



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:

Construction Costs	Permit Duration
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.

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