter. Exterior property area specifically excludes any trees along the Town right-of-way.
- G. Garbage means putrescible animal, food and vegetable wastes resulting from the handling, preparation, cooking, or consumption of food.
- H. Hazard means a situation, condition or action by a person that creates an environment that is unsafe or threatens public health, safety, or welfare.
- I. Imminent threat means a situation, condition, or action by a person that creates an environment that immediately threatens public health, safety or welfare if not immediately remedied.
- J. Invasive plant species means a species that is non-native to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm, or harm to human health as the National Invasive Species Council, the Maryland Invasive Species Council or any other State-established list the Town Administrator may determine is appropriate, or the U.S. Department of Agriculture may so identify.
- K. Litter means all combustible and noncombustible waste materials, except garbage; and the term shall include, but not be limited to, appliances, building, construction or remodeling materials or waste, bulk refuse, electronics or electronic recyclables, hazardous material or waste, household refuse, refuse, trash and yard waste, excluding organic compost piles, that is thrown, deposited or stored in or on private property or creates a nuisance or a threat to public health, safety and welfare.
- L. Multiple Repeat Violator means any person that has been noticed for three or more violations of this Ordinance in an eighteen month (18) period.
- M. Property Owner means one who has complete dominion over a particular property and in whom legal or equitable title rests, when applied to a building or land. Property Owner means any part owner, joint tenant in common, tenant by the entireties, or joint tenant, of the whole or part of such building or land.

- N. Paved Parking Area means any asphalt, bluestone, bricks, brick pavers, pervious pavers, crushed gravel, poured concrete, other hard rock surface or other masonry-like material completed in a professional manner, rolled to a smooth or level surface and maintained free of loose materials or excessive vegetative growth, situated on the property behind the property line and located and accessed in accordance with the provisions of the Prince George's County Zoning Ordinance.
- O. Person means any individual, natural person, legal entity, joint stock company, partnership, voluntary association, society, club, firm, company, corporation, business trust, organization, owner, occupant, or any other group acting as a unit, principal or agent, or the manager, lessor, lessee, agent, servant, partner, member, director, officer or employee of any of them including an executor, administrator, trustee, receiver, or other representative appointed according to law.
- P. public nuisance means a situation, condition or action whereby a person creates an environment that is unsafe or threatens public health and welfare of the surrounding area or disturbs public peace.
- Q. Repeat Violator means any person that has been noticed for two violations of this Ordinance in an eighteen (18) month period.
- R. Rubbish means all non-putrescible combustible or non-combustible solid waste normally generated from running a household.
- S. Town Council means the Town Council for Berwyn Heights.
- T. Vacant Property means a residence that is not occupied on a regular and habitual basis by the property owner or any other person for the usual and customary purposes for which the residence is designed and lawfully permitted.
- U. Weeds means brush, plants, or any noxious growth that is injurious to public health, agriculture, recreation, wildlife or property. This definition excludes properly tended trees, ornamental plants, flowers, vegetable plants, or undisturbed woodland, not otherwise in violation of this Ordinance.

#### **Section 4. Violations**

The following are considered violations of this Ordinance:

- A. Condition of Exterior Property Areas.
1. Imminent threat. All exterior property areas shall be maintained free from imminent threats. Examples of imminent threats include, but are not limited to, imminent fire hazards; spilled or improperly stored hazardous or toxic chemicals; domestic animals in a contaminated or soiled environment; and protruding nails.
  2. Hazard. All exterior property areas shall be maintained free from hazards. Examples of a hazard include, but are not limited to, spilled or improperly stored potentially harmful substances or pesticides; excessive accumulation of domestic animal feces; and a leaning fence.
  3. Non-Hazard. All exterior property areas shall be maintained in a reasonably clean and sanitary condition, free from any accumulation of debris. If pests are found, the property owner shall initiate the extermination process which shall not be injurious to the health of humans or domestic animals.

- B. Tall Grass and Weeds. All exterior property areas shall be properly maintained and no grass or weeds more than ten (10) inches tall, other than annual or perennial cultivated flowers, and plants, bushes, shrubs, garden and yard plantings, and trees properly maintained by the property owner or agent shall be allowed to accumulate or grow on any private property. No vegetation shall be allowed to grow in, or into, the public curb or gutter.
- C. Invasive plant species and Bamboo. Invasive plant species and bamboo plants are permitted provided that such invasive plant species and bamboo do not spread any closer than two (2) feet from the property owner's property line and are contained in such a manner as to not spread to any other public or private property. Should any property owner or agent permit invasive plant species or bamboo to spread to any other public or private property, the property owner or agent from where the invasive plant species or bamboo has spread shall be responsible for the expense of its removal.
- D. Discarded Vehicles. It shall be unlawful for any person to discard any vehicle on any residential lot within the corporate limits of the Town.
- E. Vehicle Condition and Storage.
1. No property owner or agent shall permit any vehicle to remain on such property in a condition that causes environmental harm or constitutes a breeding ground or habitat for mosquitoes, rats, or other vermin or pests.
  2. No property owner or agent shall permit an abandoned, junked, wrecked or non-road worthy vehicle as defined in this Ordinance to remain on such property, except enclosed in a garage; if such vehicle is in a driveway, it shall be properly and completely covered with a make, model and year custom-fitted or universal tightly fitted cover. Such vehicles, not enclosed in a garage, shall be limited to two (2) per residence.
  3. The Code Compliance Department and the Police Department are authorized to tow, impound, and send to a scrap processor a motor vehicle that has been declared an abandoned, junked, wrecked or non-road worthy vehicle, as defined in this Ordinance, only after notifying the property owner or agent of the property on which the vehicle is located and the motor vehicle owner, if known, by attaching a notice on the presumed abandoned, junked, wrecked or non-road worthy vehicle. The property owner or agent where the vehicle is located shall be responsible for all towing, storage, preservation, and any other charges related to the towing, impounding, and disposition of the vehicle.
- F. Motor Vehicle Parts. Exterior property areas shall not be utilized for the storage of motor vehicle parts.
- G. Building Materials. Exterior property areas shall not be utilized for the open storage of building materials, bathroom or kitchen fixtures, furniture, or lawn and garden equipment, irrespective of age or condition, except for routine garden maintenance equipment, outdoor lawn furniture, or materials used in construction or renovation projects with the appropriate Prince George's County and Town permits.
- H. Wood Storage. The storage of wood and other materials not prescribed by this Ordinance, including organic compost piles, shall be accomplished in a manner designed to avoid rodents, termites and other insect infestation. Wood shall be stored at least six (6) inches above the ground.

- I. Vegetation. All vegetation located on exterior property areas shall be maintained in such a way so as not to pose a danger or obstruction to adjoining property, pedestrians or vision of any motorist.
- J. Parking Surfaces.
  - 5. A paved parking area must be accessed by a curb cut unless granted an exception by the Town Council. The curb cut shall be constructed of poured concrete completed in a professional manner, situated totally within the public right-of-way, where applicable, constructed in accordance with the Building Code of Prince George's County and located in accordance with the Prince George's County Zoning Ordinance. Grassy yards or other unpaved areas shall not be used for the parking of boats, motorcycles, motor vehicles of any type, trailers or similar items on a residential property except during a "snow emergency." All wheels of said vehicle(s) must be parked on an approved paved parking area in order to be in compliance with this Ordinance.
  - 6. Vehicles, such as boats, trailers or other currently registered seasonal or recreational vehicles are exempted from this subsection when the vehicle's owner obtains a permit from the Town Administrator. Such permit shall be issued only for good cause and for a period of time not to exceed seventy-two (72) hours. Only through action of the Mayor and Council may a permit be issued for a period of time that exceeds seventy-two (72) hours. If there are extenuating circumstances, the Mayor and Council may grant a long-term permit for a period not to exceed one year and such permit may be renewed only by action of the Mayor and Council.
- K. Building Security. No property owner or agent shall allow vacant structures or property to become a public nuisance, safety or health hazard, or be in a condition that could encourage trespassing.
- L. Accessory Structures. No accessory structure shall pose a public health or safety hazard. All accessory structures shall comply with Prince George's County and Town Ordinances and any improvements to such accessory structures shall be duly permitted.
  - 5. A Code Compliance Officer or other Town designated representative may require a property owner, at the property owner's expense, to repair or replace a fence not in compliance with the Prince George's County Zoning Ordinance. Any fence repair or replacement shall comply with provisions regarding location, height, and material in the Prince George's County Zoning Ordinance.
  - 6. A Code Compliance Officer or other Town designated representative may require a property owner, at the property owner's expense, to repair or install a retaining wall along their property line if the Town Administrator makes a determination that rainwater or stormwater run-off discharging from their property is causing erosion or damage to adjoining properties or structures.
- M. Premises Identification. All premises shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property.

## **Section 5. Enforcement**

- A. It shall be the duty and responsibility of the Town to enforce the provisions of this Ordinance as herein provided.

- B. The Mayor and Council may waive applicability of this Ordinance to a property on application of the property owner or agent if:
1. Adequate notice is given in a form and manner specified by the Town;
  2. The property owner or agent is afforded an opportunity to comment on the complaint either in writing or in person; and
  3. The waiver would not threaten the health, safety or welfare of any resident or visitor.

**Section 6. Notice of Violation of Standards and Penalty for Violations**

- Whenever the Code Compliance Officer or other designated Town representative determines that there are reasonable grounds to believe that there has been, or is, a violation of any provision of this Ordinance or of any rule or regulation adopted pursuant thereto, the Code Compliance Officer or designated representative shall give notice of such alleged violation to the person or persons responsible therefore, as herein after provided unless otherwise noted in this Ordinance. Such notice shall:
  1. Be in writing;
  2. Include a description of the real property sufficient for identification;
  3. Include a statement of the reason why the notice is being issued with reference to the section of this ordinance violated;
  4. Allow time, as set forth in this Ordinance, for the remedial action required to correct the violation; and
  5. Contain:
    - a. An outline of the remedial action which, if taken, will effect compliance with the provisions of this Ordinance and with the rules and regulations adopted pursuant thereto; and
    - b. The requirement that the violation must be fully corrected within the timeframe, as specified in Section 6. E. of this Ordinance. For each additional prescribed period that the violation is not fully corrected, notice will be issued of the fine amount as due and payable to the Town of Berwyn Heights. Fines for failure to take remedial action shall be established by resolution of the Town Council and shall not exceed the amount of one thousand dollars (\$1,000.00). Failure to pay fine(s) will result in the amount of any fine(s) imposed to be collected in the same manner as delinquent Town taxes.
- Service of notice that a dwelling is in violation shall be as follows:
  7. By delivery to the property owner or agent personally or by leaving the notice at the usual place of abode of the property owner or office of the agent with a person of suitable age and discretion who shall be informed of the intent thereof; or
  8. By appropriate means of mail addressed to the property owner or agent at the address provided to the Town by the property owner or agent with postage prepaid thereon with return receipt requested, or if said letter is returned with receipt showing non-delivery, then
  9. By posting a copy of the notice in a conspicuous place on the premises affected by such notice.
- Town Abatement. The Town of Berwyn Heights shall have the right, after thirty (30) days of continued violation, to enter onto the premises of the property in violation to abate any violation. The costs of such abatement shall be charged to the property owner and be

collected in the same manner as delinquent Town taxes. Abatement by the Town does not constitute compliance with this Ordinance. The Town's abatement procedure pursuant to Section 4. L. of this Ordinance may include the boarding up or razing of buildings or structures on the premises. Where a clean lot problem is refuse improperly put out for collection, the right to abate and collect costs will be as prescribed in Ordinance 117 – Refuse Collection.

- Vacant Property.
  1. Hazardous Situation. If a Code Compliance Officer or other Town designated representative has determined that the condition of a vacant property is hazardous to public health, safety or welfare, the Town of Berwyn Heights shall have the right to immediately enter upon the premises of the property in violation to abate any and all violations after complying with the notification provisions set forth in this Ordinance. Failure of the property owner to pay the Town for the cost of abatement within ten (10) days shall result in collection by the same manner as delinquent Town taxes.
  2. Non-Hazardous Situation. If a Code Compliance Officer or other Town designated representative determines the condition of a vacant property constitutes a violation, a person shall be notified of the violation of this Ordinance by certified mail and have ten (10) days to correct the violation. If, after ten (10) days from the date of notification, the violation has not been corrected, the Town of Berwyn Heights shall have the right to enter upon the premises of the property in violation to abate any and all violations. Failure of the property owner to pay the Town for the cost of abatement within ten (10) days shall result in collection by the same manner as delinquent Town taxes.
  3. The Code Compliance Department shall maintain a list of vacant residential property located within the Town.
  
- Timeframe for Notice of Violation and Penalties. The definitions below and the following table provide categories of timeframes for issuing the initial violation notice, a subsequent violation notice and assessment of penalties and fines.
  9. Immediate means a person shall be subject to an immediate fine, or have twenty-four (24) hours from the time the correction notice was issued to correct the violation at the discretion of a Code Compliance Officer or other designated Town representative only if the person is not a repeat violator or multiple repeat violator. If, after twenty-four (24) hours, the violation has not been corrected, another notice to correct which imposes a fine shall be issued. A recurring fine and notice to correct shall be issued in twenty-four (24) hour intervals thereafter until the violation is corrected.
  10. Time Sensitive means a person shall have seven (7) days from the time the correction notice was issued to correct the violation. If, after seven (7) days, the violation has not been corrected, another notice to correct which imposes a fine shall be issued. A recurring fine and notice to correct shall be issued in seven (7) day intervals thereafter until the violation is corrected.
  11. Regular Order means a person shall have fifteen (15) days from the time the correction notice was issued to correct the violation. If, after fifteen (7) days, the violation has not been corrected, another notice to correct which imposes a fine shall be issued. A recurring fine and notice to correct shall be issued in fifteen (7) day intervals thereafter until the violation is corrected.
  12. Structural means a person shall have forty-five (45) days from the time the correction notice was issued to provide to an adequate plan to the Code Compliance Department to

correct the violation. If, after forty-five (45) days, a person has not provided an adequate plan to the Code Compliance Department to correct the violation, another notice to correct which imposes a fine and affords the person thirty (30) days to provide the plan shall be issued. A recurring fine and notice to correct shall be issued in thirty (30) day intervals thereafter until the violation is corrected.

<b>Category of Violation and Timeframes for Notice and Violation</b>	<b>Immediate</b>	<b>Time Sensitive</b>	<b>Regular Order</b>	<b>Structural</b>
A. Condition of Exterior Property Areas				
1. Imminent threat	X			
2. Hazardous		X		
3. Non-Hazardous			X	
B. Tall Grass and Weeds		X		
C. Invasive Species and Bamboo			X	
D. Discarded Vehicles	X			
E. Vehicle Condition and Storage			X	
F. Motor Vehicle Parts		X		
G. Building Materials		X		
H. Wood Storage			X	
I. Vegetation			X	
J. Parking Surfaces	X			
K. Building Security		X		
L. Accessory Structures				X
M. Premises Identification			X	

**Section 7. Repeat Violations**

- A. Unless otherwise noted in this Ordinance, any two (2) violations occurring within an eighteen (18) month period shall be considered a repeat of any previous violation and the property owner or agent shall be deemed a repeat violator. Any repeat violations will be treated as a Time Sensitive violation, with the exception of a violation deemed to be an Immediate violation, pursuant to Section 6. Repeat violations are subject to Town abatement if not corrected within twenty-one (21) days. The costs of such abatement shall be charged to the property owner and be collected in the same manner as delinquent Town taxes.
- B. Unless otherwise noted in this Ordinance, any three (3) violations, with the exception of a violation of Section 4. K. Parking Surfaces, occurring within an eighteen (18) month period shall be considered repeats of any previous violation and the property owner or agent shall be deemed a multiple repeat violator. Any repeat violations will be treated as an Immediate violation pursuant to Section 6 of this Ordinance. Multiple repeat violations are subject to

immediate Town abatement. The costs of such abatement shall be charged to the property owner and be collected in the same manner as delinquent Town taxes.

**Section 8. Right to Appeal**

- A. Any person affected by any notice of violation may elect to appeal to the Town Council.
  - 3. Any person affected by any notice of violation which had been issued in connection with the enforcement of any provision of this Ordinance may request and shall be granted a hearing on the matter by the Town Council, provided that such person shall within ten (10) days after service of a notice of violation, file with the Town Council a signed written notice of appeal, requesting a hearing and setting forth a brief statement of the reasons therefore. Upon receipt of such notice of appeal, the Town Council shall set a time and place for such hearing and shall determine appeals as promptly as practicable. The Town Council, with a quorum present, shall hear appeals.
  - 4. After such hearing the Town Council may, by a majority of members present, affirm, amend, modify or withdraw the notice of violation that has been appealed. Any person who shall fail, refuse or neglect to comply with the decision of the Town Council shall be guilty of violating the provisions of this Ordinance.
  - 5. In the event a person wishes to contest the decision of the Town Council, he or she may notify the Town of his or her intent within ten (10) days after the rendering of the decision by the Town Council. In that event the Town shall issue a municipal infraction citation to the aggrieved person who may request a hearing in the District Court of Maryland pursuant to the Municipal Infraction procedure. The decision of the Town Council in such a case shall be stayed, pending a resolution by the District Court. To the extent of this Section of the Ordinance, all violations of this Ordinance will be considered municipal infractions of the Town.
  
- B. Failure to pay after adjudication or request of adjudication by the Town will result in the amount of any fine imposed and be collected in the same manner as delinquent Town taxes.

**Section 9. Severability**

If any section or part of a section of this Ordinance shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance.

Amended	03/09/94
Effective	03/29/94
Amended	10/09/96
Effective	10/29/96
Amended	04/12/00
Amended	07/13/05
Effective	08/02/05
Amended	05/14/08
Effective	06/04/08
Amended	03/11/15
Effective	03/31/15