

## **CHAPTER 11 PUBLIC WORKS**

### **PUBLIC WORKS COMMISSION**

#### **SECTION 11.1 TO PROVIDE FOR INTERNAL ORGANIZATION**

The Public Works Commission shall have the following powers and duties:

- A.** to promulgate such rules and regulations necessary for the administration of its duties;
- B.** to manage and control the sanitation and cleanliness of City property, unless otherwise provided by law;
- C.** to have charge of the lighting of street and all appropriations therefor;
- D.** to assess charges for the use of facilities, utilities and other property of every nature under their control.

### **CITY ENGINEER**

#### **SECTION 11.2 TO BE HEAD OF ENGINEERING DEPARTMENT; DUTIES GENERALLY**

The City Engineer shall be the head of the Engineering Department, and shall exercise a general supervision of all engineering for public improvements.

The City Engineer shall have the following powers and duties:

- A.** to have the care and custody of all plans or surveys relating to public works and improvements, including all other plans and surveys relating to streets, sewers, bridges, and drains and to prepare plans and contracts for the same;
- B.** to supervise the location of water pipes and prepare accurate plans of the same;
- C.** to make such surveys, plans, profiles, estimates, and descriptions as may be required by the Mayor or City Council.
- D.** to supervise the construction and maintenance of municipal water, sewer and drainage systems, to establish rules and regulations for connection thereto and to provide for a means of assessing charges for use thereof.

### **SEWERS**

#### **SECTION 11.3 CITY SEWERS TO BE UNDER CHARGE OF CITY ENGINEER; CONNECTIONS TO BE MADE UNDER HIS SUPERVISION; COMMON SEWER DEFINED;**

## **COMMON SEWERS TO BE LAID BY CITY**

All common sewers constructed or owned by the City and all connections made under the provisions of this chapter shall be under the supervision, direction and control of the City Engineer. In any street opened, or proposed to be opened for public travel or accommodation, every sewer or drain laid for the purpose of draining more than one property shall be deemed to be a common sewer, and no such common sewer shall be laid or connected with any existing common sewer, except as provided in this chapter.

### **SECTION 11.4 OTHER UTILITY LINES NOT TO INTERFERE WITH SEWERS; REMOVAL OF LINES VIOLATING SECTION**

Whenever any street is open for the laying of pipe or conduit for water, gas or any other purposes, such laying of pipe or conduit and the work connected therewith, shall be so executed as not to obstruct, in any way, the course, capacity or construction of a common sewer. Whenever pipe or conduit for any purpose or the work connected therewith is found to exist at such depth or in such location as to interfere with any existing common sewer, or with the building of any common sewer, the entity or person maintaining the same shall, upon written notice thereof, at once, remove, change or alter such pipe or pipes or other works, in such manner as the City Engineer may direct. If such entity or person neglects to comply immediately with the terms of such notification, the City Engineer may make such removal, change or alteration, and the cost thereof shall be paid by such entity or person.

### **SECTION 11.5 CITY ENGINEER TO MAINTAIN PLANS FOR SEWERS**

The City Engineer shall make, and maintain office files, accurate plans of all common sewers, showing all entrances thereto.

### **SECTION 11.6 CITY ENGINEER TO PREPARE PLANS FOR BETTERMENT ASSESSMENTS**

The City Engineer shall prepare plans of all property to be assessed for sewer betterments.

### **SECTION 11.7 SEWER CONNECTION REQUIRED; PENALTY FOR FAILURE TO CONNECT**

Owners of property, which is accessible to a common sewer as determined by the City Engineer, shall construct and maintain such drains or connections to said sewer as may be necessary to conduct the sewage from the said property. Construction, connection and maintenance shall be at the sole expense of the owner. Any person

refusing to make application to the Commission for the construction of such drain and entering the same into the common sewer, or neglects to make application for a period of fourteen days after written notice from the City Engineer to do so, shall be fined in accordance with the provisions of Section 1.13 for such offense; and if such person neglects or refuses for any succeeding fourteen days thereafter to make such application, each continual neglect or refusal for fourteen successive days thereafter shall constitute a new offense and an additional fine shall be imposed therefor.

## **SECTION 11.8                   APPLICATIONS FOR SEWER CONNECTIONS; APPROVAL OF PRIVATE SEWER LAYERS**

All applications for the construction of sewers for private use, within the street limits, and their entrance into common sewers, shall be made to the City Engineer and shall be in such form as he shall prescribe. All such sewers for private use within the street limits and their entrances into common sewers shall be constructed, connected, maintained and kept in repair by a licensed private sewer layer hired or employed by the applicant in such manner as the City Engineer may from time to time determine. The cost of any work so constructed, maintained or repaired shall be paid by the applicant therefor.

## **SECTION 11.9                   APPROVAL AND/OR LICENSING OF SEWER LAYERS; PERMIT REQUIRED**

All private sewer layers must be licensed and/or approved by the City Engineer prior to commencing any work within the City of Malden. The City Engineer may license such private sewer layers as apply and are found competent. No person other than a licensed private sewer layer shall construct or repair any sewer for private use within street limits, or connect the same with any common sewer, or dig up any street for such purpose.

No private sewer between the limits of any street and the building shall be laid except as authorized or licensed by the City Engineer, or by his agent or employees acting under his direction. No such private sewer layer shall lay any such sewer without first having obtained a permit in writing from the City Engineer in such form and under such conditions as it shall prescribe, and within five (5) days of completion of the work such permit shall be returned to the office of the City Engineer signed by the permittee and stating what has been done under such permit.

## **SECTION 11.10 BOND REQUIRED OF LICENSED SEWER LAYERS**

Every person licensed as provided in the preceding section shall, before performing any work by virtue of such license, execute a

satisfactory bond to the City in a sum of not less than five thousand dollars (\$5,000.00), conditioned upon compliance with this Code, the ordinances of the City, the rules and regulations of the Commission and of the Board of Health, and with the terms and conditions of the permit under which in each case work is performed; and that the City will be indemnified and held harmless from all damages, losses or expenses by reason of injuries arising during or resulting from the work done under said permit.

## **SECTION 11.11 REPAIR OF SEWERS**

Whenever any private sewer shall become clogged, broken, obstructed, out of order, detrimental to the use of the common sewer, or unfit for sewage purposes, in or under that property situated outside of any street in which common sewers are laid, the owner, agent, occupant or person having charge of any building or lot of land or premises in which such private sewer is located shall, when directed by written notice from the Commission remove, reconstruct, alter, cleanse, or repair such private sewer, as the conditions thereof may require. In case of neglect or refusal to comply with such notice within five days after the same is given, the City Engineer may cause the private sewer to be removed, reconstructed, repaired, altered or cleansed, as it may deem expedient, at the expense of such owner, agent, occupant or other person so notified. Any person failing to comply with such notice shall also be liable to a fine in accordance with the provisions of Section 1.13.

## **SECTION 11.12 PRIVATE SEWERS TO BE BUILT IN ACCORDANCE WITH REGULATIONS OF CITY ENGINEER**

The City Engineer shall have the authority to prescribe rules as to the materials to be used, and the manner of construction of all common sewers and connections therewith from the existing common sewer to a distance ten feet outwardly from the inside of the exterior wall of the building for which they are used; but all connections within such building and within ten feet of such building shall be subject to the Plumbing and Gasfitting Ordinances. The City Engineer may also determine the grade of such particular sewer; the place and manner of connection with the common sewer; and in private ways shall require such filling to a grade as may be determined by the City Engineer, proper drainage facilities and all other construction necessary and incident to the protection and satisfactory performance of the sewer.

## **SECTION 11.13 BOND REQUIRED**

The City Engineer shall require a performance bond or deposit of money in such amount as he determines to be sufficient to cover the cost of all improvements specified in Section 11.11. Such bond shall be approved as to form and manner of execution by the City Solicitor, and shall be contingent on the completion of such improvements within one

year of the date of the bond. Such bond or deposit shall be filed and approved before and as a condition of beginning construction of the improvement.

#### **SECTION 11.14 EXHAUSTS AND BLOWOFFS NOT TO BE CONNECTED TO SEWER**

No exhaust from a steam engine and no blowoff from a steam boiler shall be connected with any common sewer or private drain connecting with a common sewer.

#### **SECTION 11.15 HAZARDOUS SUBSTANCES NOT TO BE DEPOSITED IN SEWERS OR DRAINS**

No person shall allow, cause or permit any explosive, inflammable or hazardous substance, as defined in 310 CMR 30, MGL Chapter 21 and the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, to enter directly or indirectly any common sewer. No person shall allow, cause or permit any material which may tend to cause an obstruction to enter any common sewer or public drain.

The City Engineer, the Superintendent of Public Works, the Director of Public Health, the Civil Defense Director, and their agents and employees may order any person found in violation of this ordinance to remove or cause to be removed any substance or material from a sewer or drain within such time and in such manner as said agent or employee deems reasonable; provided that removal of hazardous substances shall be done in accordance with the provisions of Chapter 21E, Massachusetts Oil and Hazardous Material Release Prevention and Response Act. Any agent issuing a removal order under the provisions of this ordinance may, upon the failure of any person to comply with said order, cause said substance to be removed by the city at the expense of the violator.

Violations of this ordinance may also be punished in the manner proscribed in Massachusetts General Laws Chapter 41, Section 21D by a fine of \$300.00 for each offense. Each twenty-four hour period during which a violation exists shall constitute a separate offense, punishable by the imposition of an additional fine.

#### **SECTION 11.16 STORM WATER NOT TO BE DEPOSITED IN SEWERS**

No roof, ground cellar or surface water shall be allowed to enter directly or indirectly the common sewer. All owners of buildings where roof, ground or surface water is being disposed of contrary to the provisions of the above shall be notified by the Commission to cease doing the same. The Commission shall also notify the Inspector of Plumbing, who shall cause the fixtures through which the water is

being admitted to be sealed. If for any reason it becomes necessary to break the seal, it shall only be done by a licensed plumber or drain layer, who shall notify the Inspector of Plumbing, in writing, of his doings. The Inspector shall as soon as possible thereafter cause the fixtures to be resealed, the expense of sealing to be borne by the owner.

## **STREETS AND SIDEWALKS**

### **SECTION 11.17 PROCEDURE FOR REPAIR OR ALTERATION OF STREETS**

**A.** Applications for laying out, widening, altering, locating, grading or discontinuing any street in the City shall be made by petition to the Public Works Commission and shall be accompanied by an agreement or release signed by abutters relating to compensation for damages resulting therefrom. The provisions of this section shall not apply to assessment of betterments.

**B.** The Public Works Commission shall hold a public hearing on any petition for laying out, altering, widening, locating, grading or discontinuing a street, after at least seven days notice to the Mayor, the City Clerk and all abutters as required by law.

**C.** Prior to commencing any work which may result in the levy of a betterment assessment, notice of said assessment shall be given to all affected owners as required by law.

**D.** The Public Works Commission shall place permanent landmarks and bounds on any street repaired or altered hereunder.

### **SECTION 11.18 TEMPORARY REPAIRS ON PRIVATE WAYS; SCOPE; COUNCIL APPROVAL REQUIRED; ASSESSMENT OF PROPERTY OWNERS; LIABILITY**

**A.** Pursuant to Mass. General Laws Chapter 40:6N, the Public Works Commission may make temporary repairs on any private way, which the City Council has determined is required by public necessity and for which a majority of the abutters have petitioned. Such repairs may include the installation, construction, reconstruction or resurfacing, in whole or in part, of such ways. Except as otherwise provided, the provisions of Massachusetts General Laws Chapter 82 shall apply to repairs to private ways under this section. The City shall not be liable for any damage caused by repairs made under this section.

**B.** The City Council may assess betterments upon the owners of lands which derive particular benefit or advantage from the making of such repairs on any such private way, if City funds are used.

Such assessment may be a sum equal, in the aggregate, to a maximum of the total cost of such repairs and, in the case of each such lot,

shall be in proportion to the frontage thereof on such way.

## **SECTION 11.19 NAMES OF STREETS; SIGNPOSTS TO BE ERECTED**

**A.** All public ways shall be named by the Public Works Commission, hereinafter designated in this chapter as the Commission. The Commission may change the name of any public way in the City; provided, that before such change it shall appoint a time and place of the public hearing from all persons interested therein, and give notice of such hearing and of its intention to change said name, by publication of the same at least once in a newspaper published in the city. It shall cause signposts to be erected, designating the names of the ways.

**B.** Ways that are open for public use but have not become public ways shall be named by the Planning Board, as it is the successors to the powers of the Board of Survey, and further provided that the Planning Board shall have the authority to change the name of any way, whether public or private, where the name of such way is identical to, or so similar to, the name of another way so as to lead to confusion. The Planning Board may so act only after a public hearing with notice of such hearing given as required by section seventy-four of chapter forty of the General Laws of Massachusetts.

**C.** Nothing in this section is intended to supersede the requirements of Chapter eighty-five of the General Laws of Massachusetts.

## **SECTION 11.20 STREET OPENINGS**

Public utility companies and private contractors who open or occupy public ways in the course of their business have an obligation to act responsibly to residents, businesses and travelers in the City of Malden who depend upon the use of these ways in the course of their daily lives. To protect the public from the effects of improper backfilling, poor patching, careless plating and unsightly debris remaining at completed projects, the following standards are adopted to protect against potential abuses of the necessary and lawful excavation of public ways.

### **A. PERMITS, APPLICATIONS, FEES AND INSURANCE**

#### **1. Excavation Permit**

No person, corporation or other entity shall excavate, dig up, open or disturb the pavement or ground in any street, sidewalk, lane or highway without the written consent of the Director of Public Works, as designee of the City Council under Mass. General Laws Chapters 164 through 166A; provided that the Public Works Director may, in his discretion, refer any application for an excavation permit to the City Council.

The Director of Public Works and City Engineer shall annually in

January generate a list of streets whose wearing surface maintains above average structural integrity. Said list shall include but not be limited to any street with pavement five (5) years or less in age. No permit shall be issued to break the pavement on any street included on said list; provided that the Director of Public Works may issue a permit when, in his opinion, the immediate health, safety or convenience of the public requires that the pavement be opened. The age of any pavement shall be determined from the date of final acceptance of its construction, reconstruction or repair. In the event that said pavement is broken, the permittee may be required to replace the pavement structure from curb to curb and/or intersection to intersection by cold planing, resurfacing wearing surface, and all items necessary to repair, as ordered by the Director of Public Works.

Applications for an excavation permit shall be accompanied by the following:

- (a) a non-refundable application fee of \$.30/square foot or \$60.00 (sixty) dollars, whichever is greater;
- (b) a performance bond in the amount of five thousand (\$5,000.00) dollars;
- (c) a certificate of general liability insurance in the amount of one million (\$1,000,000.00) dollars naming the City of Malden as loss payee;
- (d) a plan showing the location, dimensions, details, profiles and sections of all work to be performed;
- (e) the name and telephone number of such person or persons who will be responsible to act in the event of an emergency;
- (f) for installation of sewer, water and drain lines, written authorization from the City Engineer's Office

Excavations performed by the City of Malden and its employees shall be exempt from permit, fee and insurance requirements.

Prior to the commencement of any work under an excavation permit, the permittee shall submit proof to the Director of Public Works that notification of the intent to excavate has been given to Digsafe and to the police, fire and water departments of the city.

The Director shall include on each permit the times and dates on which work may be done, and such other conditions as he deems appropriate to the preservation of the public health, safety and welfare of the residents of the city.

Emergency excavations shall be made only under the following conditions:

- (a) that notification and permit application be made to the Department of Public Works on the business day next succeeding the day of the emergency;
- (b) that restoration, as described in Paragraph 2., be completed contemporaneous to excavation.

Failure to comply with the terms or conditions of any permit or city ordinance shall result in revocation or amendment of said permit. Any

person, corporation or other entity who excavates without a permit shall be punished by cancellation of all existing permits, license revocation and shall be fined in the manner provided by Mass. General Laws Chapter 41 Section 21D.

## **2. Restoration Permit**

Each applicant for an excavation permit shall apply for and obtain a permit for restoration of said excavation. Restoration permits shall be issued upon payment a fee as determined from time to time by the Public Works Commission or its designee; provided that fees shall be waived when a permittee has been ordered by the Director of Public Works to make permanent restoration.

The permit holder shall restore the excavation with a temporary patch of bituminous concrete binder to the elevation of the wearing surface and, on street restorations, shall apply tack coat to the bituminous concrete sidewall perimeter, and shall seal all joints between the existing pavement and the temporary patch. The permit holder shall maintain said temporary patch until permanent repair has been made.

### **B. CONSTRUCTION PROCEDURES - IN GENERAL**

1. Except as modified by city ordinance, all construction materials, methods and workmanship will conform to the standards set forth in the most recent edition of Massachusetts Department of Public Works Standard Specifications for Highway and Bridges.
2. Excavation shall be limited to the area defined in the permit and shall not encroach upon any construction undertaken by the City of Malden or its agents; provided that, if such encroachment is deemed necessary by the Director of Public Works, the utility shall make restoration in a manner agreed upon by the City or its agent.
3. The permit holder shall take all necessary and proper precautions to protect against damage to private property.
4. The permit holder shall replace all accouterments to the roadway, including but not limited to conduits, manholes, catch basins, trees, and fences.
5. The permit holder shall take all necessary and proper precautions to protect against personal injury and must maintain adequate rights of way for vehicular and pedestrian traffic throughout the course of the project. Said rights of way shall be clearly defined by barricades and sufficiently lighted to insure public safety.
6. At the end of each workday, full vehicular and pedestrian access shall be restored. In lieu of back filling, a permit holder may, with the approval of the Director of Public Works, restore access by placement of steel plates over the excavated area.
7. The permit holder shall display excavation and restoration permits

at the construction site throughout the course of the project.

8. No excavation or restoration permit shall be issued for work to be commenced between November 15 and April 1 in any year; provided that excavation will be permitted on an emergency basis to correct any condition which endangers life or property or as approved by the Director of Public Works. Any excavation or restoration work completed between these dates shall be done in accordance with all other provisions of this ordinance.

9. Excavation sites shall be maintained in a clean and safe condition at all times, and streets and sidewalks shall be cleaned at the end of each workday.

### **C. CONSTRUCTION PROCEDURES - EXCAVATION AND BACKFILL**

1. The Public Works Commission or its designee shall review construction plans and drawings and shall note on the permit the parameters of the excavation and whether an inspection will be required. The permit holder shall notify the Department of Public Works no less than 24 hours prior to the scheduled excavation and shall provide an estimated time for the commencement of backfill and shall verify the name and telephone number of an emergency contact person.

2. Before excavation is commenced, a rectangular cut shall be made in the pavement for entire perimeter to be excavated. Said cut shall be made by saw cutting, pneumatic chisel or hydraulic chisel to the full depth of the existing pavement.

3. Shoring and/or bracing shall be required for all excavations where the excavated material is sufficiently unstable as to cause cave-in or settlement of the roadway. Settlement caused by failure to properly shore or brace an excavation shall be repaired at the expense of the permit holder.

4. Surplus or unacceptable excavated material shall be removed from the site immediately. Proper disposal of hazardous materials, including bituminous concrete, shall be the responsibility of the permit holder.

5. Backfill material shall be gravel borrow, processed gravel or Controlled Density Fill; provided that the Director of Public Works may require that Controlled Density Fill (CDF) be substituted for compacted gravel.

6. Compaction shall be performed in lifts not to exceed 8 inches; provided that the depth of any lift shall be determined by the type of compacting tool and the gravel type, as defined in the Massachusetts Standard Specifications for Bridges and Highways and the Department of Telecommunications and Energy. Each lift shall be compacted by mechanical means to 95% of maximum dry density. Compacted material shall meet the lower elevation of the pavement structure. Pavement

structure shall include bituminous concrete, concrete, cobblestones or similar paving material. Infusion of water into a gravel base, commonly known as "puddling", shall not be an accepted method of compaction.

7. All leak detection or drilling holes shall be filled in lifts with gravel filler, compacted to the lower elevation of the pavement structure and covered with a poured sealant to the upper elevation of the pavement structure. Except in cases of settlement, this repair shall be considered permanent.

8. The permit holder shall be responsible for settlement in or adjacent to the original excavated area for a period of three (3) years from the date of the final accepted permanent repair or, if backfilled with Controlled Density Fill, for a period of one (1) year from the date of the final accepted permanent repair. Any settlement of an excavation shall be corrected by the City of Malden at the expense of the permit holder.

#### **D. CONSTRUCTION PROCEDURES - RESTORATION**

1. The permit holder shall backfill, compact and apply a temporary patch to all excavations. The City of Malden, through its Department of Public Works or its agents, shall permanently repair all excavations.

2. Temporary patches shall be made by hot inlay of bituminous concrete base course to a thickness not less than four inches.

3. Prior to restoration, the perimeter of the excavated area shall be cut back no less than twelve (12) inches in straight lines, with ninety (90) degree angles at the point of intersection to such depth as to expose an undisturbed gravel base. The vertical face of the pavement cuts shall be thoroughly cleaned, particularly at the corners. Computation of restoration fees shall be based on the dimensions of the excavation after said cutback. Excavations or restoration cutbacks within two (2) feet of the curb and/or edge of the pavement shall be extended to the pavement edge prior to temporary repair.

4. Street accouterments, including but not limited to manholes, catch basins and gate boxes, shall be set and leveled to existing pavement surfaces.

5. In roadways, the permit holder shall install a temporary bituminous concrete patch to the full depth of the excavated pavement surface. Said patch shall be compacted by mechanical means and joint sealed. In sidewalks, the permit holder shall install a level bituminous pavement patch. The permit holder shall maintain all temporary patches in a safe and passable manner, as determined by the Director of Public Works, until permanent repair is made by the City of Malden. To allow adequate time for settlement, the City of Malden will not undertake permanent repair of any excavation for a period of not less

than one year from the date of installation of a temporary patch; provided that the schedule for permanent repair may be altered by order of the City Council or the Director of Public Works.

6. If settlement occurs in leak detection, test pits or core holes, the City will cut and restore up to the full pavement depth for an acceptable width and one foot in excess of the length of the entire test area. Additional restoration costs for repair of leak detection, test pits and core holes will be borne by the permit holder.

#### **E. BILLING AND COLLECTIONS**

1. Except as permitted by the Director of Public Works, payment for excavation and restoration permits shall be made at the time of permit application.

2. With the approval of the Director, a permit holder may be billed on a monthly basis for all permits issued during the preceding month. Such monthly bill shall be paid within 30 days of issuance and failure to do so will result in a service charge of one and one-half (1.5) per cent per month for all past due invoices.

3. Failure to pay obligations when due may result in the loss of deposit, assessment of fines, revocation of existing permits, denial of future permits, attachment of bonds, and accrued service charges, and assessment of collection costs and attorney fees, if any.

4. If an account is determined to be uncollectible, the city may place a lien upon such real estate in the manner provided by Sections 42A to 42F of Chapter 40 of the General Laws, as amended.

#### **F. SEVERABILITY**

If any section or provision of this ordinance is held invalid by any court, the same shall not affect any other section or provision, except in so far as the section or provision deemed invalid is inseparable for the remainder.

### **SECTION 11.21 PERMIT AND BOND REQUIRED FOR STREET OR SIDEWALK OBSTRUCTION; CONDITIONS OF PERMIT**

No person shall occupy or use a street or sidewalk for any purpose, place or permit to be placed thereon any impediment or obstruction, or disrupt the free flow of vehicular or pedestrian traffic without having obtained a permit therefor from the Public Works Commission.

The Commission may grant permits for the occupation, use or obstruction of streets or sidewalks for such purposes and under such terms, conditions and restrictions, as they deem in the best interests of the public health, safety and welfare.

Permits shall specify the portion or portions of the street or sidewalk to be occupied, and shall specify any area to be used for depositing materials for work to be done, or for temporary storage of debris arising from such work.

When a permit is granted for construction or demolition of an adjacent building, the occupied portion of the street shall be enclosed with such barriers as are required by the Commission. Barriers shall be maintained during the entire term of said occupation, and lighting or warning devices shall be deployed around barriers, as determined by the Commission.

No permit to occupy a street or sidewalk shall be issued until all permits required for the work to be done have been obtained.

Said permit shall be made available for inspection upon the request of any agent or employee of the Commission or member of the police department.

The permit holder shall be liable for all injuries resulting from said obstruction or impediment and shall provide the city with an indemnity bond or liability policy in a amount determined by the Commission as sufficient to hold the city harmless against any claims for personal injury or property damage arising out of said street or sidewalk occupancy.

The permit holder shall also provide the city with a performance bond in the amount of five thousand dollars (\$5,000.00).

The provisions of this ordinance shall not apply to employees of the City of Malden.

Violation of the provisions of this ordinance or of the terms and conditions of any permit issues thereunder shall be punishable by immediate revocation of said permit and stoppage of work until said violations are corrected; provided that, in the case of emergency as determined by the Director of Public Works or the Police Chief, work shall be allowed to continue until such emergency or unsafe condition has been abated. Violation of the provisions of this ordinance or the terms and conditions of any permit issued thereunder shall be punishable by a fine of \$200.00, which may be imposed in the manner provided in Massachusetts General Laws Chapter 40 Section 21D.

Each 24 hour period during which a violation exists shall be a separate violation for which an additional penalty may be assessed.

## **SECTION 11.22 POLICE DETAIL REQUIRED FOR CERTAIN STREET/SIDEWALK OPENINGS AND OBSTRUCTIONS**

No person shall occupy or use a street or sidewalk for any purpose, place or permit to be placed thereon any impediment or obstruction, or disrupt the free flow of vehicular or pedestrian traffic without

having arranged to have on site such number of regular police officers as have been determined necessary by the Police Chief or his designee. The permit holder shall bear the cost of said police officers. Said police officers shall assure that all permit conditions are met and that a safe and convenient passage for pedestrians and vehicles is maintained.

Failure to comply with the provisions of this ordinance shall be punishable by immediate revocation of any permit issued under Section 11.20 or 11.21; provided that, in the case of emergency as determined by the Director of Public Works or the Police Chief or their designees, work shall be allowed to continue until such emergency or unsafe condition has been abated. Violation of the provisions of this ordinance shall be punishable by a \$300.00 fine, which may be imposed in the manner provided in Massachusetts General Laws Chapter 40 Section 21D. Each 24 hour period during which a violation exists shall be a separate violation for which an additional penalty may be assessed.

### **SECTION 11.23 BARRIERS ETC.; REQUIRED FOR EXCAVATIONS**

An owner of land which has been excavated shall erect barriers or take other suitable measures within twenty-four hours after such owner has been notified in writing by the Public Works Commission that in their opinion such excavation constitutes a hazard to public safety. The penalty for violation of this section shall be in accordance with Section 1.13 of this Code.

### **SECTION 11.24 PERMIT REQUIRED FOR PERMANENT OPENINGS IN PUBLIC WAYS**

No person shall erect or maintain a passageway to any cellar, basement or other structure in or upon any street, without a permit therefor from the Public Works Commission. No person shall suffer the platform or grate of the entrance or passageway to a cellar or basement in any street to rise above the even surface of such street; and, every such entrance or passageway shall be kept covered with a suitable platform or grate, or shall be guarded and protected by a sufficient railing on both sides thereof, at least two and one-half (2 ½) feet high, and well lighted at night. No person shall erect or maintain any doorstep, portico, entrance or bay window in or upon any street.

No person shall make, or cause to be made any coal hole, or other opening in a street, except in accordance with a permit from the Commission, and no person shall leave such coal hole or opening uncovered or unfastened, except while actually in use, in which event it shall be properly guarded.

Whenever any person shall dig or sink any well, cistern or other cavity in the ground near to or adjoining any street, a sufficient and suitable railing or fence, well-lighted at night shall be maintained,

on the line of such street.

## **SECTION 11.25 HAULING BUILDING MATERIALS**

The hauling of brick or plaster mortar or any like material in any vehicle is hereby prohibited unless the vehicle is enclosed and constructed so as to prevent the material from dropping on the street, pavement or sidewalk.

## **SECTION 11.26 TEMPORARY OBSTRUCTIONS PERMITTED**

Except as provided in Section 11.21, no person shall place or deposit, or permit to be placed or deposited, in or upon any street, any impediment or obstruction of any kind, or suffer the same to remain thereon; nor occupy or obstruct any street to interfere with the convenient use of the same for public travel; nor place or cause to be placed in any gutter any obstruction to a free flow of water. The foregoing prohibitions shall not prevent the unloading or temporary deposit in or upon any street of merchandise, fuel, building materials, or other article; provided, that such articles shall in no case be permitted to remain thereon for more than one hour, except by license as provided in this chapter.

## **SECTION 11.27 REMOVAL OF VEHICLES OBSTRUCTING SNOW REMOVAL**

The Director of the Public Works Department, for the purpose of removing or plowing snow, or removing ice from any way may remove, or cause to be removed, to some convenient place, including a public garage, any vehicle interfering with such work, and shall be reimbursed for the cost of such removal, and of the storage charges, if any, resulting therefrom, by the owner of such vehicle.

## **SECTION 11.28 PARKING ON SIDEWALKS PROHIBITED; PERMITTING PROCEDURE FOR INSTALLATION OF CURB CUTS**

No person shall stop or park any vehicle on a sidewalk or walkway abutting any street.

Except where curbing has been removed to provide access to the abutting property, no person shall drive a vehicle across a sidewalk or walkway.

No person shall remove curbing to provide access to the property abutting a sidewalk or walkway without having obtain a permit therefor from the Public Works Commission.

Application for a permit to install a curb cut shall be made on a form approved by the Commission and shall be accompanied by a fee as

determined by the Commission. The Commission shall, within forty five days of receipt of a completed permit application under this section, schedule a public hearing on said application. Notice of said hearing shall be mailed by first class mail no later than 7 days prior to the date of the hearing to abutters, the City Councillor in whose ward the proposed curb cut is located, and the Councillors At Large. Said notice shall include the name of the petitioner, the street address to which the application applies, a description of the work to be done and the date, time and place of the public hearing and shall inform abutters of their right to appear at said hearing and provide testimony on the proposal.

As used in this section, abutters shall mean the Abutters and Abutters to Abutters, as certified by the Assessor from the most recent tax list, within 300 linear feet of the property to which the permit applies, as measured along all public or private ways.

Within seven days of a hearing held under this section, the Commission shall issue or deny said permit and shall notify the petitioner of said issuance or denial. A denial shall be accompanied by a statement of the reasons therefor. An issuance shall contain such conditions, restrictions and time limitations as the Commission may deem reasonably necessary to protect the health, safety and welfare of residents; provided that, under no circumstances shall a permit to complete said work be valid for more than six months from the date of issuance.

## **SECTION 11.29 HANDICAPPED AND DISABLED VETERAN'S PARKING**

- A.** Designated parking spaces for vehicles owned and operated by disabled veterans or by handicapped persons and bearing the distinctive license plate authorized by Chapter 90, Section 2 of the Massachusetts General Laws must be provided in public and private off-street parking areas in the City of Malden.
- B.** Any person or entity that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for business, shopping centers, residential dwellings, or for any other place where the public has a right of access as invitees or licensees, is required to reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the appropriate, authorized license plate.
- C.** The formula for deciding how many spaces should be distinguished for handicapped parking is as follows:
- If the number of parking spaces in any such area is more than fifteen but not more than twenty-five, one parking space;
  - more than twenty-five but not more than forty, five per cent of such spaces but not less than two;
  - more than forty but not more than one hundred, four per cent of such spaces but not less than three;

more than one hundred but not more than two hundred, three per cent of such spaces but not less than four;  
more than two hundred but not more than five hundred, two per cent of such spaces but not less than six;  
more than five hundred but not more than one thousand, one and one-half per cent of such spaces but not less than ten;  
more than one thousand but not more than two thousand, one percent of such spaces but not less than fifteen;  
more than two thousand but less than five thousand, three-fourths of one per cent of such spaces but not less than twenty;  
and more than five thousand, one-half of one per cent of such spaces but not less than thirty.

**D.** Parking spaces designated as so reserved shall be identified by the use of above grade signs with white lettering against a blue background and shall bear the words "Handicapped Parking: Special Plate Required, Unauthorized Vehicles May Be Removed At Owner's Expense", or such other suitable sign or designation as the Malden Traffic Commission deems appropriate.

Parking spaces shall be as near as possible to a building entrance or walkway.

Such spaces shall be adjacent to curb ramps or other unobstructed methods permitting sidewalk access to a handicapped person.

**E.** Parking spaces shall be twelve feet wide or two eight-foot wide areas with four feet of cross hatch between them; or such other dimensions as the Malden Traffic Commission deems appropriate.

Leaving unauthorized vehicles within parking spaces designated for use by disabled veterans or handicapped persons is prohibited. The obstruction of a curb ramp designed for use by handicapped persons as a means of egress to a street or public way is prohibited.

**F.** The penalty for violation of this ordinance shall be as follows:  
for the first offense, fifteen (\$15.00) dollars;  
for the second offense, twenty-five (\$25.00) dollars;  
and for each subsequent offense, the vehicle may be removed in accordance with Chapter 266 Section 120D of the Massachusetts General Laws. These penalties may be amended by the Malden Traffic Commission in accordance with their rules and regulations.

**G.** The Chief of Police or a designee, shall remove, to some convenient place through the agency of a person or persons in the employ of the Police Department or by an independent contractor selected in accordance with law, or ordinance, on the basis of competitive bids, any vehicle parked or standing on any part of any way under the control of the municipality in such a manner as to obstruct any curb ramp designed for use by handicapped persons, or to occupy or obstruct any parking space reserved for a vehicle used by a disabled veteran or handicapped person whose vehicle bears the distinguishing, authorized license plates.

Whoever violates this ordinance shall be liable to charges for the removal and storage of the vehicles as well as subject to punishment by fine.

### **SECTION 11.30 PERMIT REQUIRED FOR POSTS**

No person shall set up a post in any street, except by permission of the Commission.

### **SECTION 11.31 DANGEROUS SUBSTANCES IN STREETS PROHIBITED**

No person shall put or place, or cause to be put or placed in any street, land, alley or any other place, public or private, where it may be offensive or objectionable, any ashes, dirt or refuse; nor shall any piece of hoop or wood, or any board, wire, glass, tacks or other material or any other rubbish injurious to tires of bicycles or other vehicles be put, placed or thrown into or on any street, walkway, lane, alley or public place. No person shall place or cause to be placed on any sidewalk, walkway or crosswalk any article or thing whatsoever, so as to interfere with the safe and convenient use of the same by any person traveling thereon. This section shall not apply to building materials so placed with permission of the Commission.

### **SECTION 11.32 LICENSING OF DISTRIBUTION OF PRINTED MATTER ON PUBLIC WAYS**

No person shall place or cause to be placed any unattended bundles of printed matter upon any sidewalks, footwalks, or crosswalks.

No person, firm, corporation, association, partnership, trust, or other type of entity shall distribute, place, install, or deliver any non-political fliers advertising the sale of retail goods or services to any residential homes in the City of Malden, without obtaining a written permit therefor from the Public Works Commission. The application for the permit shall fully and specifically describe the name and address of the applicant, the exact date or dates said distributions will take place, the manner by which said materials shall be affixed, held in place or distributed, at said residences, and a general description of the contents, together with a statement indicating the way and manner notices shall be given to said applicant in the event residents of the City do not wish to receive said materials. Application fees on an annual or daily basis shall be determined by the Public Works Commission, which fees will be reasonably related to the costs of processing said application. The form of application shall be approved by the City Solicitor. The Public Works Commission shall either grant such permit or deny the application for a permit upon a finding that the issuance of such a permit would lead to the creation of a nuisance, would litter the public ways of Malden and the residences of Malden, or would otherwise

endanger the public health, safety, or order. The applicant shall agree to take reasonable steps to avoid littering of public ways and residences of Malden and to comply with requests that deliveries not be made at certain streets or houses.

The Public Works Commission may impose conditions upon the permit, but said conditions may only relate to compliance with applicable laws, ordinances, or to public safety, health or order or to steps required to be taken to guard against creation of a nuisance or to insure adequate safety or security for the public. Violation of the terms and conditions of this ordinance shall be punishable by fines and penalties as provided in Chapter 1.13 and said violation shall be cause for cancellation, suspension, revocation or modification of the permit, after hearing, upon three days written notice, sent registered or certified mail, to the name and address set forth in the application.

### **SECTION 11.33 PRINTED MATTER VENDING MACHINES**

**A.** No person, firm, corporation, association, partnership, trust or other type of entity shall place, install, use or maintain any printed matter vending machine on any public property, without obtaining a written permit therefor from the Public Works Commission.

**B.** A "printed matter vending machine" (hereinafter called "machines") shall mean any coin or token operated box, container, stand, rack, storage unit or other dispenser or device installed, placed, used, operated or maintained for the display and sale or distribution of newspapers, periodicals, or other printed matter for public use.

**C.** The application for the permit shall fully and specifically describe the printed matter vending machine by setting forth its height, depth, and width or any other relevant dimensions if varying in height, depth, and width, the name and business address of the applicant, the exact date or dates said machines will be in place or in operation, the exact place where said machine will be located, the manner by which said machine shall be affixed or held in place and the description of any object to which said machine shall be affixed. Further reasonable information which may affect the public safety, health, or order in the community may be requested from the applicant. An annual application fee, the amount of which will be determined annually thereafter by the Public Works Commission, which fee will be reasonably related to the costs of processing said application, shall be paid for each machine licensed. The form of application shall be approved by the City Solicitor.

**D.** A certificate of insurance indemnifying and saving harmless the City of Malden from any loss or damage from all suits, actions and claims of any and every nature for or on account of any injuries or damage received or sustained by any person or company or other entity arising from the installation, use or maintenance of such machines

shall be filed with the Public Works Commission, prior to their issuance of any permit hereunder; further said policy will directly provide for payment to any person or company or other entity injured thereby.

**E.** Within twenty days of receipt of such completed application, the Public Works Commission shall grant a permit or shall order a hearing within an additional 10 days, giving at least 5 days written notice to the applicant.

**F.** Within ten days next following the close of the hearing the Public Works Commission shall grant such permit or shall deny such application upon a finding that issuance of such a permit would lead to the creation of a nuisance or would endanger the public health, safety or order by:

1. unreasonably increasing pedestrian traffic in the area in which the machine is located;
2. endangering the public safety as follows: by reason of the machine's projecting onto, into, or over any part of the roadway of any public street; by reason of its being affixed to a site or location used for public utility purposes, public transportation purposes, or governmental use; or by reason of its being located in such a manner as to unreasonably interfere with or impede the flow of pedestrian or vehicular traffic, sidewalk or street cleaning and/or snow removal, and the ingress or egress from any residence, place of business or any legally parked or stopped vehicle; by reason of esthetic harm and defacement caused by its being affixed to poles, posts, traffic signs or signals, hydrants, mailboxes or other objects at or near such location.

**G.** No machine shall be chained, bolted or otherwise attached to property owned or maintained by the City of Malden; within three feet of any crosswalk; within fifteen feet of any fire hydrant; within five feet of any fire or police call box or other emergency facility; within five feet of any driveway, public or private; within three feet ahead or fifteen feet to the rear of any designated bus stop, taxi stand, or place marked for handicapped parking; within three feet of any bus bench or shelter; at any location whereby the clear space for the passageway of pedestrians is reduced to less than four feet; within three feet of any display window of any building abutting the sidewalk or other public place in such a manner as to impede or interfere with the reasonable use of such window for display purposes.

**H.** No machine shall be used for advertising signs or publicity purposes other than that which is essential to identify on no more than two sides of the machine the printed matter offered for sale therein. No letter thereon shall exceed two square inches in size.

**I.** Each machine shall be maintained in a clean and neat condition and in good repair at all times, and it shall be of one color that does not unnecessarily contrast with the immediate surroundings except that the lettering may contrast with such one color. No reflectorized paint, day-glo, fluorescent, or scotchlite reflective materials or

materials of like nature may be used on such machine.

**J.** The person who places or maintains such machine shall have a name or Massachusetts agent's name, address, and telephone number affixed thereto in a place where such information may easily be seen.

**K.** Notice of the denial of an application for permit shall be in writing and accompanied by a statement of the reasons therefor. No application shall be denied if the anticipated harm is not significant or if the likelihood of its occurrence is remote. The Public Works Commission may impose conditions upon the permit but said conditions may only relate to compliance with applicable laws or ordinances or to public safety, health or order, or to steps required to be taken to guard against creation of a nuisance or to insure adequate safety and security for the public. No applicant having been denied a permit as aforesaid shall submit the same or similar application within one year of said denial without including in said new application facts showing that the circumstances upon which the original denial was based have substantially changed.

**L.** Violation of the terms and conditions in this ordinance or in any permit granted hereunder shall be punishable by fines and penalties as provided by Chapter 1.13 and said violation shall be cause for cancellation, suspension, revocation or modification, after hearing, upon three days written notice, sent registered or certified mail, to the name and address set forth in the annual application. The City of Malden may petition the Superior Court department of the trial court to enjoin any violation of this ordinance or the conditions in any permit granted hereunder. If, after hearing, the applicant fails to comply with the order of the Public Works Commission, said Commission may order the removal of said machines and place them in storage in a secure place; the cost of removal and storage shall be paid by the permit holder.

**M.** If such machine is not used for the distribution of printed matter for a period of 60 calendar days, the same shall be deemed as abandoned property and may be disposed of according to law.

## **SECTION 11.33A SHOPPING CARTS PROHIBITED ON PUBLIC WAYS**

### **.1 DEFINITIONS**

As used in this section, the following words shall have the following meaning:

**Business:** any retail establishment which supplies shopping carts for use by its customers.

**Parking lot:** any parcel of land, including areas of ingress and egress, under the control of a business and used for parking motor vehicles in conjunction with the daily operation of the business.

**Shopping cart:** any vehicle designed for human propulsion of goods and merchandise in and around a business.

### **.2 ON-SITE RETENTION OF SHOPPING CARTS**

Every shopping cart shall have affixed thereto a permanent tag, label or identification plate containing the name and address of the owner. Failure to attach said identification shall be punishable by a fine of \$20.00.

Every business shall implement and maintain a system to retain shopping carts within the business building or parking lot. The business shall post notices in a conspicuous location on the premises advising customers of the operation of the retention system.

Acceptable methods of on-site retention include the following:

- .1 a physical barrier, such as bollards, restricting shopping carts to a portion of the exterior of the business; provided that said barriers shall not interfere with fire lanes, handicapped access or similar building features;
- .2 a protruding vertical arm or similar device attached to the cart which prevents its removal from the interior of the business;
- .3 a system requiring the user to remit collateral, including but not limited to a refundable monetary deposit; provided that said collateral is reasonable in scope and designed to encourage return of the shopping cart;
- .4 a wheel-locking mechanism installed on the cart in conjunction with an electronic barrier along the perimeter of the business property which activates when the cart crosses the barrier;
- .5 a plan approved by the Director of Public Works which satisfies the intent of this ordinance.

**.3 DISPOSAL OF SHOPPING CARTS ON PUBLIC WAYS**

- .1 Failure to prevent removal of shopping carts from the business premises may result in impoundment of said cart and in fines issued pursuant to Massachusetts General Laws, Chapter 40 Section 12D in accordance with the following schedule:

1st-3rd cart	\$20.00 per cart
4 <sup>th</sup> and subsequent carts	\$50.00 per cart.
- .2 The Director of Public Works or his designee may impound shopping carts found on public or private ways within the city of Malden, provided that the owner is notified within 48 hours of said removal by delivery of a citation, as required in paragraph A above.
- .3 The Director of Public Works shall, upon payment of fines, release any impounded shopping cart to the business identified as owner of the cart; provided that, if at the expiration of 30 days from the date of impoundment, fines have not been paid or no hearing, as provided in Massachusetts General Laws Chapter 41 Section 21D, has been requested, the shopping cart shall be deemed to be abandoned.
- .4 The Director of Public Works may, as he deems appropriate dispose of abandoned shopping carts in the following manner:
  - .1 by return to the owner upon payment of fines and costs;

- .2 by public auction;
- .3 by destruction of the carts.

## **SECTION 11.34 RESERVED**

## **SECTION 11.35 REMOVAL OF SNOW AND ICE FROM SIDEWALKS**

**A.** The owner, occupant or agent in charge of any land or building abutting a paved sidewalk in the City of Malden shall make said sidewalk safe and convenient for public use by removing any snow or ice accumulating thereon or by otherwise make the same safe by covering with sand or other suitable substance.

**B.** Removal of hazardous conditions shall be made within the first twenty four hours after such snow or ice accumulates on said sidewalk. Sidewalks shall be cleared to provide a minimum passage of thirty six inches in width. A minimum passage of thirty six inches in width shall also be cleared to the street. Handicapped access ramps shall be cleared to the full extent of the width and length of the main slope and side slopes.

**C.** This ordinance may be enforced in the manner provided in Massachusetts General Laws Chapter 40 Section 21D by regular enforcement officers and by Department of Public Works storm supervisory personnel. The penalty for violation of this ordinance shall include the cost of removal of said violation, as determined by the Director of Public Works, and a fine of up to \$300.00 for each violation.

## **SECTION 11.36 THROWING SNOW, ICE ON PUBLIC WAYS PROHIBITED; PENALTY**

**(a)** No person shall throw or place, or permit to be thrown or place, any snow or ice on any street or sidewalk, except as directed by the D.P.W. Commissioners or their designees, exclusive of such portion thereof as may be occupied by street railway tracks. No snow or ice shall be removed from private property and deposited on any sidewalk, public way or way to which the public has access.

**(b)** This ordinance may be enforced in the manner provided in Massachusetts General Laws Chapter 40 Section 21D by regular enforcement officers and by Department of Public Works storm supervisory personnel. The penalty for violation of this ordinance shall include the cost of removal of said violation, as determined by the Director of Public Works, and a fine of up to \$300.00 for each violation.

### **SECTION 11.37 GATES NOT TO OPEN INTO STREET**

The owner or person in charge of any premises shall not allow any gate or door adjoining any street, to swing on, over or into the street.

### **SECTION 11.38 CONSENT OF OWNER REQUIRED TO POST HANDBILLS, ETC., BULLETIN BOARDS PROHIBITED WITHOUT LICENSE**

No person shall post any placard, handbill, poster or notice upon any building, tree, tree guard, fence or any other thing, without the consent of the owner, agent or occupant, nor shall any person erect or maintain bulletin boards in any street without a license from the Public Works Commission.

### **SECTION 11.39 OVERHANGING SIGNS, ETC.**

No person shall establish or maintain any sign, signboard, shade or awning over any portion of a street without a permit therefor from the Public Works Commission and subject to the rules and regulations thereof.

### **SECTION 11.40 DAMAGING STREETS PROHIBITED**

No person shall move any vehicle or equipment, or drag or slide the same over any street, in such a manner as to damage, mar or deface such street or underground utilities.

### **SECTION 11.41 EXTINGUISHING LIGHTS ON STREETS PROHIBITED**

No person shall remove, extinguish or diminish a light placed in any street, in accordance with the provisions of this chapter. No person shall light or extinguish any public lamp, except by permission of the Commission.

### **SECTION 11.42 PERMIT REQUIRED TO HEAT TAR IN STREETS**

No person shall set up or use any kettle or other receptacle for the purpose of heating tar or other substance, for roofing or otherwise, in any street, without obtaining a permit in writing from the Commission

### **SECTION 11.43 MOVING BUILDINGS**

No person shall move any building through any streets, unless a permit is obtained from the Commission and under such restrictions as the Commission may proscribe; but, no permit shall be given, nor shall any building be moved, which will, in the opinion of the Commission cause the destruction, mutilation or injury of any public property in or upon any street, unless the applicant pays the cost of replacing or repairing the same.

#### **SECTION 11.44 HOUSE NUMBERING**

The City Engineer shall designate an identifying number for every building fronting on a public or private way within the city, and may order the owner or occupant of any building to affix said number to the building so as to be clearly visible from the street. Unless otherwise ordered by the City Engineer, numbers shall be no less than two inches in height and in regular series. No owner or occupant shall affix or retain on any building a number other than that assigned by the City Engineer.

#### **SECTION 11.45 STREET SIGNS- DESTROYED- PENALTY**

It shall be unlawful for any person or persons to destroy, obliterate, remove, damage or change any street sign, stop sign, directional sign or sign post designating streets, as erected by the Public Works Commission or the Traffic Commission, except by a permit granted by the Public Works Commission or the Traffic Commission. No street directional sign as erected by the Traffic Commission shall be changed in direction except by permit of the Public Works Commission or Traffic Commission.

Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in accordance with the provisions of Chapter 1.13.

#### **SECTION 11.46 MINIMUM WIDTH OF STREETS**

No street shall be laid out of a less width than forty feet, excepting such streets as were in public use prior to the year 1890. This, however, shall not apply to extensions of streets already accepted. In all streets hereafter laid out by the Public Works Commission at a width of less than forty feet, suitable edgestones shall be placed.

#### **SECTION 11.47 PERMIT REQUIRED; SIGNS, MARQUEES, AWNINGS, ETC.**

**A.** No person shall place or maintain any sign, advertising device, lettering, clock, marquee, permanent or temporary awning, canopy, post or other structure projecting into or placed on, in or over a public street or way in the City without a permit issued by the Public Works

Commission.

**B.** Temporary canopies with side curtains, but with an opening for pedestrians may be placed and maintained from buildings to the inner line of the curb for use during rain or snow storms and during festivals and social or other functions at churches, halls and private residences. The cover of such canopy shall have the lowest part thereof at least seven feet above the sidewalk and shall be erected on iron frames securely fastened to the building or to the sidewalk, the sidewalk fastenings, if of a permanent nature, to be embedded in the sidewalk and level with the same. Such canopies and frames shall be removed within two hours after the storm has cleared or the social or other function has ended.

**C.** No advertising matter except as authorized by the Commission shall be placed on temporary structures involving the closing or occupation of public highways during repairs on the same or during building operations which are authorized by the Inspector of Buildings.

**D.** Applications for a permit for marquees, permanent awnings and other structures shall be advertised for a public hearing and notice thereof mailed to abutting owners by certified or registered mail.

**E.** Applications for permits shall be made on blank forms furnished by the Commission. Petitions shall set forth the purpose for which such sign, advertising device, clock, marquee, permanent awning or structure is to be used, the manner in which it is to project into or over the public highway, and such other requirements as the Commission may deem necessary.

**F.** Applications for permits shall, if the commission so orders, be accompanied by detailed plans, made to scale, showing the character of the construction of the same. Permits may be granted for not more than one year and must be renewed on expiration or within thirty (30) days thereafter. A permit may be renewed without the filing of additional plans; provided, that the applicant certifies to the Commission that there has been no change in the conditions under which the permit was first granted.

**G.** The foregoing section shall not apply to signs or other structures projecting onto or over a street or way a distance of less than six inches, nor to poles, wires, conduits, and appurtenances of steam railroad, street railway, telegraph and telephone, water, gas, electric light, heat and power companies.

## **SECTION 11.48 INSPECTOR OF BUILDINGS TO APPROVE ENCROACHMENTS**

All signs, advertising devices, clocks, marquees, permanent and temporary awnings and structures authorized by the Public Works Commission shall be subject to the requirements of the Inspector of Buildings as to their construction and their physical connection with

the building to which they are attached.

## **SECTION 11.49 INSPECTOR OF WIRES TO APPROVE WIRING**

The installation of wiring or apparatus for electricity to be used in connection with a sign, advertising device, clock, marquee, permanent awning or other structure shall be subject to the approval of the Inspector of Wires of the City.

## **SECTION 11.50 CERTAIN FLAGS, ETC., NOT SUBJECT TO ARTICLE; LIMITATION ON LOCATION OF FLAGS**

United States flags, state and City flags, flags of United States recruiting stations, of foreign nations and of private clubs and institutions shall not be subject to this chapter; provided, that such flags shall not be suspended across a public highway by ropes or wires attached to structures on either side of such highway; and provided, also, that the lowest part of such flags shall be at least ten feet above the sidewalk.

## **SECTION 11.51 MINIMUM HEIGHT FROM GROUND; LIMITATION OF PROJECTION**

- A.** Signs and advertising devices attached to buildings and projecting more than six inches therefrom shall have the lowest part thereof at least eight feet above the sidewalk. Private lamps for lighting purposes, on which no lettering is displayed, may be projected from buildings at a height of not less than ten feet above the sidewalk.
- B.** No sign or advertising device shall project into a highway more than three feet except by special permission of the Commission, but in no case more than six feet. Clocks attached to buildings may project into a highway not more than five feet.
- C.** Flat signs, drum signs and sill signs may be attached to building at any height above the sidewalk, providing such signs do not project into the highway more than six inches.
- D.** Temporary or permanent signs for benevolent, charitable, religious, educational, temperance, entertainment or political purposes, attached to buildings, and signs indicating places of historical interest, if projecting into the highway more than six inches, shall have the lowest part thereof at least eight feet above the sidewalk, and shall not project into the highway in any case more than two feet.
- E.** No movable awning, which is made to roll over a framework of iron or other material or to fold close to or against a building, shall be erected or maintained over a highway unless it is placed at least seven feet above the sidewalk. Such awning and all its cloth parts

shall, unless otherwise ordered by the Commission be kept rolled or folded against the building, except at such times as the sun shines on the part of the building on which the awning is placed; and no cloth parts except such as may be rolled or folded against the building shall be attached to such awning or framework.

## **SECTION 11.52 PERMITS FOR LETTERING IN SIDEWALKS AND FOR HOISTING MERCHANDISE**

Permits for lettering in or on sidewalks and for devices for hoisting merchandise over a public highway may be issued by the Commission.

## **SECTION 11.53 DENIAL OF PERMITS**

Notice of the denial of an application for permit sought under this Chapter shall be in writing and accompanied by a statement of the reasons therefor. No application shall be denied if the anticipated harm is not significant or if the likelihood of its occurrence is remote. The Public Works Commission may impose conditions upon the permit but said conditions may only relate to compliance with applicable laws or ordinances or to public safety, health or order, or to steps required to be taken to guard against creation of a nuisance or to insure adequate safety and security for the public. No applicant having been denied a permit as aforesaid shall submit the same or similar application within one year of said denial without including in said new application facts showing that the circumstances upon which the original denial was based have substantially changed.

## **SECTION 11.54 EXCAVATIONS- WHEN TO BE FILLED**

If a person having a building permit makes an excavation for the construction of a building and the same is allowed to remain uncovered or unprotected for six months thereafter, the Building Inspector may revoke the permit and order the owner to level the lot to uniform grade by a proper sanitary fill.

## **SECTION 11.55 PERMIT REQUIRED TO CUT, PRUNE, PLANT, ETC., TREES**

No person shall, without a permit from the Public Works Commission, cut, plant, prune, break, injure, or remove any tree located in or upon any public street or way; or cut, disturb or interfere in any way with the roots said tree or trees, or place any rope, sign, poster or other fixture on said tree or trees or guard; or injure or misuse or remove any device placed to protect said tree on a public street or way.

## **SECTION 11.56 OPEN SPACE AROUND TREES REQUIRED**

No person shall place or hereafter maintain upon the ground in a public street or way, stone, cement or other substance, which shall impede the free passage of water and air to the roots of any tree in such street or way, without leaving an open space of ground as required by the Public Works Commission.

### **SECTION 11.57 GUARDS TO BE PLACED AROUND TREES IN SPOTS WHERE CONSTRUCTION PROGRESSING**

In the construction or repair of any building or structure, the owner or agent thereof shall place such guards around all nearby trees on public streets or ways as shall prevent injury to said trees.

### **SECTION 11.58 INJURIOUS SUBSTANCES NOT TO BE PLACED AROUND TREES**

No person shall pour or place substances injurious to plant life upon any public street or way in such a way as to injure any tree or shrub planted or growing thereon.

### **SECTION 11.59 PERMIT REQUIRED TO ATTACH WIRES, ETC., TO TREES; TO BE PROTECTED**

No person shall, without the written permit of the Public Works Commission, attach any electric wire, insulator or any device for the holding of an electric wire, to any tree upon any public street or way. All wires passing through any shade tree on the public streets or ways shall be covered by some suitable protection so as to prevent injury to, or contact of electricity with the tree.

## **WATER**

### **SECTION 11.60 WATER DIVISION**

The Water Division shall be under the charge of the City Engineer, who shall have all powers, duties and authority incident to providing a supply of pure water for the use of residents of the City of Malden. The City Engineer shall make all necessary repairs, extension, or improvements on the city's waterworks.

### **SECTION 11.61 TO HAVE CONTROL OF CONSTRUCTION AND REPAIR OF HYDRANTS, STANDPIPES, STREET FOUNTAINS, ETC.**

The City Engineer shall construct and repair hydrants, standpipes, street fountains and all other city-owned connections with the water system, and the expense shall be paid by the department requiring the

same.

### **SECTION 11.62 AGREEMENT TO PAY COST OF LAYING PIPE, ETC., TO BE SIGNED BEFORE WORK COMMENCED**

The City Engineer shall not lay pipe or supply water to any property abutting a private way without having obtained an agreement to pay all costs incident thereto, including but not limited to the cost of cutting or filling the trench or way to the required grade.

Owners of property who wish to connect to a common water main and for which a common water main has been constructed or which common water main is accessible to such property shall construct and maintain such pipes or connections to the common water main as may be necessary to conduct the water to said property, at the sole expense of the owner and shall enter the pipes and/or connections therefor into the common water main.

### **SECTION 11.63 ASSESSMENT FOR LAYING WATER PIPE**

The City Engineer shall notify the Treasurer of the cost incurred for laying pipes in public and private ways for the conveyance or distribution of water to its inhabitants. The Treasurer shall levy special assessments against said inhabitants to meet the whole or part of said costs.

The assessment for the cost of providing and laying water pipes hereafter in public and private ways shall be made upon the several parcels of land receiving benefit from the laying of such pipes by a fixed uniform rate based upon the estimated average cost of all the water pipes therein and the laying thereof according to the frontage on such land on any way in which a water pipe is laid.

### **SECTION 11.64 DETERMINATION OF WATER RATES AND ABATEMENTS; METERS; REGULATION OF THE USE OF WATER**

The Public Works Commission shall annually set rates for use of municipal water and sewer, and may abate charges levied for use thereof. The Commission shall notify the Treasurer of the rates set and abatements granted.

The City Engineer shall oversee installation of water meters and establish rules and regulations for the use of water.

### **SECTION 11.65 WATER BILLS; ANNUAL INSPECTION OF PREMISES**

Water usage in the City shall be metered, and, under the direction of the City Engineer, all meters shall be read and all charges for water

usage shall be recorded and billed at least once each year. The City Engineer shall deliver to the Collector of Taxes complete schedules of such charges.

## **SECTION 11.66 DISPOSITION OF INCOME; APPLICATION OF FUNDS**

All sums paid into the Treasury on account of the Water Division shall be applied, as allowed by law and as appropriated by the City of Malden, to the payment of the expenses of maintenance and operation incurred by such City Engineer; the interest requirements of all bonds and notes issued on account of the waterworks; the water assessment of the city to be paid to the Treasurer of the Commonwealth; the expenses of the extension of the works; and the balance, if any, as the City may determine.

## **SECTION 11.67 RECORDS REQUIRED**

The City Engineer shall record the names of all water users, the type of building served, the address, the nature of the use, the number of users, and the amount charged.

## **SECTION 11.68 TAMPERING WITH WATER PIPES, METERS, ETC. PROHIBITED; MAINTENANCE OF WATER PIPES AND TESTING OF CERTAIN METERS REQUIRED**

No person shall, without a permit, change, alter or replace any pipe connected with the waterworks or, without authorization, draw or remove any water therefrom.

Every water user shall install and maintain, in a manner acceptable to the City Engineer, all connections and pipes required to draw water from the municipal water main to the property, up to the water meter.

When so ordered, the user shall repair defects in connections, pipes and, if applicable, water meters to the satisfaction of the City Engineer.

Every water user shall maintain the areas adjacent to pipes, connections and meters so as to allow reasonable access to said pipes, connections and meters and shall, upon five days notice from the City Engineer, allow agents of the city to enter the premises to inspect, make repairs or replace equipment, as deemed necessary by the City Engineer.

Every water user who fails to maintain temperatures adequate to prevent the freezing of pipes and meters shall be liable for repair or replacement of any resulting damage.

No person shall, except in case of fire or as otherwise authorized by

the city, operate or remove the cap from any hydrant.

No person shall tamper with a city water meter or in any manner impede the city's ability to determine accurate consumption of water from said meter.

Any meter in excess of one inch shall be purchased, installed and maintained at the property owner's expense. Initial connections to the city water system shall be made only by purchase and installation, at the owner's expense, of a water meter approved by the City Engineer.

Every privately installed water meter and any meter in excess of one inch shall comply with American Water Works Association Standards and shall be tested for accuracy at the owner's expense no less than once every five years. The City Engineer may order repair or replacement of any meter, which, in his opinion, does not reflect actual usage of water.

The City Engineer may order installation of a backflow valve when, in his estimation, said valve is necessary to protect the city's water supply. Installation of said valve shall be at the expense of the owner. Every backflow valve shall be tested at the owner's expense no less than once every five years.

Violation of this section may be enforced in the manner provided under Massachusetts General Laws Chapter 40, Section 21D and shall be punishable by a fine of \$300.00 for each offense. Each twenty-four hour period during which a violation shall exist shall constitute a separate offense, and a separate and additional fine shall be imposed for each twenty-four hour period during which a violation exists.

## **SECTION 11.69 RULES AND REGULATIONS ESTABLISHED BY COMMISSION TO BE BINDING UPON USERS REGULATIONS TO BE PRINTED ON BILLS**

Rules and regulations established by the City Engineer shall be binding upon every person who uses city water. Rules and regulations shall be printed upon every bill for water rates, and whenever any of them are violated, penalties as established by the Commission may be imposed.

## **SECTION 11.70 SPECIAL PROVISIONS FOR ASSESSMENT WHERE LAND NOT BUILT UPON**

If the order for easement is upon vacant land, the Commission may extend the time for payment until such time as the land is built upon. Interest on said assessment shall be charged at prevailing legal rates. The assessment and interest shall be paid within three months after such land is built upon.

## **SECTION 11.71 PLACEMENT OF POLES, WIRES AND TELE-COMMUNICATIONS EQUIPMENT IN, ALONG OR ON PUBLIC WAYS**

### **.1 Permit required for installation of telecommunication equipment and devices**

No provider of telephone, telegraph, electric power or telecommunications service shall install, construct, maintain, relocate or remove underground conduits, manholes, house connections, poles, cables, wires or telecommunications devices of any type in, on, along or on a public way without permission of the City Council.

A provider of telephone, telegraph, electric power or telecommunications service may petition the City Council for a permit to install, construct, maintain or remove equipment and sustaining fixtures. Said petition shall be accompanied by a specific description of the equipment to be installed, a statement of the location to which the petition applies and a plan showing the portion or portions of the street to be occupied and the names and addresses of all abutters.

The City Council may, after a public hearing as required by Chapter 166 of the Massachusetts General Laws, issue a permit for the installation of such equipment under such conditions, restrictions and limitations as it deems necessary to promote the public health, safety and welfare of the residents of Malden; provided that no permit shall be issued for a pole to be constructed within ten feet of a hydrant, or in a manner or locations which in the judgement of the City Engineer, the Director of Public Works will interfere with any water pipe, shade tree, drive way, or intersection of streets.

The City Engineer, the Director of Public Works and the Inspector of Wires shall be given notice of the time and date of such hearing and shall provide written recommendations relative to the petition.

No company executing a permit granted hereunder shall allow any other provider the use of said poles or conduits without permission of the City Council, granted after hearing and notice as provided in this section.

The fee for any permit granted hereunder shall be \$500.00.

### **.2 Removal of equipment upon order of the City Council**

The City Council may order the removal or relocation of any equipment installed by permit granted under this section when it determines that the existence or location of said equipment will interfere with the construction or expansion of a public works project. Removal or relocation shall be made without unreasonable delay and shall be done at the expense of the owner. Prior to ordering removal or relocation

under this section, the City Council shall provide notice and an opportunity to be heard to the owner of the equipment in question.

### **.3 Poles installed at request of City**

The Wire Inspector may, when it is deemed necessary in the interest of public safety to illuminate a portion or portions of a street, request that a pole be installed on city property for said purpose. Said poles shall be installed at the expense of the provider of power; provided that the City shall bear the cost of power consumed.

The City may attach to said poles, at its own expense, such additional signage and equipment as are deemed necessary for the efficient conduct of its business; provided that the city shall bear the cost of power consumed by any such equipment; and provided further, that the city shall indemnify and hold the provider harmless from any damage or claims arising from the installation of signage or equipment.

### **.4 Conditions precedent to commencement of work; Limitations on execution of work**

Work shall commence within six months of approval of a permit by the City Council. Failure to commence work within the specified time shall render the permit void.

Upon the commencement of work, the permit holder shall file with the City Engineer a plan showing the location of every post or pole to be located on a public way. Said plan shall include a notation of the provider's identifying sign as appearing on the pole.

Prior to the commencement of work, every permit holder shall execute and agreement with the City providing that:

- .1 In every underground conduit, one duct, not less than three inches in diameter, shall be reserved and maintained free of expense for use by the city and that the City and its agents shall be provided access to such conduits upon request;
- .2 On every pole, the City shall have the exclusive use of sufficient space, brackets and attachments for installation of no less than one cable. No other wires or cables shall be installed within twenty-four inches of space reserved for use by the City.
- .3 The provider will indemnify and hold the City harmless from any claims arising from the rights granted it by the City.
- .4 The provider recognizes the city's right to order removal of any equipment upon reasonable notice and will comply with any such order.
- .5 That the company will, as soon as construction is complete, remove thereto such equipment as any conduit or pole is intended to accommodate;
- .6 That all users of a pole or conduit will be notified by the owner if a pole is to be relocated or its use discontinued.

### **.5 Minimum Standards for Construction and Maintenance of Poles,**

## **Conduits, Fixtures and Equipment**

No provider of telephone, telegraph, electric power or telecommunications service shall install or construct a pole except in conformance with the following minimum standards:

- .1 Poles shall be of iron or suitable wood;
- .2 Wooden poles shall be painted or stained and no less than 25 feet in height;
- .3 Poles shall be clearly marked, at a height of not less than 5 feet nor more than 7 feet, with the name of the owner and an identifying number;
- .4 Poles shall be set in the ground at a depth of no less than five feet and shall be straight;
- .5 The minimum top circumference of poles shall be fifteen inches;
- .6 The minimum circumference at a height of 6 feet from the butt shall be 24 inches;
- .7 Except for purposes of street lighting, no wire shall be attached at a height of less than 18 feet;
- .8 All wires shall be supported on cross arms or suitable brackets and guarded or braced as required by the Inspector of Wires;
- .9 The distance between poles shall not exceed 132 feet;
- .10 Maintenance, installation, repair or replacement of equipment, poles and conduits shall be performed only on Monday through Saturday between the hours of 8 a.m and 9 p.m.; provided, when in the opinion of the Police Chief, a serious emergency exists such that immediate repair of equipment is necessary to preserve the public safety, work may be performed at such times and places, to such an extent and with such police details as he may permit.

## **SECTION 11.72 BADGES TO BE WORN BY EMPLOYEES**

All employees, officials or agents of any company owning or controlling any electric line of wires in the City shall be furnished with a certificate or badge from the company, which shall be shown whenever access is desired to any premises.

## **SECTION 11.73 MUNICIPAL STORM DRAINAGE SYSTEM**

### **.1 IN GENERAL**

The City shall maintain and, under the direction of the City Engineer, regulate use of a stormwater drainage system for the collection and dispersion of storm water runoff, snow melt runoff and surface water runoff and drainage. The City Engineer may promulgate rules and regulations to effectuate the provisions of this ordinance and may issue permits for use of the storm drainage system upon such terms and conditions as he may deem appropriate.

The City Engineer may suspend access to the municipal storm drainage

system without notice whenever necessary to prevent the actual or threatened discharge of prohibited substances into the storm drainage system and, upon failure of any party to comply with such suspension order, may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

## **.2 PROHIBITED ACTIVITIES**

No person shall dump, discharge, cause or allow to be discharged any non-stormwater discharge or pollutant into the municipal storm water drainage system. Pollutants shall include, without limitation, paints, varnishes, solvents, automotive fluids, pesticides, herbicides, fertilizers, sewage, fecal coliform and pathogens, dissolved and particulate metals, animal waste, rock, sand, salt, soils, construction wastes and residues, refuse, rubbish, garbage, litter, and other noxious or offensive matter of any kind.

No person shall construct, use, allow, maintain or continue any connection to the municipal storm water drainage system from indoor drains, sinks or toilets or which allows discharge of wastewater or wash water, whether or not said connection was approved before the effective date of this ordinance.

No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the City Engineer.

## **.3 EXEMPTIONS**

Discharge into the municipal storm water system resulting from the following sources shall be exempt from the prohibited activities set forth in Section 11.73.2:

- .1 municipal activities, including but not limited to fire fighting, waterline flushing;
- .2 flow from potable water sources, springs, riparian habitats and wetlands, diverted stream flow and rising groundwater;
- .3 uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), uncontaminated pumped groundwater, water from approved exterior foundation drains, crawl space pumps, air conditioning condensations and footing drains, but not including active groundwater dewatering systems;;
- .4 discharge from landscape irrigation, lawn watering or individual residential car washing
- .5 Discharge from swimming pools which contains one part per million or less of chlorine;
- .6 dye-testing, provided that prior verbal notification has been given to the City Engineer;
- .7 discharge for which prior written approval has been obtained from the City Engineer as necessary to protect public health, safety and welfare or the environment;
- .8 discharge permitted under a permit, waiver or order issued by any state or federal environmental agency, provided that said discharge is in full compliance with the requirements of permit, waiver or order and applicable laws and regulations.

#### **.4 NOTIFICATION OF SPILLS**

Any person in control, or in charge of emergency response, at any facility or operation in the city shall immediately, upon becoming aware of a release or threatened release of materials at the facility or operation which could result in discharge of pollutants to the municipal drainage system, take all necessary steps to insure containment and cleanup of the release.

Said person shall immediately notify the police and fire departments of the release of oil or hazardous materials.

The release of non-hazardous materials shall be reported to the City Engineer no later than the following business day.

The person charged with reporting discharge shall provide the City Engineer with written confirmation of all notifications within three business days of the discharge and shall retain, on site, a written record of the discharge and actions taken to prevent its recurrence. Said records shall be retained for no fewer than three years.

#### **.5 ENFORCEMENT**

The City Engineer may pursue civil and criminal remedies for violation of this ordinance or any permit or order issued pursuant thereto and may seek injunctive relief to restrain further violations or compel remediation of violations.

The City Engineer may issue written orders to compel compliance with the provisions of this ordinance and may require:

.1 performance of monitoring, analyses and reporting to assure compliance; and

.2 remediation of contamination resulting from violations.

Where remediation is ordered, the City Engineer shall specify the time within which such remediation shall be complete. Said order shall state that, failure to abate the violation or perform the required remediation within the specified time, may result in the city undertaking such work at the expense of the owner.

The city shall, within 30 days of completing abatement or remediation of a violation, notify the property owner of cost incurred in remediation, including administrative costs. If the amount due is not received within 30 days of notification or within thirty days following a final decision of a court of competent jurisdiction affirming or reducing the costs, the costs shall become a special assessment and shall constitute a lien on the owners property for the amount of said costs. Costs remaining unpaid more than 31 days after becoming due shall accrue interest at the rate provided by law.

## **SECTION 11.74 STORM WATER MANAGEMENT AND LAND DISTURBANCE REGULATION**

## **.1 APPLICABILITY AND ADMINISTRATION**

Except as authorized by the City Engineer in a Land Disturbance Permit or as otherwise permitted by ordinance, no person shall engage in any activity which disturbs

- .1 one acre or more of land that drains to the municipal storm drainage system;
- .2 less than one acre of land but is part of a larger common plan of development or sale that will ultimately disturb one acre or more of land that drains to the municipal storm drainage system;

The following activities shall be exempt from the provisions of this ordinance:

- .1 routine maintenance to maintain the original line, grade, hydraulic capacity or the original purpose of the site;
- .2 normal maintenance and improvement of land in agricultural use as defined by Wetlands Protection Regulation;
- .3 maintenance of existing landscaping, gardens, or lawn areas associated with a single family dwelling;
- .4 construction of fencing that will not substantially alter existing terrain or drainage patterns;
- .5 construction of utilities other than drainage which will not alter terrain and drainage patterns;
- .6 activities that are subject to the Wetlands Protection Act and demonstrate compliance with an Order of Conditions issued by the Conservation Commission.
- .7 normal maintenance or improvement to agricultural or aquacultural land as defined in 310 CMR 10.4.

The City Engineer shall enforce the provisions of this ordinance and may delegate any duties imposed by it to his employees and agents. The Engineer may adopt rules and regulations for storm water management not inconsistent with the provisions of this ordinance and may waive strict compliance with any requirement of this ordinance where such action is allowed under federal, state or local statutes and regulations, is in the public interest and is not inconsistent with the purpose and intent of this ordinance.

## **.2 STORMWATER MANAGEMENT PLAN**

The Stormwater Management Plan shall fully describe the proposed project in drawings and narrative and shall include:

- .1 a locus map
- .2 existing zoning and land use at the site;
- .3 the proposed land use;
- .4 the location of existing and proposed easements and utilities;
- .5 existing and proposed topography with contours at 2 foot intervals;
- .6 existing site hydrology;
- .7 description and delineation of existing stormwater conveyances, impoundments and wetlands on or adjacent to the site or into which stormwater flows;
- .8 a delineation of 100 year flood plains, if applicable;
- .9 estimated seasonal high groundwater elevation in areas to be used for stormwater retention, detention or infiltration;
- .10 existing and proposed vegetation and ground surfaces with

- runoff coefficients for each;
- .11 an area drainage map showing pre-construction and post-construction watershed boundaries, drainage area and stormwater flow paths;
- .12 description and drawings of all components of the proposed drainage system including
  - .1 locations, cross sections and profiles of all brooks, streams, drainage swales and their method of stabilization;
  - .2 measures for detention, retention or infiltration of water;
  - .3 measures for the protection of water quality;
  - .4 structural details for all components of the proposed drainage system and stormwater management facilities;
  - .5 specification of materials to be used, construction specifications and typicals, and
  - .6 expected hydrology with supporting calculations;
- .13 proposed improvements, including buildings or other structures, impervious surfaces and drainage facilities, as applicable;
- .14 timing, schedules and sequence of development;
- .15 a maintenance schedule for the construction period.
- .16 such other information as is required by the Engineering Department.

**.3 LAND DISTURBANCE PERMIT - APPLICATIONS AND PROCEDURES**

Application for a Land Disturbance Permit shall be signed by all owners of the property for which the permit is requested and shall be accompanied by all of the following:

- .1 a list of abutters, certified by the Assessor's Office;
- .2 a non-refundable filing fee of \$50.00;
- .3 three copies of an Construction Phase Erosion and Sediment Control Plan as described in 11.74.1.4.
- .4 three copies of a Post-Construction Storm Water Management Plan as described in Section 11.74.6.
- .5 three copies of a Operation and Maintenance Plan for Storm Water Management as described in Section 11.74.7
- .6 verification that an additional copy of required materials have been placed on file in the City Clerk's Office. Filing of a completed application shall constitute permission for the City Engineer and his agents to enter the site to verify information contained in the application, to inspect for compliance with permit conditions and to make such tests and take such samplings as may be required to determine compliance with the permit or permit conditions.

The City Engineer may request additional information as he deems necessary to issue a decision on the application.

Within 10 days of receipt of a completed application, the City Engineer shall notify abutters that the application is available for inspection at a time and place designated by the Engineer and that public comment will be accepted for 21 days from the date of notice. Within 14 days of the expiration of the time for public comment, the

Engineer shall render a decision on the permit application in one of the following forms:

- .1 approve the application and issue the permit;
- .2 approve the application and issue a permit with such conditions, restrictions or modifications as he deems necessary to protect water resources;
- .3 disapprove the application and deny a permit as failing to meet the requirements of this ordinance.

A permit shall be deemed to be approved if the City Engineer fails to take action within the times specified herein and, upon certification by the City Clerk that allowed times have passed, a permit shall be issued by the Engineering Department.

Prior to any change or alteration of the permitted plan, the permit holder shall notify the Engineering Department in writing. When, in the opinion of the City Engineer, the change or alteration is significant, he may require the permittee to install interim erosion and sedimentation control measure and to submit an amended Land Disturbance Permit applications, which shall conform to the procedures outlined above.

#### **.4 CONSTRUCTION PHASE - EROSION AND SEDIMENT CONTROL PLAN - FORM, CONTENTS & DESIGN STANDARDS**

The Erosion and Sediment Control Plan shall be designed so as to:

- .1 minimize the total area of disturbance;
- .2 sequence activities to minimize simultaneous areas of disturbance;
- .3 minimize peak rate runoff in accordance with the Massachusetts Stormwater Policy;
- .4 minimize soil erosion and control sedimentation during construction, provided that prevention of erosion shall take precedence over sedimentation control;
- .5 divert uncontaminated water around disturbed areas;
- .6 maximize groundwater recharge;
- .7 install and maintain all Erosion and Sediment Control measures in accordance with product specifications and good engineering practice;
- .8 prevent off-site transport of sediment;
- .9 protect and manage on and off-site material storage areas, including all areas used solely by the permitted project;
- .10 comply with all applicable laws and regulations, including waste disposal, sanitary sewer or septic system regulations, air quality requirements and dust control;
- .11 prevent significant alteration of habitats mapped by the Massachusetts Natural Heritage and Endangered Species Program as endangered, threatened or of special concern, estimated habitats of rare wildlife, certified vernal pools and priority habitats of rare species from the proposed activities;
- .12 institute interim and permanent stabilization measures as soon as practicable but no more than 14 days after construction activity has temporarily or permanently ceased on a specified portion of the site;
- .13 properly manage on-site construction and waste materials;

.14 prevent off-site vehicle tracking of sediments.

The Erosion and Sediment Control Plan shall be certified by a Professional Engineer or a Certified Professional in Erosion and Sediment Control and contain the following:

- .1 Names, addresses and telephone numbers for the owner, applicant and the person or firm preparing the plan;
- .2 Title, date, north arrow, names of abutters, scale, legend and locus map;
- .3 Location and description of natural features including:
  - .1 watercourses and waterbodies, wetland resource areas and all floodplain information, including the 100 year flood elevation based on the most recent Flood Insurance Rate Map or as calculated by a professional engineer for areas not assessed on maps;
  - .2 existing vegetation including tree lines, canopy layer, shrub layer and ground cover, and trees with a caliper twelve (12) inches or larger, noting specimen trees and forest communities; and
  - .3 habitats mapped by the Massachusetts Natural Heritage and Endangered Species Program as endangered, threatened or of special concern, estimated habitats of rare wildlife, certified vernal pools and priority habitats of rare species within five hundred (500) feet of any construction activity
- .4 Lines of existing abutting streets showing drainage, driveway and curbcut locations;
- .5 existing soil volume and nature of imported soil materials;
- .6 topographical features, including existing and proposed contours at intervals no greater than two (2) feet, with spot elevations provided when needed;
- .7 surveyed property lines showing distances and monument locations, existing and proposed easements, rights-of-way and other encumbrances, the size of the entire parcel and the delineations and number of square feet of land area to be disturbed;
- .8 Drainage patterns and approximate slopes anticipated after major grading activities;
- .9 location, details, and a narrative of the steps taken to conform with the design standards set forth above;
- .10 such other information as is required by the Engineering Department.

#### **.5 INSPECTION AND SITE SUPERVISION**

The City Engineer may require the permittee to post a surety bond or other acceptable security prior to the start of work under a Land Disturbance Permit. The form of the bond shall be in an amount deemed sufficient to ensure that the work will be completed in accordance with the approved plan and shall be in a form approved by the City Solicitor. The Engineer may release portions of the bond on a phased project as each phase is completed in compliance with the permit; provided that the bond is not fully released until certification of final completion of the project.

Prior to the start of any permitted land disturbing activity, the City Engineer shall meet with responsible representatives of the permittee to review the permitted plans and their implementation. The permit and associated plans shall be maintained at the site until final certification of completion.

The permittee shall conduct and document weekly inspections to determine the overall effectiveness of the control plan and shall cause additional control or maintenance measures to be taken as needed. The permittee shall submit monthly reports to the Engineering Department in a format designated by the City Engineer.

The City Engineer or his agents shall inspect work under an approved permit in conformance with the following schedule:

- .1 erosion and sediment control measures are in place and stabilized;
- .2 site clearing has been substantially completed;
- .3 rough grading has been substantially completed;
- .4 final grading has been substantially completed;
- .5 close of the construction season and
- .6 final stabilization and project completion.

The permittee shall notify the Engineering department no less than two working days before inspection is required.

Upon completion of the work, the permittee shall submit a report, including as-built construction plans, from a Professional Engineer, surveyor or Certified Professional in Erosion and Sediment Control certifying that all erosion and sediment control devices have been completed in accordance with the approved permit or approved changes or modifications to the permit.

#### **.6 POST- CONSTRUCTION STORM WATER MANAGEMENT PLAN - FORM, CONTENTS & DESIGN STANDARDS**

The Plan shall be meet the following standards:

- .1 No new stormwater conveyances shall discharge untreated stormwater directly to or cause erosion in wetlands or water of the Commonwealth;
- .2 Post-development peak discharge rates shall not exceed pre-development peak discharge rates;
- .3 Post-development annual recharge to groundwater shall approximate the pre-development recharge rate, based on soil types;
- .4 for new development, stormwater management systems shall remove 80% of the average annual load to total suspended solids.

This standard will be presumed to be met when:

- .1 suitable nonstructural practices for source control and pollution prevention are implemented;
- .2 stormwater management best practices are sized to capture the prescribed runoff volume; and
- .3 stormwater management best practices are maintained as designed;
- .5 stormwater discharges from areas with higher potential pollutant loads use specific stromwater management best practices, as established in the Stormwater Policy Handbook;

- .6 stormwater discharges to shellfish beds, swimming beaches, cold water fisheries and recharge areas for public water supplies utilize stormwater management best practices approved for critical areas, as established in the Stormwater Policy Handbook;
- .7 for redevelopment, Stormwater Management Standards must be met to the maximum extent practicable through retrofitted or expanded stormwater management systems;
- .8 erosion and sediment controls must prevent impacts during construction activities.

In lieu of meeting one or more of the standards set forth here, an applicant may demonstrate that an equivalent level of environmental protection will be provided.

#### **.7 OPERATION AND MAINTENANCE PLANS**

The Operation and Maintenance Plan shall be designed to insure compliance with the permit and shall be signed by the property owners, shall include the name of the owner of each component of the Stormwater Management system and shall contain a maintenance agreement specifying:

- .1 Names and addresses of persons responsible for operation and maintenance of the stormwater management system;
- .2 Names and addresses of the persons responsible for financing maintenance and emergency repairs of the stormwater management system;
- .3 a maintenance schedule for all drainage structures, including swales and ponds;
- .4 a listing of easements with the purpose and location of each and shall include easements providing:
  - .1 access for facility inspections and maintenance;
  - .2 preservation of stormwater runoff conveyance, infiltration and detention areas and facilities, including flood routes for the 100 year storm event;
  - .3 direct maintenance access by heavy equipment to structures requiring regular cleanout.

Unless waived by the City Engineer, easements shall be required for all areas used for off-site stormwater control and shall be recorded in the Middlesex County Registry of Deeds.

#### **.8 ENFORCEMENT**

The City Engineer may issue a written order to enforce the provisions of this ordinance, including but not limited to:

- .1 an order to cease and desist from activity pending compliance with this ordinance or a permit issued thereunder;
- .2 maintenance, installation or performance of additional erosion and sediment control measures;
- .3 monitoring, analyses and reporting;
- .4 remediation of erosion and sedimentation resulting directly or indirectly from land disturbing activity.

Where abatement or remediation is required, the order shall set forth a deadline for completion of said abatement or remediation. Said order shall state that, failure to abate the violation or perform the required remediation within the specified time, may result in the city

undertaking such work at the expense of the owner.

The city shall, within 30 days of completing abatement or remediation of a violation, notify the property owner of cost incurred in remediation, including administrative costs. If the amount due is not received within 30 days of notification or within thirty days following a final decision of a court of competent jurisdiction affirming or reducing the costs, the costs shall become a special assessment and shall constitute a lien on the owners property for the amount of said costs. Costs remaining unpaid more than 31 days after becoming due shall accrue interest at the rate provided by law.

The City Engineer and his authorized agents may purpose any civil and criminal remedy available in law and in equity to enforce the provisions of this ordinance or permits issued thereunder and may also punish violations in the manner provided in Massachusetts General Laws Chapter 40, Section 21D by a fine of \$300.00. Every twenty-four hours during which a violation exists shall constitute a separate offense punishable by an additional fine.