

# TITLE 155: DEPARTMENT OF PUBLIC WORKS

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Subchapter Authority: 1 CMC § 2404; 2 CMC § 4134.

Subchapter History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: PL 1-8, tit. 1, ch. 15, codified as amended at 1 CMC §§ 2401-2405, creates the Department of Public Works (DPW) within the Commonwealth government. See 1 CMC § 2401. 1 CMC § 2404 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

2 CMC §§ 4131-4137 prohibits any person from cutting or trenching into a road without a permit from the Department of Public Works. 2 CMC § 4133. 2 CMC § 4134 authorizes the Department to promulgate such rules and regulations deemed necessary for the implementation of the permit requirement.

### **Part 001 - General Provisions**

#### **§ 155-20.1-001 Purpose and Findings**

(a) The Department has the power and authority to construct and maintain all public works and roads, unless otherwise provided by law and to construct, maintain and operate public signs, traffic signals, public vessels, public buildings, and public works functions previously performed by chartered municipalities, unless otherwise provided by law (1 CMC § 2403). The Department has jurisdiction over this property and these facilities for the stated matters.

(b) The Department is required by the Legislature to adopt rules and regulations regarding those matters over which the Department has jurisdiction (1 CMC § 2404; 2 CMC § 4923). The promulgation of regulations to accomplish these ends is necessarily and fairly implied in and incident to the powers expressly granted and is essential to the accomplishment of the declared objects and purposes.

(c) The Department's functions include repairing, improving and maintaining in good and safe condition all public roads, sidewalks, sewers, drains, and other public rights-of-way.

(d) The Department hereby finds and declares that the public is entitled to the uninterrupted, unimpeded, and unobstructed use and quiet enjoyment of every portion and part of public rights-of-way and the public's rights therein are not limited to the traveled portion. The public includes pedestrians and vehicular travelers as well as property owners and users who receive services through the rights-of-way. The public's uses include driving vehicles, cycling, horseback riding, walking, gathering, and meeting for commerce, recreation, cultural, and religious matters and ceremonies.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted comma after the words "drains" in subsection (c) and "unimpeded," "gathering," and "cultural" in subsection (d) pursuant to 1 CMC § 3806(g).

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### § 155-20.1-005 Definitions

(a) “Department” means the Department of Public Works and its successor agencies, as well as an instrumentality of the CNMI that is authorized by the Department, or otherwise by law, in writing to undertake specific notice, complaint, enforcement, and/or other regulatory action of the matters addressed in the regulations in this subchapter. Such instrumentality may include, but is not limited to, a Mayor or his/her designee.

(b) “Determination” means a decision which is reduced to writing and includes a description or discussion of the reasons for it.

(c) “Drain” whenever used in this subchapter, is a facility or surface feature which collects and transmits or conducts water that has originated as rainfall or otherwise collected on the surface of the ground, either covered or uncovered, and includes:

(1) The main stream or trunk and all tributaries or branches of a creek; a watercourse, wash, ravine, pond, hole, or ditch;

(2) A natural depression that, during rainy weather, collects water as a pond;

(3) A pipe, culvert, main, or constructed ditch;

(4) A sanitary sewer or a combined sanitary and storm sewer;

(5) A stone sewer or conduit composed of tile, brick, concrete, or other material; and/or

(6) The following mechanical or constructed devices:

(i) Structures or mechanical devices, that treat, purify, sift, or clean the flow of such drains;

(ii) Pumping or lifting equipment necessary to assist or relieve the flow of such drains; and/or

(iii) A levee, dike, barrier, or a combination of any or all of same, constructed, or proposed to be constructed, for the purpose of drainage or for the purification, sifting, or cleaning of the flow of such drains;

(7) But shall not include a dam, impoundment, or other surface feature, pipe, conduit, and flowage rights used in connection with any of these, which is isolated so that it guides and/or retains water solely on one user’s real property.

(d) “Encroachment” of a right-of-way means:

(1) Something that comes within the following general description:

(i) Situated upon, in, or over a right-of-way without a permit, deed, lease, license, or other official written permission; and

(ii) Which may be of either a legal or a physical nature, or both;

(2) Something that includes, but is not limited to, one of these specifically described things or conditions when located on, in, or over a right-of-way:

(i) Fences;

(ii) Signs;

(iii) Awnings;

(iv) Platforms and pads;

(v) Tanks, waste containers or storage containers;

(vi) Bollards, planters, dividers, and other traffic or landscaping constructions, whether poured in place or pre-built and placed on site;

(vii) Walls, footings, roofs, overhangs, and other components of buildings;

(viii) Fixtures, including but not limited to, heating, air conditioning and ventilating equipment,

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electrical equipment, lighting equipment, and plumbing;

(ix) Underground pipes, conduits, tanks, vaults, and traps; and

(x) Personal, movable property.

(e) “Highway” means a road designed to accommodate vehicles traveling at speeds greater than 30 miles per hour, including, but not limited to, Beach Road, Middle Road, (Chalan Pale Arnold) and Cross-Island Road (Chalan Pale Monsignor Guerrero).

(f) “Obstruction” of a right-of-way means:

(1) Something that comes within the following general description:

(i) An object located alongside, thereon, or therein, or overhead which is large enough and situated in such a way as to:

(A) Interfere with foot, animal, cycle or motor vehicle traffic, maintenance or the free passage of drainage waters; and/or

(B) Interfere visually with vehicular traffic and/or pedestrian cross traffic; and/or

(ii) An object, excessive noise, smoke or vapor, fuel or lubricant drip, or other pollution which creates a safety hazard or other traffic congestion;

(iii) An object or material located within a public drain so as to impede the free flow of water therein; and/or

(iv) Interference or impairment to travel, whether the travel is by foot, by animal, by cycle, or by motor vehicle; and/or

(2) Something that is one of these specifically described things or conditions in, on, over, or under, and when specifically stated, alongside, the public right-of-way:

(i) A fence or curb;

(ii) A ditch, cut, trench, hole, or other opening thereon;

(iii) A current of water directed so as to saturate, wash, or do damage;

(iv) A building, installation, roadside stand, gasoline pump and related facility, or other structure or use;

(v) Signage located therein, thereon, overhead, or alongside, including but not limited to, a poster, billboard, sandwich board, free-standing, or trailer-mounted sign, other than traffic sign or signal:

(A) Which constitutes a safety hazard; and/or

(B) A prohibited sign, marking or signaling device under the CNMI Vehicle Code, 9 CMC § 5204, or succeeding provision;

(vi) A vehicle or load, including an animal which is being led, ridden or driven, or a vehicle drawn by an animal, which constitutes a safety hazard;

(vii) An immobilized or legally inoperative vehicle, push cart, wheelbarrow, or similar device:

(A) Constituting a safety hazard or interfering with maintenance operations therefor; and/or

(B) Left on or along a public right-of-way in excess of 7 days without a permit;

(viii) Unused poles, wires, structures or other appliances;

(ix) Solid waste;

(x) A fallen tree; and/or

(xi) A dead animal; and

(3) Provided that, this definition shall not apply to any person who shall:

(i) First secure a lawful permit or other authorization for the obstruction;

(ii) Lawfully fell any tree for use end shall immediately remove the same out of the right-of-

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way; or

(iii) Desire to drain or otherwise improve his/her property, through, or along which property a public right-of-way may pass, and who shall:

(A) Give due notice to the proper government authority of such intention, and who shall secure from such government authority any required written permission for any work or excavating s/he proposes to do within the limits of the right-of-way; and

(B) Further, with respect to which the Department shall not have communicated in writing an objection on the grounds of public health, safety, or welfare.

(g) “Person” includes, but is not limited to a natural person, non-governmental organization, firm, association, partnership, limited liability company, corporation, and/or a government agency or other government corporation, political subdivision, or instrumentality, of the CNMI or the United States. Except that, for the purposes of 2 CMC §§ 4131-36 (PL 5-41) (cutting or trenching into a roadway) the definitions of the CNMI Code, 2 CMC § 4132 shall control, thereby excluding the CNMI and its employees.

(h) “Public,” with respect to “right of way” refers to the right of the public to travel upon or otherwise use the way, and is not restricted to whether the public actually uses the way.

(i) “Remediation” typically includes all of the following, but is not limited to:

(1) Removing an encroachment or obstruction;

(2) Filling up any ditch or excavation;

(3) Regrading, including regrading side gutters or ditches;

(4) Reconstruction of pre-existing pavements, supporting materials and related fixtures and/or utilities; and

(5) Obtaining related permits and approvals.

(j) “Remediation costs” include, but are not limited to:

(1) The direct costs, fees, and expenses of remediation;

(2) The indirect costs, fees, and expenses of remediation, including but not limited to, contractors’ overheads and contractors’ reasonable profits;

(3) Related legal and consulting expenses and fees;

(4) Related public safety costs, including but not limited to, wages, salaries, and other agency costs, both direct and indirect;

(5) The related wages, salaries, other costs, both direct and indirect, for Department and other CNMI employees and contract employees;

(6) Equipment costs, including but not limited to, rental or the equivalent usage of owned equipment, maintenance and repair, and the purchase of required specialized equipment.

(k) “Right-of-way” includes, but is not limited to roads, streets, sidewalks, paths, trails, beds for roads or railways, bridges, bridge abutments, culverts, drains, and their foundations and supports, which are dedicated in whole or in part to the passage of people, animals, vehicles, and/or drainage water.

(l) “Road” means road, street, alley, way, or other thoroughfare through or over which vehicles travel. Except that, for the purposes of 2 CMC §§ 4131-4136 (PL 5-41) (cutting or

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trenching into a roadway) the definition of the CNMI Code, 2 CMC § 4132 for a “road” shall control.

(m) “Safety hazard” includes, but is not limited to an object, fluid, smoke, aerosol, pollutant, and/or other material and/or excessive noise that:

- (1) Interferes with a person’s ability to see or hear another person or object on a public right-of-way;
- (2) Impedes the flow of vehicular or pedestrian traffic in such a way as to endanger property, life, or health;
- (3) Impedes the flow of stormwater drainage, electric or water line or wastewater; and/or
- (4) Otherwise endangers the public health or safety.

(n) “Secretary” means the Secretary of the Department, or other chief executive officer of the Department, his/her designee, or, in the case of a hearing conducted pursuant to the regulations in this subchapter, the term shall also include an administrative hearing officer assigned pursuant to the Secretary’s order of reference.

(o) “Writing” includes hard copy, and such electronic formats as fax, email, pdf format, and word processing formats which are generally commercially available.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: In subsections (d), (i)(5), (j)(6), and (k), the Commission changed the final semi-colon to a period. In subsection (h), the Commission moved the comma after “Public” inside of the closing quotation mark. In subsection (i)(3), the Commission inserted the final semi-colon. The Commission inserted commas after the words “enforcement” in subsection (a), “hole” in subsection (c)(1), “sift” in subsection (c)(6)(1), “sifting” in subsection (c)(6)(iii), “in” and “license” in subsection (d)(1)(i), “in” in subsection (d)(2), “overhangs” in subsection (d)(2)(vii), “vaults” in subsection (d)(2)(ix), “road” in subsection (e), “thereon” in subsection (f)(1)(i), “over” in subsection (f)(2), “hole” in subsection (f)(2)(ii), “wash” in subsection (f)(2)(iii), “overhead” and “free-standing” in subsection (f)(2)(v), “wheelbarrows” in subsection (f)(2)(vii), “through” in subsection (f)(3)(iii), “safety” in subsection (f)(3)(iii)(B), “subdivision” in subsection (g), “fees” in subsection (j)(1), “fees” in subsection (j)(2), “salaries” in subsection (j)(4), “vehicles” in subsection (k), “way” in subsection (l), “pollutant” in subsection (m), “life” in subsection (m)(2), and “format” in subsection (o) pursuant to 1 CMC § 3806(g).

### **§ 155-20.1-010 Powers and Duties**

(a) Specific powers. The Department shall have all powers provided it by law to ensure compliance with the requirements of the regulations in this subchapter, including but not limited to:

- (1) Inspection at reasonable times;
- (2) Use of or entry upon private land incidental to works temporarily undertaken;
- (3) Giving of notices;
- (4) Granting of permits;
- (5) Conduct of hearings and issuance of orders; and
- (6) Levying of fines, penalties, and suspension and/or revoking of permits.

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(b) Enforcement and delegation of power. The regulations in this subchapter shall be read to authorize their enforcement by the Department and any other instrumentality of CNMI government, including but not limited to, the Office of a Mayor, as provided by agreement with the Department.

(c) Public safety. The Department may request the assistance of the Department of Public Safety in enforcing the provisions of the regulations in this subchapter and/or protecting the public health, safety, and welfare with respect to them.

(d) Determinations as orders. The Department shall issue its determinations whenever practicable as orders, which shall be titled and numbered.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted commas after the words “penalties” in subsection (a)(6) and “safety” in subsection (c) pursuant to 1 CMC § 3806(g).

### **Part 100 - Public Rights-of-way**

#### **§ 155-20.1-101 Public Rights-of-way; In General**

(a) The public rights-of-way available for Commonwealth roads, streets, and other rights of way shall be held inviolate for Commonwealth right-of-way purposes, except as provided in the regulations in this subchapter.

(b) These regulations shall not interfere with the following publicly beneficial use by the following entities, as provided herein:

(1) The entities:

- (i) The CNMI government and/or its political subdivisions, agencies, and instrumentalities;
- (ii) A public utility; and/or
- (iii) A private telecommunication entity.

(2) The use:

(i) Use of a public right-of-way for the purpose of laying or erecting pipelines, sewers, wires, cables, poles, ditches, drains, railways, for a public purpose, under an existing agreement or permit, or such agreement or permit hereinafter made by the Department or pursuant to a statute or regulation;

(ii) Provided that:

(A) Such use does not interfere with the public’s use of the property, as provided in these regulations, except for reasonable interferences during permitted construction; and

(B) No private telecommunication or electrical cable or wire shall be placed in, on, or over the right-of-way until the person seeking to do so first had secured a permit and provides a bond or similarly secure undertaking payable to the Department in an amount to be determined by the Secretary.

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Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: In subsection (b)(1)(i) and (b)(2)(i), the Commission inserted the final semi-colon. The Commission inserted commas after the words “streets” in subsection (a), “agencies” in subsection (b)(1)(i), and “on” in subsection (b)(2)(ii)(b) pursuant to 1 CMC § 3806(g).

### **§ 155-20.1-105 Prohibition on Closure of Public Right-of-Way**

(a) No person shall close a public right-of-way. Except that a person may secure from the Department a permit to close a public right-of-way to a limited extent for public purposes over limited periods of time.

(b) An unauthorized closure of a public right-of-way is a public nuisance, and, for the purposes of the regulations in this subchapter, may be treated as an encroachment and/or obstruction.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### **§ 155-20.1-110 Prohibition on Encroachments, Impairments, and/or Obstructions**

(a) No person shall encroach upon, obstruct, or impair a public right-of-way. Except that a person may secure from the Department a permit to obstruct, impair, or encroach upon a public right-of-way.

(b) It is unlawful for any person to commence work in a public right-of-way until DPW has approved the application and until a permit has been issued for such work, except as specifically provided to the contrary in this specification. Duration of the permit shall be set at the time of issuance of the permit. If work is not completed pursuant to Permit Application, the permit will expire. An extension may be applied for and must be issued prior to commencement of any further work. An unauthorized encroachment upon, impairment or an obstruction of, a right-of-way is a public nuisance.

(c) The Department shall issue a “Cease and Desist Order” directed to any person or persons doing or causing any work to be done in the public way without a permit. Any person found to be doing any work in the public way without having obtained a permit, shall be required to pay the applicable permit fee and penalties authorized by these regulations. Unless otherwise explicitly stated, nothing in the regulations in this subchapter shall be construed to require as a precondition to the Department’s determining an encroachment or obstruction:

- (1) The notification thereof to the encroaching or obstructing person;
- (2) A special injury; or



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- (3) A financial loss.
- (d) The determination of an impairment, obstruction or encroachment shall be without regard to:
- (1) Degree or type;
  - (2) Permanence or temporary nature;
  - (3) Whether the property interest obstructed or encroached upon is claimed to be in fee, or through lease, license, designation, or easement;
  - (4) Whether the impairment, obstruction or encroachment is in fact owned, leased, pledged, designated, or licensed; and
  - (5) Whether a person directly created the impairment, encroachment, or obstruction him/herself or employed another to do so, or was employed by another to do so.
- (e) It is unlawful for any person to erect a fence, scaffold, or other structure, or to occupy or use any portion of a public way for the storage of construction or landscaping material and/or equipment without first making application for and receiving a permit from the Department. The permit may set forth such restrictions and or conditions as the Department deems necessary or appropriate in its sole discretion. No fence construction and no building material shall remain in place in any public way after the ending date of the permit.
- (f) Nothing in these regulations shall be construed to prohibit the valid and authorized exercise of the rights of free speech and assembly, as provided under the U.S. and Commonwealth Constitutions and the laws of the Commonwealth

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted commas after the words “designation” in subsection (d)(3) and “designated” in subsection (d)(4) pursuant to 1 CMC § 3806(g).

### **Part 200 - Permits for Closure or Restriction from Department for Public Purposes**

#### **§ 155-20.1-201 Power and Authority**

The Department may, by permit, provide for the closure of a public right-of-way to some, but not all, uses for public purposes.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

#### **§ 155-20.1-205 Prohibition on Closure for Private Purpose**

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The Department may not permanently close a public right-of-way for private purposes.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### § 155-20.1-210 Permits

The Department shall provide an application form for a permit to close a public right-of-way. Any person may seek a permit. The Department may grant a permit for the following purposes and reasons, as requested or with conditions. Conditions may include, but are not limited to, the provision of a bond, deposit, undertaking, or other security.

(a) Bases for granting a permit.

(1) Short term permit. The Department may grant a permit for a period less than 8 days for a person who seeks to hold an event of a temporary nature for substantially public purposes, including:

(i) A parade, assembly, speech making, or cultural or religious event;

(ii) A festival, fair, or other public amusement; or

(iii) An event of a cultural or familial nature that is limited in duration and for which a suitable private venue is not available.

(2) Long term permit. The Department may grant a permit for a period greater than seven days for a person who seeks to hold an event of a temporary, but repeating, nature for substantially public purposes, including a festival, fair, market, cultural presentation, or other public amusement.

(b) Special use district permanent permit.

(1) For a special use district which has been declared by the Governor:

(i) The Department may grant a permanent permit for a person who seeks to provide to the public an integrated group of uses of a repeating nature.

(ii) The Department shall grant a permanent permit to an instrumentality of the Commonwealth for the use of a special use district, including but not limited to planning and/or improvement districts for the Garapan District designed to create a pedestrian mall and related facilities, and/or drainage treatment, and/or cultural center and related facilities.

(2) In order to issue a permanent permit, the Department shall determine that the proposed use/s will likely:

(i) Be accessible to the public;

(ii) Enhance the character of the district;

(iii) Contribute to the CNMI's economic or cultural development;

(iv) Reasonably balance the uses of the public and the needs of contiguous businesses and residences;

(v) Not unreasonably burden public agencies to provide utility or public safety services.

(3) A subdivision of the Department tasked with construction and/or maintenance may apply for such a permit.

(4) The permanent permit shall be subject to review for renewal, termination, or modification on a periodic basis. For the first year such review shall be conducted on a quarterly basis. For succeeding years such review shall be conducted on an annual basis.

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(c) Notice of permit applications. The Department shall provide notice of a permit request to the Secretary of a Department directly affected by the permit, and, upon request, to the offices of the local Mayor and the Governor. In all cases the Department shall provide notice of the permit request to the Secretary of the Department of Public Safety.

(d) Objections to a permit. A person having an interest in the closure of a right-of-way and objecting to closure shall have the right to complain to the Department, pursuant to the procedures provided in the regulations in this subchapter for complaints.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: With respect to the references to the “Secretary of the Department of Public Safety” in subsection (c), see Executive Order 94-3 (effective August 23, 1994) reorganizing the Commonwealth government executive branch, changing agency names and official titles, and effecting numerous other revisions. E.O. 94-3 § 106(a) designates the Commissioner of Public Safety as the head of the Department of Public Safety.

The Commission inserted commas after the words “undertaking” in the initial paragraph, “fair” in subsection (a)(1)(i), “presentation” in subsection (a)(2), and “termination” in subsection (b)(4) pursuant to 1 CMC § 3806(g).

### **Part 300 - Permits for the Obstruction, Impairment, or Use of a Public Right-of-way**

#### **§ 155-20.1-301 Applications for and Granting of a Permit**

(a) A person seeking to impair, obstruct, or encroach upon a public right-of-way shall obtain a permit from the Department. The Department shall provide for permit applications, forms, and fees. Any person desiring to perform any work of any kind within a public right of way shall be subject to these regulations and shall make application for a permit. Such application shall be filed with the Department. Any work involving installation or alteration in the public right of way will require plans, traffic plans, and specifications showing the proposed work in sufficient detail to permit determination of (such relationship and compliance); and the application shall not be approved until such plans or sketches are filed with and approved in writing by the Department. The Department may deny issuance of permits to contractors, utility companies, or other permit applicants who have shown by past performance (or lack thereof) that they will not consistently conform with Department requirements.

(b) A traffic plan must be submitted by the permittee together with its application. Permittee’s traffic plan must be in conformance with current "MUTCD" and approved in writing by the Department prior to excavation, construction, or any occupation of the public right-of-way.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120

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days from January 12, 2004).

Commission Comment: The Commission inserted a comma after the word “forms” pursuant to 1 CMC § 3806(g).

### **§ 155-20.1-305 Public Notice of Application for a Permit to Encroach**

The Department may, when it deems appropriate, require or provide for the publication, including or limited to posting, of a request for a permit. In deciding whether to require publication, the Department shall consider the impact on the public, the extent of public use of the location, type of use, the permit requestor’s history for and ability to follow permit conditions, length of use, and likely cost of publication.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### **§ 155-20.1-310 Time Limits**

The Department shall act on a request for a permit with reasonable expediency. If no technical investigation is required, the permit decision shall be made as a determination within seven days.

Modified, 1 CMC § 3806(e), (g).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### **§ 155-20.1-315 Procedure; Form for Application**

- (a) The Department shall develop forms for requesting a permit.
- (b) The forms shall secure the information which is reasonably necessary for the Department to render an accurate, balanced, and fair decision. Forms shall include a provision for swearing that the statements made to secure the permit are true and correct and made upon the penalties for perjury.

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### **§ 155-20.1-320 Conditions for Issuance of a Permit**

- (a) The Department may condition the issuance of a permit on the payment of a fee, a security deposit, bond, and/or undertaking, and public liability insurance.
- (b) Where the applicant seeks to modify physically the public right-of-way, or where the Department reasonably anticipates expenses to supervise or monitor the requested use, the

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Department shall require the payment of a refundable security deposit.

(c) Where no modification of the public right-of-way is intended or likely, the amount of the deposit and/or insurance shall not be so high as to unreasonably interfere with the exercise of a First Amendment right.

(d) Applicants shall provide evidence of liability insurance naming the Commonwealth as an additional insured in such amounts as may be requested by the Department in its sole discretion.

(e) Security for permits and permitted uses.

(1) Persons desiring to perform work in the public way shall be properly licensed in the Commonwealth of the Northern Mariana Islands and shall post a performance bond. The bond amount shall be in an amount no less than the greater of 150% of the total contracted cost of the permitted work or \$50,000, and shall remain in full force and effect for a period of one year after the date the work is completed and accepted by the Department in writing. A single bond may be posted by a permittee to guarantee performance for one or more permits if approved by DPW and agreed to, in writing, by the bonding company. The minimum bond amount shall be assessed based on the number of permits issued to each permittee.

(2) Such bond or undertaking shall be calculated to cover the Department's costs in:

(i) Completing, repairing, and/or maintaining a site or an excavation and/or other works in order to place property in no worse a state than prior to the permitted activity; and

(ii) Compensating persons for torts directly related to and caused by the works for the placement.

(f) Specifications. All rights-of-way shall be restored in accordance with Department specifications as set forth in Schedule 320.1

(g) Permit Closeout: Upon completion of project, permittee shall Inform DPW of project completion and request for final inspection. A final closeout report and acceptance by DPW shall be issued upon satisfaction of work.

(h) Safety. Permittee must be in compliance with Occupational Safety & Health Administration (OSHA) on job site. Workers/employees have a right to a safe workplace.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted a comma after the word "insurance" in subsection (e)(1) pursuant to 1 CMC § 3806(g).

### **§ 155-20.1-325 Name of Permittee**

The Department shall issue the permit in the name of the applicant and/or other party it deems responsible. In the case of a road cutting permit, the Department shall issue the permit in the

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name of both the beneficiary of the permit and the contractor performing the permitted work (ex. Commonwealth Utilities Corporation AND contractor) both of whom shall be jointly and severally liable for violations and/or defects in restoration construction.

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### § 155-20.1-330      Fees

(a) For road cutting permits DPW shall charge and the Permittee shall pay upon issuance of the permit, fees for costs associated with the work performed under the permit as outlined in the Fee Schedule located at subsection (d). Such costs could include costs for reviewing the project and issuing the permit, inspections of the project, deterioration of the Public Way, or diminution of the useful life of the Public Way, and other costs associated with the work to be done under the permit. All costs shall be assessed in a non-discriminatory manner. Additional charges to cover the reasonable costs and expenses of any required engineering review, inspection, and work site restoration associated with each undertaking may be charged by DPW to each permittee, in addition to the permit fee. For other Use Permits, the Department may charge a fee for a permit that is reasonably calculated to cover the costs indicated below. Provided, however, that the Department may charge no more than the following for the following purposes:

- (1) Use periods of less than one day or CNMI agency: No charge.
- (2) Use periods of less than four days: No more than \$50;
- (3) Use of a special district or specially designated events area: No more than \$500.

(b) The costs upon which a permit fee may be based are for:

- (1) Issuing the requested permit;
- (2) Supervising, as required, the permitted activity;
- (3) Publication of notice;
- (4) Required investigation or technical review; and/or
- (5) The conduct of a hearing.

(c) For the purpose of this section the Department shall create and maintain for public inspection a list and description of special districts and specially designated events areas, and the permit fees for each.

(d) Fee Schedule.

<b>Description:</b>	<b>Fee:</b>
Application	\$25
Road Cutting and Restoration	\$100
Site Inspection	\$100
Re-Inspection	\$50
Final Inspection Per Location	\$100
Amendment to Permit	\$25

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Modified, 1 CMC § 3806(a)–(b), (f)–(g).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: In codifying 38 Com. Reg. 39115, the Commission relocated Schedule 330.1 to subsection (d) pursuant to 1 CMC 3806(a)–(b).

### **§ 155-20.1-335      Revocation, Suspension, and Penalties**

(a) The Department shall deny or revoke a permit for any of the following reasons:

(1) Discovery that false or misleading information was given on an application, or material facts were omitted from an application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application;

(2) The permittee was or has become ineligible to obtain a permit;

(3) Any cost or fee required to be paid by the regulations in this subchapter has not been paid;

(4) The permittee knowingly provides, or with the exercise of due diligence should have known that s/he was providing, the permitted use to another person who uses the right-of-way in violation of the terms of a permit;

(5) The use of the permit will result, or has resulted, in an unsafe or hazardous condition, or a condition injurious to the public health, safety, or welfare;

(6) The permittee knowingly denies, or through the exercise of due diligence should have known that he/she was denying, access to law enforcement personnel or Department personnel during business hours to any portion of the permitted premises;

(7) The permittee attempts to transfer a permit or any interest in a permit;

(8) The permittee fails to maintain the premises in the condition provided in the permit;

(9) The permitted use will violate, or has violated, a statute, ordinance, rule, or regulation of the CNMI; and/or

(10) The permittee has knowingly violated the terms of another Department permit and there is no evidence that the permittee will follow the requirements of the requested permit.

(11) Provided that, notwithstanding any other provision of these regulations, for violations of 2 CMC §§ 4133-36 (cutting and trenching roads) any person who violates these code provisions shall be denied a permit until such person complies with the provisions.

(b) The Department may revoke a permit for any of the following reasons:

(1) The permittee knowingly uses, or with due diligence should have known that the permittee was using, the right-of-way in violation of the terms of a permit;

(2) The permittee attempted to transfer his/her permit or any interest in his/her permit to someone else without prior Department approval;

(3) Another application for a permit to do the same thing or the application for the renewal of a permit to do the same thing was denied and the administrative denial became final; or

(4) Any cost, fee, or fine required to be paid has not been paid.

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(c) The Department shall revoke a permit for any of the following reasons:

- (1) Discovery that false or misleading information or data was given on any application, or material facts were omitted from any application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application;
- (2) The permittee has become ineligible to obtain a permit;
- (3) The permittee knowingly denies, or through the exercise of due diligence should have known that s/he was denying, access to law enforcement personnel or personnel of the Department during business hours to any portion of the permitted premises; or
- (4) The permittee has been found by the Department to have violated the terms of the permit more than twice within a period of twenty-four months, not including any period of suspension.

(d) A person whose permit is revoked shall be ineligible to receive a permit for one year from the date of revocation. For this purpose, "person" includes the permittee, its owner/s and principals, a relative thereof, and/or another person owned or controlled by them.

(e) The Department may either fine a permittee, suspend a permit, or both fine and suspend, for any of the following reasons:

- (1) Any cost, fee, or fine required to be paid has not been paid;
- (2) The permittee fails to maintain the permitted premises in the condition contemplated by the permit or in a safe condition;
- (3) The permit has otherwise been violated;
- (4) There is a ground for suspension of the permit; or
- (5) There is a ground for revoking the permit.

(f) The Department shall immediately suspend a permit if it finds:

- (1) A ground for revocation.
- (2) The permittee has apparently violated the terms of the permit, and the public safety, health, or welfare requires immediate suspension.

(g) Fine for failure to obtain a permit. The Department shall fine a person who should have secured, but did not secure, a permit. Any fine may be appealed to the Secretary of the Department within 30 days of issuance thereof.

(h) Penalties for violation. Upon finding a violation the Department may:

- (1) Impose a civil fine of up to five hundred dollars per day; and/or
- (2) Suspend the permit for periods of not less than seven days and no longer than twenty-eight days.
- (3) Provided that, for violations of 2 CMC §§ 4133-36 (cutting and trenching roads) the penalties shall be as set forth in:

(i) Civil Fines.



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Description:	First Offense:	Second Offense:	Third Offense:
2 CMC § 4133—Permit Required	\$500	\$2,000	\$5,000
2 CMC § 4134—Permit Application	\$500	\$2,000	\$5,000

(ii) Civil Penalty.

Description	Amount:
2 CMC § 4135—Repair of Road	Per Day Penalty not less than \$150 or \$250

(i) Violation of Specifications.

(1) If DPW Inspectors determine construction practices and/or materials, i.e. backfill, road base, asphalt and/or concrete, do not meet specifications, the DPW Inspector may:

(i) Suspend or revoke the permit;

(ii) Issue a stop work order;

(iii) Order removal and replacement of faulty work;

(iv) Require an extended warranty period;

(v) Negotiate a settlement to be applied toward future maintenance costs; and/or

(vi) Make demand upon the permittee's bond to correct faulty work.

(2) Settlement of trench backfill, road base, asphalt, and/or concrete will be incontrovertible evidence of inadequate compaction of fill materials.

Modified, 1 CMC § 3806(a)–(b), (d), (g).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: In subsection (a)(4), the Commission changed “known the” to “known that” to correct a manifest error. In subsection (b)(1), the Commission changed the final period to a semi-colon to ensure consistent punctuation. In subsection (h)(3), the Commission changed “as be” to “be as” to correct a manifest error. The Commission corrected the spelling of “permittee” throughout this section. The Commission inserted commas after the words “safety” in subsection (a)(5), “rule” in subsection (a)(9), “fee” in subsections (b)(4) and (e)(1), and “health” in subsection (f)(2) pursuant to 1 CMC § 3806(g).

In codifying 38 Com. Reg. 39115, the Commission changed “Section 4922” to “2 CMC § 4133” and “Section 4923” to “2 CMC § 4134” in (h)(3)(i) and “Section 4924” to “2 CMC § 4135” in (h)(3)(ii) pursuant to 1 CMC 3806(c).

### § 155-20.1-340 [Reserved]

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### § 155-20.1-345 Finality

A determination shall become final if not appealed within thirty days.

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Modified, 1 CMC § 3806(e).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### **§ 155-20.1-350 Stays of Determination**

The fact that the Department's determination or a trial court's judgment relating to the Department's determination is being appealed shall not automatically stay or have other effect, and the determination shall stand until such time as the judgment of the trial court is reversed. The Department, the Secretary, or a court may, upon application, stay a determination of the Department.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted a comma after the word "Secretary" pursuant to 1 CMC § 3806(g).

## **Part 400 - Complaints**

### **§ 155-20.1-401 Encroachment or Obstruction of Public Right-of-way**

Any person may complain to the Department about or against an encroachment or obstruction of a public right-of-way. Provided that the Department shall not make the filling out of a form by a member of the public a necessary condition for making a complaint.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission created the section titles in this part.

### **§ 155-20.1-405 Department Action**

Any person aggrieved by the Department's action under the regulations in this subchapter may complain to the Department and shall be given the opportunity for a hearing.

Modified, 1 CMC § 3806(d).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### **§ 155-20.1-410 Complaint Forms; Record Keeping**

The Department shall provide forms and record-keeping for complaints.

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History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### **§ 155-20.1-415 Special Injury Not Required**

The Department shall entertain the complaint against an encroachment or obstruction without regard to whether the complainant has suffered a special injury.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### **§ 155-20.1-420 Party to Hearing**

A complainant shall have the right to participate as a party in a hearing on the complaint.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

## **Part 500 - Removal of Encroachment or Obstruction; Procedures and Remedies**

### **§ 155-20.1-501 Removal of an Encroachment or Obstruction**

(a) In order to remove an encroachment or obstruction to a public right-of way the Department shall use the standard removal procedure described in § 155-20.1-510, except as provided otherwise.

(b) Except, if the Secretary finds that exigent circumstances require expedited removal of an encroachment or obstruction to a public right-of-way the Department may utilize the expedited procedure described in § 155-20.1-501. In order to find exigent circumstances the Secretary must certify that expedited removal is required to:

- (1) Respond to a health or safety emergency;
- (2) Eliminate a condition creating substantial immediate risk of harm;
- (3) Protect the surface, bed, or structure of the right-of-way and that delay would allow the material degradation thereof;
- (4) Provide for works designed to protect the public health or safety; or
- (5) Advance a public works project designed to benefit the public safety, health, or welfare and that, on balance, the public benefits in proceeding on an expedited basis outweigh the costs of following the standard removal procedure.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted commas after the words “bed” in subsection (b)(3) and “health”

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in subsection (b)(5) pursuant to 1 CMC § 3806(g).

### § 155-20.1-505 Remedies and Procedure for Remedies

#### (a) Removal

(1) An unauthorized encroachment or obstruction shall be removed and remediated, and, upon the Department's determination, at the owner's expense.

(2) An unauthorized encroachment or obstruction which provides a serious and immediate interference or impairment shall be removed immediately and, upon the Department's determination, at the owner's expense.

(3) The Department may order the encroaching or obstructing person to remove and remediate, or it may remove and remediate the encroachment or obstruction itself, through: its staff; by agreement for the use of the staff of another instrumentality of the Commonwealth government; and/or through a contractor.

#### (b) Costs, expenses, and fees

The Department may recover the costs of remediation from the person who caused the obstruction or encroachment, and/or may secure a lien against the offending real estate, if any, in the amount thereof.

(c) For injury to a person's property proximately caused by negligent, reckless, or excessive removal or remediation which the Department has caused, the Department may compensate:

(1) By paying money;

(2) By repairing the injury and/or replacing the injured property;

(3) By replacing the injured property with property of substantially similar value and use; and/or

(4) By providing a formal apology.

(d) Entry upon adjoining private land. If the Secretary finds exigent circumstances, as provided in these regulations, § 155-20.1-501(b), and notice is given thereafter pursuant to these regulations, § 155-20.1-510(a)(2), the Department, or other responsible public agency, may enter upon lands adjoining a public right-of-way:

(1) For the purpose of opening any existing drain, or for digging a new drain, for the free passage of water for the drainage of a public or private right-of-way;

(2) To drive piles, throw up embankments, or to perform any other work necessary to keep a drain within the proper channel, and to prevent the flow of drain water, or related erosion, upon public or private rights of way, or upon other private property;

(3) Or enter upon lands adjoining a private right-of-way, which during the time of high water flow is subject to overflow from a drain, to remove or change the position of a fence or other obstruction which is preventing the free flow of water to or through a drain or other public right-of-way; and/or

(4) Enter upon lands adjoining a private right-of-way to remove, close, cap, or otherwise terminate an outflow of sewage or other wastewater which may harm the public.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed

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26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission changed “Or enter upon lands” to “Enter upon lands” in subsection (d)(4) to correct a manifest error. The Commission inserted commas after the words “expenses” in subsection (b) and “cap” in subsection (d)(4) pursuant to 1 CMC § 3806(g).

### **§ 155-20.1-510 Procedures for Removal of Obstructions and/or Encroachments, and for Suspensions, Revocations, and Fines**

(a) Standard procedure for removal.

(1) Except as otherwise provided in the regulations in this subchapter, the Department shall provide a person with notice and the opportunity for a hearing prior to action to remove an obstruction and/or encroachment. Such hearing shall be conducted in order to provide a speedy, final, and effective determination of the limited matters governed by this subchapter.

(2) Notice. Ordinarily reasonable advance notice shall be mailed to the last known address of the owner of, or other person responsible for, the obstruction and/or encroachment and shall be posted on or near the obstruction and/or encroachment in a conspicuous place.

(3) Hearing. Except as otherwise provided in this subchapter, the Department shall provide a person with the opportunity for a contested case hearing that comports with the requirements of the Administrative Procedure Act, 1 CMC §§ 9108-13; and

(4) The Department shall determine with respect to the action, and any hearing requested shall address:

(i) The location of the encroachment or obstruction which gives rise to the proposed action;

(ii) A short summary of the action and the reasons for it;

(iii) Whether the location is in a public right-of-way, or whether Department has another, superior right to the interest in real property on which the obstruction or encroachment is present;

(iv) The nature of the person’s property interest;

(v) The public need for removal of the obstruction or encroachment;

(vi) The Department’s related proposed works, if any;

(vii) The schedule for the Department’s related proposed works, if any;

(viii) The respective costs to the parties of government action and/or inaction;

(ix) The effect of removal on the person’s property;

(x) The public interest for and/or against the proposed works, if any;

(xi) The damages and/or other injuries to the parties, if any; and

(xii) Whether the Department shall take the proposed action.

(5) A Department or other government employee having personal knowledge of the relevant circumstances shall attest by signature that the determination is true and correct to the best of his/her knowledge, information and/or belief.

(b) Summary pre-removal hearing.

(1) Upon the Secretary’s determination that expedited removal is required, but that the time allows and the public safety, health, and welfare will not be adversely affected, the Department may hold a summary pre-removal hearing, the issues of which shall be limited to:

(i) The location of the encroachment or obstruction which gives rise to the proposed action;

(ii) A short summary of the action and the reasons for it;

(iii) Whether the location is in a public right-of-way, or whether Department has an other\*,

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superior right to the interest in real property on which the obstruction or encroachment is present;

- (iv) The public need for removal of the obstruction or encroachment;
- (v) The schedule for the Department's related proposed works, if any;
- (vi) The effect of removal on the person's property; and
- (vii) Whether the Department shall take the proposed action.

(2) The Department shall give the best notice which it determines feasible in the circumstances;

(3) The Department shall provide the opportunity for a full, contested case hearing after an action for removal is taken.

(c) Expedited procedure for removal before a hearing.

Upon the Secretary's determination that exigent circumstances require an expedited proceeding, the Department may immediately, without a pre-hearing, remove the obstruction and/or encroachment if:

- (1) It gives the best notice which it determines feasible in the circumstances; and
- (2) It provides as soon as convenient to the owner of, or other person responsible for, the obstruction and/or encroachment, and/or other claimant, the opportunity for a post-removal hearing that otherwise follows the standard procedure of this subchapter for removal.

(d) Procedures for suspensions, revocations, and fines.

(1) With respect to revoking or suspending a permit or imposing a fine or other penalty, the Department shall provide a person with notice and the opportunity for a hearing.

(2) Except as otherwise provided in this subchapter, the Department shall provide a person with the opportunity for a contested case hearing prior to its action, a hearing which comports with the requirements of the Administrative Procedure Act, 1 CMC §§ 9108-9113. Except that, if the Department finds exigent circumstances, it may make a prehearing determination to suspend, providing the permittee with immediate notice of the determination and an expedited opportunity to respond after the action is carried out, and the opportunity for a contested case hearing.

(e) Waiver. Failure to appear at the contested case hearing, or timely effort to secure an excused absence and rescheduled hearing, shall waive the right to contest the action.

(f) Immediate effect. A determination and/or order of the Department shall take immediate effect unless stayed by the Department, the Secretary or the reviewing court.

(g) Notice of effect and appellate procedures. The Department shall, in its final order or other final determination, give notice to the affected party of the party's right to appeal, the place/address of the appeal, and the time within which the appeal must be filed.

(h) If no internal administrative appeal to the Secretary is timely filed, and no good cause is shown to excuse the failure to appeal timely, the determination of the Department shall become final.

(i) Enforcement of penalties.

(1) The Department may enforce its penalties to the extent provided by law.

(2) The Department shall secure the assistance of the Attorney General to implement its

penalties through any action in the Superior Court.

\* So in original.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: In subsection (d)(2), the Commission corrected the spelling of “permittee.” The Commission inserted commas after the words “find” in subsection (a)(1), “health” in subsection (b)(1), “revocations” in subsection (d), and “appeal” in subsection (g) pursuant to 1 CMC § 3806(g).

## **Part 600 - Notices and Service; In General**

### **§ 155-20.1-601 Service**

Unless otherwise specifically stated in the regulations in this subchapter, service can be made on the person, the person’s resident agent, or, if neither can be determined, upon the property. Service may be accomplished by first class mail, return receipt, personal delivery followed by a sworn certificate of service, or by a commercial mailing service that generates a return receipt. A party may waive service, or agree to service by fax or electronic mail.

Modified, 1 CMC § 3806(d).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission created the section title.

### **§ 155-20.1-605 Notice**

Ordinarily notice shall be given at least 14 days prior to the hearing or action date. Such notice may be served to the address provided on a person’s permit application, or, if one is not available, to the last known address of the permittee, and, if a fax or email address was provided on the application, by either a fax or email copy with a report of receipt generated. If mail or personal service is not feasible, the Department may post the notice on or near the permitted property in a conspicuous place.

Modified, 1 CMC § 3806(g).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission corrected the spelling of “permittee.”

**§ 155-20.1-610 Notice for Expedited or Summary**

Proceeding Notice for an expedited or summary proceeding may be accomplished by the best method available at the time to give actual notice of proceedings or an action within the time required. This may include personal oral or written notice, telephone notice, fax, or email. The person giving notice shall swear to it thereafter in a written certificate of service. Service by fax or email shall be evidenced by an electronic return receipt or the recipient's acknowledgment.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted a comma after the word "fax" pursuant to 1 CMC § 3806(g).

**Part 700 - Claims Against Department; Appeals to Secretary; Other Remedies**

**§ 155-20.1-701 Claims Against the Department or the Secretary Affecting Personalty or Real Property**

(a) The regulations in this subchapter shall not change the statutory or common law scope of the sovereign or other immunity, or waivers of limitations thereof, applicable to the Commonwealth, its departments, agencies, political subdivisions, and/or other instrumentalities.

(b) Claims arising out of actions contemplated by or governed through these regulations shall be filed against the "Department of Public Works" or the other Commonwealth instrumentality which the Department has designated to carry out the action.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted a comma after the word "divisions" pursuant to 1 CMC § 3806(g).

**§ 155-20.1-705 Appeals to the Secretary of Department Determinations and Other Actions**

(a) A person who is aggrieved by a determination of the Department or other action made pursuant to this subchapter shall file an appeal to the Secretary within 14 days of the issuance of the order or other action complained of. The person shall serve a copy on each party to the matter within seven days of the filing. The time in which to file the appeal is jurisdictional.

(b) No particular form of pleading or letter is required, provided that the appeal shall include:

- (1) Name, address, telephone, email if available, and/or other contact information for the appellant or his/her representative;
- (2) The docket number and caption or title of the matter appealed from, including the other



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parties;

- (3) The location of the incident which gave rise to the complaint to the Department;
- (4) A short summary of the controversy and the Department's decision;
- (5) The reasons for the appeal and relief requested;
- (6) A statement signed "under the penalty of perjury" that the matters stated in the appeal are true and correct to the appellant's knowledge and belief, and that a copy is being timely served upon other parties to the matter; and
- (7) A request that the Secretary rule on the appeal.

(c) The Secretary may provide an appeal form, specify the number of copies of appeal materials to be filed, identify the required supporting information, and provide for the details of the appeal proceedings, including conferences and hearings. Unless otherwise granted by the Secretary, there shall be no evidentiary hearing or oral argument in the appeal proceedings. The Secretary shall provide the opportunity for briefs, memoranda, or other written comments, replies thereto, and may provide for rebuttal, to the end that all parties may be heard.

(d) The Secretary shall affirm, deny, modify, or remand.

(e) Notice of effect and appellate procedure. The Secretary shall, in his/her order or other final determination, give notice of the party's right to appeal to the courts, the place/address of the appeal, and the time within which the appeal must be filed.

Modified, 1 CMC § 3806(d), (e).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted commas after the words "memoranda" in subsection (c) and "appeal" in subsection (e) pursuant to 1 CMC § 3806(g).

### **§ 155-20.1-710 Other Remedies**

Nonexclusive remedy and exhaustion. A remedy under the regulations in this subchapter shall not be the exclusive remedy of a person or of the Department aggrieved by an encroachment or obstruction. Provided that a party seeking either a remedy against an encroachment or an obstruction governed by these regulations, or against a party availing itself of a remedy under these regulations, shall first exhaust their remedies hereunder.

Modified, 1 CMC § 3806(d).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

### **Part 800 - Miscellaneous Provisions**

**§ 155-20.1-801 Construction of These Regulations**

In construing the regulations in this subchapter, the singular shall mean the plural, and the plural the singular, the male shall indicate the female and the female the male, and either shall also apply to a non-natural person.

Modified, 1 CMC § 3806(d).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

**§ 155-20.1-805 Severability**

If any provision of the regulations in this subchapter or any application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or application of these regulations which can be given effect without the invalid provision or application; and to this end the provisions of these regulations are declared to be severable.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).