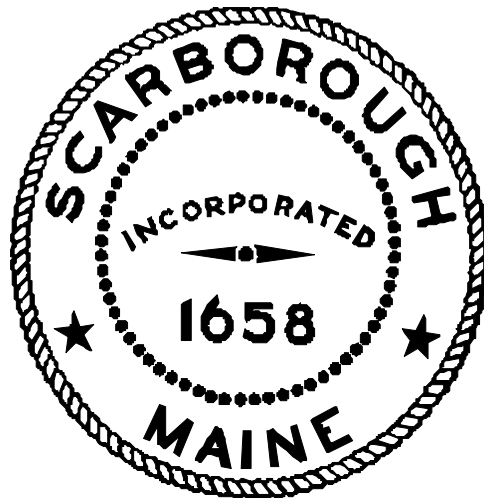


**CHAPTER 702**

**TOWN OF SCARBOROUGH**

**STREET OPENING ORDINANCE**



**ADOPTED JUNE 1988**  
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Section I Definitions, License, Insurance, Permit .....	1
Definitions: .....	1
1.    Town.....	1
2.    Excavation.....	1
3.    Facility.....	1
4.    Licensed excavator.....	1
5.    Newly constructed, reconstructed or repaved streets.....	1
6.    Permittee.....	1
7.    Public place .....	1
8.    Substructure.....	1
9.    Utility .....	2
License:.....	2
Insurance.....	2
Permit.....	2
Section II Special Conditions, Excavation, Resurfacing, Fees.....	3
Special Conditions .....	3
1. Relocation and protection of utilities .....	3
2. Protection of public property .....	4
3. Urgent Work.....	4
4. Emergency action.....	4
5. Noise, dust and debris .....	4
6. Preservation of monuments.....	4
7. Granite and bituminous curb .....	5
8. Maintenance of drawings .....	5
9. Annual work program to be submitted by utilities.....	5
Excavation .....	5
1. Clearance for vital structures .....	5
2. Protective measures and routing of traffic .....	6
3. Breaking through pavement in streets and sidewalks .....	7
4. Care of excavated material.....	7
5. Backfilling of excavation .....	8
6. Trenches .....	8
7. Prompt completion of work.....	8
8. Excavations during winter.....	9
9. Manholes and/or catch basins .....	9
10. Excavations in reconstructed streets .....	9
11. Incurred expenses through repairing and backfilling by Town .....	9
12. Resurfacing of streets and sidewalks .....	10
13. Inspection .....	10
Fees and Charges.....	11
1. Fee: .....	11
2. Cost of Replacement: .....	11
3. Special Conditions: .....	11
Billing Procedures .....	11

**CHAPTER 702  
TOWN OF SCARBOROUGH  
STREET OPENING ORDINANCE**

**Section I Definitions, License, Insurance, Permit**

**Definitions:**

The following words and phrases, when used in this article, shall have the following meanings respectively ascribed to them:

**1. Town**

Shall mean Town of Scarborough and/or its public works authority.

**2. Excavation**

Shall mean any opening in the surface of a public place made in any manner whatsoever, except an opening in a lawful structure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public place.

**3. Facility**

Shall mean pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire tower, pole, pole line, anchor, cable, junction box, or any other material, structure, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under, or over any public place.

**4. Licensed excavator**

Shall mean any person who has been issued a license by the Town to excavate in public places in the Town.

**5. Newly constructed, reconstructed or repaved streets**

shall mean any street which has been newly constructed, reconstructed or repaved within the past five (5) years.

**6. Permittee**

Shall mean a person who has obtained a permit as required by this article.

**7. Public place**

Shall mean any public street, way, place, sidewalk, park, square, plaza, or any other similar public property owned or controlled by the Town and dedicated to public use, and any dedicated-but-unaccepted street or way.

**8. Substructure**

Shall mean any pipe, conduit, duct, tunnel, manhole, vault, buried cable, or wire, or any other similar structures located below the surface of any public place.

## **9. Utility**

Shall mean a private company, corporation or quasi-municipal corporation under the direction and control of the Public Utilities Commission.

### **License:**

1. No person or utility shall excavate in a public place without holding a valid license for such work from the Town. The public works authority shall issue such license upon receipt of an application therefor and the annual license fee, after having satisfied himself or herself of the competency and ability of the applicant to carry on the business of excavating. No person or utility possessing such license shall allow his or her name to be used by any person or utility, directly or indirectly, either to obtain a permit to do any work under this license; provided, however, that nothing herein shall be construed to prohibit a licensed excavator from doing such work through an authorized agent or employee who is directly and continuously supervised by him while in the performance thereof. A license issued to an excavator may be revoked after notice and hearing, if it is determined by the Town that the licensed excavator has willfully disobeyed any portion of this article.
2. The annual excavator license fee as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council, is valid from January 1 to December 31 and contains no prorated provisions.

### **Insurance**

1. This article shall not be constructed as imposing upon the Town or any official or employee any liability or responsibility for damage to any person injured by the performance of an excavation work for which an excavation permit is required under this article, nor shall the Town or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit, or the approval of any excavation work. In the case of a dedicated-but-unaccepted street or way, this article shall not be constructed as authorizing any action which is inconsistent with any private rights in said street or way, nor shall the issuance of any permit hereunder be constructed as an acceptance of said street or way by the Town for highway or any other purposes. For purposes of this section, every licensed excavator shall maintain at all times a minimum of \$300,000.00 public liability insurance coverage protecting himself, his agents and the Town from all such claims for damages or injuries and naming the Town as an additional insured. Evidence of such coverage shall be a condition precedent to the issuance of any license hereunder and shall be submitted in a form satisfactory to the public works authority.

### **Permit**

1. No person or utility shall make any excavation or fill any excavation in any public place without first obtaining a permit to do so from the Town. A certificate of Public Liability Insurance is required prior to the issuance of any excavation permit, with a minimum of \$300,000.00 coverage naming the Town as an additional insured.
2. No excavation permit shall be issued unless a written application on a form provided by the Town for the issuance of an excavation permit is submitted to the Town. The written application shall state the name and address of the applicant, the name of the public place to be excavated and street number, the beginning date of proposed work, the type of work to be done, signatures of utility approval, the signature of Town Departments (if involved), a diagram of the planned excavation on the back of the form.
3. Utilities, although having to submit an application for a permit to the Town, may contact other utilities involved by phone and the authorized person doing so shall sign the application in the appropriate place. All applications shall be presented to the Town for the issuance of an excavation permit within thirty (30) days from the date of the last utility approval. After the expiration of this thirty (30) day period such application shall become null and void and shall have to be renewed.
4. A fee as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council, shall be paid for each issuance and for each renewal of an excavation permit.
5. Excavation work must be started no later than thirty (30) days from the date of issue of the excavation permit. After the expiration of this thirty (30) day period, such permit shall become null and void and shall have to be renewed.

## **Section II Special Conditions, Excavation, Resurfacing, Fees**

### **Special Conditions**

#### **1. Relocation and protection of utilities**

The permittee shall not interfere with any existing facility without the written consent of the Town and the owner of the facility. If it becomes necessary to relocate an existing facility, this shall be done by its owner. No facility owned by the Town shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the facility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across the work. The permittee shall secure approval of method of support and protection from the owner of the facility. In case any of the pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure, the

permittee shall promptly notify the owner thereof. All damaged facilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this section that the permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The Town shall not be made a party to any action because of this section. The permittee shall inform itself as to the existence and location of all underground facilities and protect the same against damage.

## **2. Protection of public property**

The permittee shall not remove, even temporarily, any trees or shrubs which exist in the street area without first obtaining the consent of the appropriate Town department or Town official having control of such property.

## **3. Urgent Work**

When traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the Town shall have the full power to order, at the time the permit is granted, that a crew and adequate facilities be employed by the permittee beyond normal working hours including up to twenty-four (24) hours a day to end that such excavation work may be completed as soon as possible.

## **4. Emergency action**

Nothing in this article shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs, provided that the person making such excavation shall apply to the Town for such a permit on the first working day after such work is commenced. Before any excavation work is started, the person or utility excavating must contact all utilities for on the spot locations.

## **5. Noise, dust and debris**

Each permittee shall conduct and carry out excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of excavation work, noise, dust and unsightly debris and between the hours of 10:00 p.m. and 7:00 a.m. shall not use, except with the express written permission of the Town or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb sleep of occupants of the neighboring property.

## **6. Preservation of monuments**

Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point, or a permanent survey bench mark within the Town, shall not be removed or disturbed or caused to be

removed or disturbed without first obtaining permission in writing from the Town to do so. Permission to remove or disturb such monuments, reference points or bench marks shall be granted only when no alternate route for the proposed substructure or conduit is available. If the Town is satisfied that no alternate route is available, permission shall be granted only upon condition, by an agreement in writing, that the person or utility applying for such permission shall pay all expenses incident to the proper replacement of this monument by the Town or permittee.

#### **7. Granite and bituminous curb**

No person or utility shall remove, damage, haul away or cause misalignment or any bituminous curb, granite curbing, including radius curb and catch basin stones, for any reason whatsoever without first receiving written permission from the Town. Any curb missing, damaged or misaligned shall be replaced or aligned by the Town at the rate set forth herein and will be charged to the permittee; provided, however, that the Town, at its option, may allow the permittee to replace or realign that portion of curb by the permittee's excavation. In such event, replacement or realignment shall be done in a manner and under specifications prescribed by the Town and subject to inspection by the Town and shall be completed within a period of ninety (90) days after such authorization to complete work. The permittee shall, for a period of three (3) years thereafter, be fully liable for all defects in materials and workmanship relating to such work and shall promptly repair or replace the same upon notice of the public works authority and to the satisfaction thereof.

#### **8. Maintenance of drawings**

Every person or utility owning, using, controlling, or having an interest in substructures, under the surface of the public way used for the purpose of supplying or conveying gas, electricity, communication, impulse, water, steam, ammonia or oil in the Town, shall file with the Town, a map or set of maps each drawn to a scale of not less than one (1) inch to fifty (50) feet, showing in detail the plan, location, size and kind of installation, if known, of all new or renewed substructures, except service lines designed to serve single properties. These maps shall be provided to the Town no later than sixty (60) days after the completion date of construction.

#### **9. Annual work program to be submitted by utilities**

Each year on or before March thirty-first, each utility shall submit to the public works authority its planned work program for the ensuing year, which shall not include emergencies and normal house service lines. Thereafter, no permit shall be issued to a utility for excavations not contained within its planned work program, except for emergencies and house service lines, until a prior written application for such excavation shall have been submitted to and approved by the public works authority.

### **Excavation**

#### **1. Clearance for vital structures**

The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, water gates, underground vaults,

valve housing structures, traffic signal cables and loops and all other vital equipment as designated by the Town.

## **2. Protective measures and routing of traffic**

### **a. Safe crossings.**

The permittee shall in general maintain safe crossings for two (2) lanes of vehicle traffic at all street intersections where possible and safe crossings for pedestrians. If any excavation is made across any public street or sidewalk, adequate crossings shall be maintained for vehicles and pedestrians. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, a passageway at least one-half of the sidewalk width shall be maintained along such sidewalk line.

### **b. Barriers and warning devices.**

It shall be the duty of every permittee cutting or making an excavation in or upon any public place, to place and maintain barriers and warning devices necessary for safety of the general public. Traffic control in the vicinity of all excavations affecting vehicular, pedestrian and bicycle traffic shall be subject to final review and approval of the Public Works Department. Barriers, warning signs, lights, etc., shall conform to the latest edition of the "*Manual on Uniform Traffic Control Devices*". Warning lights shall be electrical markers or flashers used to indicate a hazard to traffic from sunset of each day to sunrise of the next day. Electrical markers or flashers shall emit light at sufficient intensity and frequency to be visible at a reasonable distance for safety. Reflectors or reflecting material may be used to supplement, but not replace light sources.

### **c. Normalizations of traffic conditions.**

The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions as near normal as possible shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public.

### **d. Closing of streets.**

When traffic conditions permit, the Public Works Department, with the approval of the police and fire departments of the Town, may be written approval (or by verbal approval in case of emergency), permit the closing of streets to all traffic for a period of time prescribed by him or her, if in his or her opinion it is necessary. The written approval of the Public Works Department may require that the permittee give notification to various public agencies and to the general public. In such cases, such written approval shall not be valid until such notice is given. In case of emergency on week nights, weekends or holidays the utility company having such emergency shall contact the police and fire departments by phone before closing a street to traffic.

**e. Interference with arterial streets.**

The permittee is also informed that construction activities (unless an emergency condition exists) shall not interfere with the normal flow of traffic on arterial streets of the Town. The full in-bound roadway lane width shall be maintained between the hours of 6:45 a.m. and 8:30 a.m. and the full out-bound roadway lane width shall be maintained between the hours of 4:00 p.m. and 5:45 p.m.

**f. Shifting traffic to opposite side.**

The permittee may shift traffic to the opposite side of the roadway to maintain required lane width. The permittee may only make such shift with the approval of the Public Works Department following proper review of detour plans to insure adequate safe two-way traffic flow and proper number and placement of police officers.

**3. Breaking through pavement in streets and sidewalks**

- a. All excavations on paved street and sidewalk surfaces shall be pre-cut in a neat straight line with pavement breakers, saws, or asphalt cutters.
- b. Heavy duty pavement breakers may be prohibited by the Town when the use endangers existing substructures or other property.
- c. Cutouts of the trench lines must be normal or parallel to the trench line.
- d. Pavement edges shall be trimmed to a vertical face and neatly aligned with the center line of the trench.
- e. Unstable pavement shall be removed over cave-outs and overbreaks and the subgrade shall be treated as the main trench.
- f. The permittee shall not be required to pay for repair of pavement damage existing prior to the excavation unless his or her cut results in small floating sections that may be unstable, in which case, the permittee shall remove the unstable portion and the area shall be treated as part of the excavation.
- g. When three (3) or more street openings are made in sequence (fifteen (15) feet or less, center to center, between each adjacent opening), the permittee shall neatly cut and remove the area of pavement between these adjacent openings and shall patch as one trench.
- h. On concrete sidewalks, all cuts shall be made from the nearest joint or score line on one side of the excavation to the nearest joint or score line on the other side of the excavation.

**4. Care of excavated material**

a. All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the

piling of excavated material beside the trench, the Town shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling.

b. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

c. All material excavated shall be laid compactly along the side of the trench and kept trimmed so as to cause as little inconvenience as reasonably possible to vehicular and pedestrian traffic, or as specified by the Town. Whenever necessary in order to expedite the flow of traffic or to abate the dirt or dust nuisance, the boards or bins may be required by the Town to prevent the spreading of dirt into traffic lanes.

#### **5. Backfilling of excavation**

Crushed stone or sand shall be used to bed and backfill all underground utilities and shall be thoroughly compacted under, around and to a minimum of 6 inches above the structure. After being properly bedded, the backfill material for all other substructures shall be of a fine material, free from lumps, frozen materials and no stones larger than four (4) inches in diameter. All backfill materials shall be placed in eight (8) to ten (10) inch lifts and thoroughly compacted with approved mechanical compactors. Within eighteen (18) inches of the subgrade of the pavement, gravel shall be used as backfill material consisting of fifteen (15) inches of bankrun and three (3) inches of crushed or screened gravel in accordance with the Town's specifications. The Town may require soil tests to be furnished by a recognized soil testing laboratory or registered professional engineer specializing in soil mechanics when, in its opinion, backfill for any excavation is not being adequately compacted. In order for the resurfacing to be permitted, such tests must show that the backfill material meets the minimum requirements as prescribed by the Town. All expense of such tests shall be borne by the permittee.

#### **6. Trenches**

The maximum length of open trench in an excavation permissible at any time shall be two hundred (200) feet, and no greater length shall be opened for pavement removal, excavation, construction, backfilling, patching or any other operation without the written permission of the Town.

#### **7. Prompt completion of work**

After an excavation is commenced, the permittee shall prosecute with diligence and expedite all excavation work covered by the excavation permit and shall promptly complete such work and restore the street as specified in this article. The permittee shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel by foot or vehicle.

**8. Excavations during winter**

No person or utility shall be granted a permit to excavate or open any street or sidewalk from the time of November first of each year to April fifteenth of the following year unless an emergency or special condition exists and permission is obtained in writing from the Town. Any person or utility wishing to obtain a street opening permit between these aforementioned dates shall first explain fully in writing the emergency situation existing to the Town before issuance is granted. If a hazardous condition, which could endanger life or property exists, excavation work shall not be delayed by this section, however, a written explanation shall be delivered to the Town as soon as possible and a street opening permit obtained for the opening made.

**9. Manholes and/or catch basins**

No person or utility shall remove, damage, haul away, or otherwise disturb any manhole and/or catch basin castings, frames, and/or covers owned by the Town without first receiving written permission from the Town. Any manhole and/or catch basin castings, frames and/or covers missing, damaged, or disturbed shall be repaired and/or replaced by the permittee in accordance with the specifications set forth by the Public Works Department.

**10. Excavations in reconstructed streets**

Whenever the Town has developed plans to reconstruct a street, the Town or its representative shall give written notice thereof to all abutting property owners, to the Town departments, and to all public utilities which have or may wish to lay pipes, wires or other facilities in or under the highway. Upon receipt of such written notice, such person or utility shall have sixty (60) days in which to install or lay any such facility. If an extension of time is needed by a person or utility for the installation of such facilities, the person or utility shall make a written application to the Town explaining fully the reasons for requesting such an extension of time. At the expiration of the time fixed and after such street has been reconstructed, no permit shall be granted to open such street for a period of five (5) years unless an emergency condition exists or unless the necessity for making such installation could not reasonably have been foreseen at the time such notice was given. The above mentioned five (5) year moratorium for street openings also pertains to all new public or private streets, i.e. new subdivisions or developments that have been accepted in accordance with the Town specifications.

**11. Incurred expenses through repairing and backfilling by Town**

- a. If the work or any part thereof mentioned in this article for repairing or backfilling the trenches or excavations shall be unskillfully or improperly done, the Town shall cause the same to be skillfully and properly done, and shall keep an account of the expense thereof, and in such case such person or utility shall pay the Town an amount equal to the whole of the expense incurred by the Town with an additional amount of fifty (50) percent. Thereafter, upon completion of the work and the determination of the costs thereof, the Town shall issue no

further or new permits to any person or utility until it shall receive payment of the costs.

b. Any person or utility who continues to violate any section of this article shall receive no further permits until such time as the Town is satisfied that the person or utility shall comply with the terms of this article.

## **12. Resurfacing of streets and sidewalks**

### **a. Permanent resurfacing by the Town.**

Permanent resurfacing of excavations in streets shall be made by the Town.

### **b. Temporary resurfacing by the permittee.**

The top surface of backfill shall be covered with four (4) inches compacted depth of bituminous temporary resurfacing material, by the permittee. Such temporary paving material shall be cold mix, except that the permittee may use or the Town may require hot mix. All temporary paving material shall be compacted so that it is hard enough and smooth enough to be safe for pedestrian travel over it, as well as for vehicular traffic to pass safely over it at a legal rate of speed. The permittee shall maintain the temporary paving and shall keep same safe for pedestrian and vehicular traffic until the excavation has been resurfaced with permanent paving by the Town, except if it is not possible to maintain the surface of the temporary paving in a safe condition for pedestrian and vehicular traffic, then the permittee shall maintain barriers and lights where required herein.

### **c. Permanent resurfacing by the permittee.**

Upon completion of the backfilling and temporary resurfacing of an excavation within a public place for the installation or removal of a substructure, the Town, at its option, may allow the permittee to permanently resurface that portion of the street surface damaged by the permittee's excavation. In such event, permanent resurfacing shall be done in a manner and under specifications prescribed by the Town and subject to inspection by the Town and shall be completed within a period of ninety (90) days after such authorization to complete final resurfacing. If such permanent resurfacing is satisfactory to the Town, all charges for resurfacing except for permit fees, long-term maintenance reserves and Town inspection charges, as herein set forth, will be canceled. The permittee shall, for a period of three (3) years thereafter, be fully liable for all defects in materials and workmanship relating to such resurfacing and shall promptly repair or replace the same upon notice of the public works authority and to the satisfaction thereof.

## **13. Inspection**

The Town shall make such inspections as are reasonably necessary in the enforcement of this article. The Town shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this article.

## **Fees and Charges**

### **1. Fee:**

A as specified in the *Schedule of License, Permit and Application Fees* established by the Town Council, shall be paid for each issuance and for each renewal of an excavation permit.

### **2. Cost of Replacement:**

Charges shall be established by order of the Town Council to cover the cost of replacement of the street or sidewalk after openings under this article, which charges shall not be in excess of the reasonable cost of such replacement.

### **3. Special Conditions:**

a. Where three (3) or more street openings are made in sequence (fifteen (15) feet or less, center to center, between each adjacent opening), the permittee shall be charged for one opening measured from the first opening to the last opening.

b. For street openings exceeding fifty (50) square yards, a utility company or contractor may request, in writing, the Town's permission to contract privately for the street or sidewalk repairs. If the Town agrees, the contractor shall post a letter of credit for the actual amount of the street opening times the appropriate unit rate established or as approved by the public works authority. The letter of credit shall be for a period of one year or as otherwise approved by the public works authority and shall be retained by the Town for the period of time. Upon notification from the public works authority, that the repairs have been accepted, the Town shall release the letter of credit to the contractor. Street repair work must be done in accordance with the Town's specifications and is subject to inspection by a Town representative.

c. The Town shall provide an on-the-job inspector to supervise all excavation, backfilling of temporary or permanent repairs. The permittee shall be charged at the appropriate hourly rate of the inspector, plus thirty-five (35) percent overhead for the services of such inspector.

d. In streets where the Town has installed a new sanitary sewer or storm drain and the pavement on such streets is in need of major repair, the Town may waive up to fifty (50) percent of the total street opening repair charge to utilities and individuals having work to do on such streets.

## **Billing Procedures**

1. Upon completion of the excavation work and after settlement has stabilized, a measurement shall be made by the Town of the size of the opening and a bill will be mailed to the permittee depending upon the costs of the opening to be repaired. Cost of repair of the opening will be a factor of the total number of square yards multiplied by the appropriate rate as set forth herein. Bills rendered in accordance with this section shall

be due and payable by the permittee immediately upon receipt thereof. If a permittee does not pay any such bill within thirty (30) days after receipt, the Town shall issue no further permits to any such permittee until it receives payment of such outstanding bill.

**Town of Scarborough  
STREET OPENING FEE SCHEDULE**

**Street Opening Charges**

**Fee**

As specified in the *Schedule of License, Permit and Application Fees* established by the Town Council.

**Sidewalk and Driveway Opening Charges**

As specified in the *Schedule of License, Permit and Application Fees* established by the Town Council.

**Curbing**

As specified in the *Schedule of License, Permit and Application Fees* established by the Town Council.

**Other Charges**

As specified in the *Schedule of License, Permit and Application Fees* established by the Town Council.