

SECTION 2 - REGULATING SINGLE-USE PLASTIC BAGS

Art. I.	Purpose
Art. II	Definitions
Art. III	General Prohibition and Regulation
Art. IV	Exemptions to General Prohibition
Art. V	Penalties and Enforcement
Art. VI	Date of Effect
Art. VII	Hardship Deferments

ARTICLE I. PURPOSE

This Section of the Ordinance is intended to promote the public health, safety, welfare, and the responsible use of resources and protection of the environment. It seeks to mitigate the effect the single-use plastic bags provided within the Town, and encourage the use of reusable bags.

ARTICLE II. DEFINITIONS

DEFINITIONS:

(A) As used in this Section of the Ordinance, the following terms have the meaning indicated by the definition.

ASTMD6400 standard specification means the standard specification for labeling of plastics designed to be aerobically composted in municipal or industrial facilities set by the American Society for Testing and Materials, as may be amended from time to time.

Compostable Bag means a bag that meets the current ASTM D6400 for compostability.

Recyclable means material that can be sorted, cleansed, and reconstituted using available recycling collection programs for the purpose of using the altered form in the manufacture of a new product. "Recycling" does not include burning, incinerating, converting, or otherwise thermally destroying solid waste.

Retail Establishment means all sales outlets, stores, shops, pharmacies, or other places of business located within the Town of Brattleboro which sell or convey merchandise directly to the ultimate consumer.

Retail Food Establishment means all sales outlets, stores, shops, restaurants, markets, supermarkets, clubs or other places of business which sell, serve or convey foods directly to the ultimate consumer. This definition shall include but is not limited to any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, sold or offered to the public; similar places in which food or drink is prepared for sale or service on the premises or elsewhere; and any other establishment or operation, including in-home caterers, where food is processed, prepared, sold, served or provided for the public, regardless of whether there is a charge for the food.

Retail Service Establishments means all places of business located within the Town of Brattleboro where a service, specialized or professional work is offered to the public, regardless of whether there is a charge for the service.

SHOPPING BAG DEFINITIONS:

(B) As used in this Section of the Ordinance, the following terms shall have the meanings indicated:

Compostable Plastic Bags means a bag that is:

1. Labeled in a manner that is readily and easily identifiable from other plastic bags;
2. Labeled in a manner that is consistent with the Federal guides for the use of environmental marketing claims;
3. Labeled with a certification logo indicating the bag meets the ASTM D6400 standard specification, as amended from time to time; and
4. (i) a uniform color of green and labeled with the word “compostable” in at least a 1 inch font on one side of the bag; (ii) labeled in green writing with the word “compostable” in at least a 1 inch font on both sides of the bag; or (iii) labeled with the word “compostable” in at least a one-half inch font on both sides of the bag within a green color band that: 1. Contrasts with the compostable bag’s background color; and 2. Is at least 1 inch in height.

Plastic Bag means any bag made of plastic derived from either petroleum, ethylene derived from natural gas, polyethylene, polypropylene, or nylon.

Reusable Bag means a bag that meets the following requirements: (a) has a minimum lifetime of 125 uses, which for the purposes of this Section means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet; (b) has a minimum volume of 15 liters; (c) is machine washable or is made of a material that can be cleaned or disinfected; (d) does not contain lead in an amount greater than 89 parts per million (ppm), nor contain total heavy metals (lead, hexavalent chromium, cadmium, and mercury) in an amount greater than 99 ppm, unless lower heavy metal limits are imposed by applicable state or federal law, in which case such standards shall apply; (e) has printed on the bag, or on a tag that is permanently affixed to the bag, (1) the name of the manufacturer, (2) the country where the bag was manufactured, (3) a statement that the bag does not contain lead, cadmium, or any other heavy metal in toxic amounts, (4) the percentage of Postconsumer Recycled Material used, if any, and (5) bag care and washing instructions; and (f) if made of plastic, is no less than 2.25 mils thick anywhere on the bag.

Thin-Film Single-Use Plastic Bag means a bag with a thickness of less than 2.25 mils and which are intended for single-use transport of purchased products.

ARTICLE III. GENERAL PROHIBITION AND REGULATION

No retail establishment, retail food establishment, or retail service establishment as defined in Article II of this Section, shall sell or convey merchandise to ultimate consumers in thin-film

single-use plastic bags, and said establishments shall only use such bags that are:

- (1) Reusable bags; or
- (2) Compostable plastic bags; or
- (3) Paper Bag.

ARTICLE IV. EXEMPTIONS TO GENERAL PROHIBITION

Article III of this Section shall not apply to the following items:

- (1) Thin-film plastic bags used to contain dry cleaning, newspapers, produce, meat, bulk foods, wet items, and other similar merchandise, typically manufactured as thin-film single use bags without handles;
- (2) Any flexible transparent covering for covering uncooked raw meat, poultry, raw fish, hard cheese, cold cuts, fruit, and vegetable products, baked goods, or bread;

ARTICLE V. PENALTIES AND ENFORCEMENT

- (1) If it is determined that a violation of any subsection of this Section has occurred, the Town Manager's Office or designee shall issue a warning notice for the initial violation.
- (2) If an additional violation of this section occurs within one year of the initial violation, the Town Manager's Office or designee shall issue a second notice of violation.
- (3) The Town shall impose a penalty against the retail establishment for the third and each subsequent violation.
- (4) The penalty for each violation that occurs after the issuance of the second notice of violation shall be no more than: i) \$50.00 for the first offense, with a waiver fee of \$25.00; ii) \$100.00 for the second offense and all subsequent offenses, with a waiver fee of \$50.00. Payment shall be made to the Town of Brattleboro within 30 days from the date of notice to the Town Treasurer. Nonpayment of such fines may be enforced by the Judicial Bureau. No more than one penalty shall be imposed upon a retail establishment within a 24-hour period.

ARTICLE VI. DATE OF EFFECT

Date of Effect. This section will take effect on July 1, 2018.

ARTICLE VII. HARDSHIP DEFERMENTS

Hardship deferments.

- (1) Upon written application, the Town Manager's Office or designee may defer application of any subsection of this section for a six-month period after the effective date stated in Article VI upon a showing of hardship. Hardship may be found when:
 - a. Compliance with any subsection would cause significant economic difficulty; or
 - b. There is no readily available compliant substitute.

- (2) Any entity granted a deferment by the Town Manager's Office or designee must reapply prior to the end of the six-month exemption period and demonstrate continued undue hardship if it wishes to have the deferment extended. Deferments may only be granted for intervals not to exceed six months.
- (3) A deferment granted in accordance with this subsection may be extended for no more than two additional six-month periods, upon which a written application to the Town Manager's Office or designee at least two months prior to the expiration of the prior deferment period and upon a showing that the circumstances justify deferment continue to exist.
- (4) A deferment application shall include all information necessary for the Town Manager's Office or designee to make its decision, including, but not limited to, documentation showing the factual support for the claimed deferment. The Town Manager's Office or designee may require the applicant to provide additional information to permit it to determine facts regarding the deferment application.
- (5) The Town Manager's Office or designee may approve the deferment application, in whole or in part, with or without conditions that it deems necessary to protect the environment and/or public health and further the interests of this section.
- (6) Deferment decisions are effective immediately and are final.

- End of Section 2 -

CLASS 4 HIGHWAYS AND TRAILS In Vermont:

FREQUENTLY ASKED QUESTIONS

Towns are encouraged to obtain legal counsel when making decisions about Class 4 highways and trails.

What is a Class 4 highway? Class 4 town highways are the responsibility of the municipality, including pent roads (public roads that may be gated by permission of the governing body). Some former highways, through legal proceedings, may have been designated as legal trails and are not Class 4 town highways. A Class 4 town highway is a legally established town highway that is not classified as Class 1, 2, or 3.

Additional information:

- A highway not meeting Class 3 standards may be reclassified as a provisional class 3 highway if, within five years of the determination, it will meet all Class 3 highway standards.
- The selectboard shall determine which highways are Class 4 town highways.
- Trails shall not be considered highways and the town shall not be responsible for any maintenance including culverts and bridges.
- Additionally a Class 4 highway:
 1. is 3 rods or 49.5' (unless otherwise recorded) – 19 V.S.A. § 702;
 2. is not eligible for state aid funds – 19 V.S.A. § 306;
 3. is usually not maintained for winter use – 19 V.S.A. § 302 (a) (3) (b);
 4. may be reclassified or discontinued – 19 V.S.A., Chapter. 7.

What is a trail? Trails are public rights-of-way which are not highways and are generally used for recreational purposes. They may be previously designated town highways or may be newly laid out (19 V.S.A. § 301(8) and 775). There is no minimum width required, and the ROW may be the full width of a section of highway or the width needed for a foot path. The municipality has no statutory maintenance obligations for trails, even as to bridges and culverts.

Additional information:

- is a public right-of-way and not a highway – 19 V.S.A. § 302 (a)(5);
- is not a responsibility of the town for construction, maintenance, repair or safety – 19 V.S. A. § 310.

Why is it important to keep Class 4 highways and trails?

In 1992, a committee consisting of the VT Agency of Transportation; VT Trails and Greenways Council; VT Timber Truckers and Producers Association; Associated Industries of Vermont; VT Department of Forests, Parks and Recreation; VT Local Roads Program; and VT Association of Snow Travelers determined:

There are approximately 1,700 miles of Class 4 highways and trails in Vermont. Almost every town has at least a couple miles of them, usually in the more remote section of town.

With the population growing and the interest in outdoor recreation also increasing, it is important to keep Class 4 highways and trails as public resources. As private land is further developed, there will be less access for snowmobiling, cross-country skiing, walking,

bicycling, horseback riding, fishing, hunting, and other outdoor recreation. Town-controlled corridors will help to ensure that there will continue to be a place to enjoy these activities. They also often serve as important links to more extensive trail systems that are on private lands. Class 4 highways and trails provide important transportation access for forest and agriculture management.

Finally as communities grow, these rights-of-way may be needed to provide for development, and may be upgraded accordingly. It would be costly to the town to pay landowners for a right-of-way. If the town retains the right of way, reclassification to Class 3 for instance, would involve virtually no cost beyond the cost of the survey and notice.

Do Class 4 highways and trails have to be maintained?

According to 19 V.S.A. § 310:

"(b) Class 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town, or may be reclassified using the same procedures as for laying out highways and meeting the standards set forth in § 302 of this title.

(c) A town shall not be liable for construction, maintenance, repair or safety of trails."

According to 19 V.S.A. § 302 (c) (5):

"Trails shall not be considered highways and the town shall not be responsible for any maintenance including culverts and bridges."

Do Class 4 highways and trails have to be upgraded on request?

According to 19 V.S.A. § 708 (b):

"A class 4 highway need not be reclassified to class 3 merely because there exists within a town one or more class 3 highways with characteristics similar to the class 4 highway. In considering whether to reclassify a class 4 highway to class 3, consideration may be given as to whether the increased traffic and development potential likely to result from the reclassification is desirable or is in accordance with the town plan."

Additionally, 19 V.S.A. § 711 (b) states:

"As part of the report of findings provided for in subsection (a) of this section, the selectboard may order that the petitioner bear the cost of upgrading a class 4 town highway to the class 3 town highway standards established in 19 VSA § 302 (a) (3) (B.) Nothing in this section shall be construed to require a town to maintain a class 4 highway or to upgrade a highway from class 4 to class 3."

Finally, 19 V.S.A. § 710 states:

"After examining the premises and hearing any interested parties, and if the selectmen judge that the public good, necessity and convenience of the inhabitants of the municipality require the highway to be laid out, altered or reclassified as claimed in the petition, they shall cause the highway to be surveyed in accordance with the provisions of § 33 of this title if the highway right-of-way cannot be determined and shall place suitable monuments to properly mark the bounds of the survey. If they decide to discontinue a highway, the discontinuance shall be in writing setting forth a completed description of the highway."

What is the process for altering, reclassifying or discontinuing?

This process is spelled out in detail in 19 V.S.A. § 708-712 and 771-775. These statutes should be reviewed for a full understanding. A brief summary of the process is described earlier in this section. To temporarily close a Town Highway (for example – Seasonally) see 19 V.S.A.

Can the town regulate the types, season, or condition of use?

Selectboards clearly have the authority under 19 V.S.A. § 304 (a) (2) to:

"take any action consistent with the provisions of law, which are necessary for or incidental to the proper management and administration of town highways."

Also, under 19 V.S.A. § 304 (5) selectboards may:

"grant permission to enclose pent roads and trails by the owner of the land during any part of the year, by erecting stiles, unlocked gates and bars in places designated and to make regulations governing the use of pent roads and trails and to establish penalties not to exceed \$50.00 for noncompliance. Permission shall be in writing and recorded in the town clerk's office."

The selectboard can limit types of use such as snowmobiles, ATVs and 4x4s; season of use such as restricting motorized vehicles during muddy periods; or condition of use such as speed and weight limits.

How can towns best manage Class 4 highways and trails?

One way to manage these resources is to address Class 4 roads and trails in a town highway policy and in the town plan.

Does the town have any legal rights if someone blocks a highway or trail?

According to 19 V.S.A. §1105:

"A person who places or causes to be placed an obstruction or encroachment in a public highway or trail, so as to hinder or prevent public travel, or to injure or impede a person traveling on the highway or trail, shall be fined not more than \$1,000 plus the actual costs of repairing the damage and a reasonable attorney's fee, to be recovered in a civil action in the name of the town or state. One or more items of logging or other equipment temporarily within the right-of-way of a trail shall not be actionable under this section if located in such a way as not to unreasonably impede passage. If the court finds that an action under this section was brought without substantial basis, the court may award a reasonable attorney's fee against the person bringing the action." (Added by 1991 legislature.)

What is a pent road?

According to 19 V.S.A. § 301 (4):

'Pent road' is any town highway which, by written allowance of the selectboard, is enclosed and occupied by the adjoining landowner with unlocked stiles, gates and bars in such places as the selectboard designates."

Town of Wilmington Town Highway Ordinance

SECTION	PAGE
Section 1 Purpose	1
Section 2 New Roads – Construction	1
Section 3 Existing Roadways	4
Section 4 Minimum Standards for Maintenance as Town Highway	4
Section 5 Procedure for Laying-Out or Reclassifying a Town Highway	4
Section 6 Limits in How Many Miles Town Shall Accept in One Year	5
Section 7 Civil Ordinance	6
Section 8 Definitions	6
Section 9 Severability	7
Section 10 Publication and Posting	7
Section 11 Information	7
Section 12 Right to Petition	7
Section 13 Recording	7
Section 14 Effective Date	7

§1. **Purpose:** The purpose of this ordinance is to set forth the consistent policy, practice and standards required for the new construction of roadways, whether Town or private, and to prescribe the procedures and standards for the laying-out or reclassifying a town highway in accordance with 19 V.S.A. Chapter 7. The standards listed here are considered minimum and apply to construction projects and repair and maintenance activities. The standards listed here include management practices and are designed to: ensure the safety of the traveling public, minimize damage to road infrastructure during flood events, and enhance water quality protections by minimizing sediment delivery to surface waters and/or wetlands. The Selectboard reserves the right to modify the standards for a particular project or repair or maintenance activities, where, because of unique physical circumstances or conditions, there is no possibility that the project can be completed in strict conformance with these provisions. Any modifications to the standards must be done in a manner that serves the underlying intent of the management practice, be it public safety, flood hazard avoidance, or water quality protection. Fiscal reasons are not a basis for modification of the standards. Questions about modifications to the standards should be directed to the VTrans District Office.

Municipalities must comply with all applicable state and federal approvals, permits and duly adopted standards when undertaking road and bridge activities and projects.

§2. **New Roads - Construction:** All new roadways constructed after the date hereof in excess of .20 miles in length, whether Town or private, shall be constructed according to the minimums of the following road and bridge construction standards, whether or not such roads are intended to be Town highways maintained by the Town. (Requirement for private road over .20 miles may be waived if in land deed there is language that the road can never be turned into a Town road. Property owner takes responsibility for road being sufficiently passable for fire and/or rescue vehicles and if any damage is done to vehicles due to condition of road, it will be the property owner's responsibility to pay for vehicle's repair/replacement.) If any federal and/or state funding is involved in a project, the VTrans district office must be notified prior to any field changes taking place that would alter the original scope of work.

A. Roadway Standards:

1. Road and road-related improvements shall be constructed or installed in accordance with sound engineering practice and this ordinance.
2. The construction guidelines and standards contained as part of this ordinance are considered minimum and may be exceeded to meet traffic or other conditions.
 - a. Any new road or road construction performed on Town roads shall require filter fabric to be installed beneath appropriate levels of bank run, crushed gravel, and pavement, if road is paved.
 - b. The Town of Wilmington shall not take over any private roads unless filter fabric is installed under the appropriate levels of bank run, top dressing, and pavement, if required.
 - c. All new or substantially reconstructed gravel roads shall have at least a 12-inches thick processed gravel sub-base, with an additional 5 inches (minimum) top course of crushed gravel.
 - d. All new or substantially reconstructed paved roads shall have at least a 15 inches thick processed gravel sub-base and nonwoven road fabric.
 - d. All roadways shall be graded so water does not remain on the road surface. For roadways that are not superelevated, this generally means a 2-4% ($\frac{1}{4}$ " - $\frac{1}{2}$ " per ft) crown for gravel roads and a 1-2% ($\frac{1}{8}$ " - $\frac{1}{4}$ " per ft) crown for paved roads to promote sheeting of water.
 - e. Proper grading techniques for gravel roadways must be used to avoid creating a ridge or berm between the crown and the ditch.
 - f. Any berm along the roadway shoulder that prevents the proper sheeting of water must be removed.
3. Culverts and Bridges
 - a. All new driveway culverts will have a minimum diameter of 15 inches.
 - b. Replacement of existing roadway culverts and any new roadway culverts must have a minimum culvert diameter of 18 inches.
 - c. Any existing culvert (3 feet diameter or less) that fails due to inadequate capacity and causes road failure shall be replaced with a larger culvert at the discretion of the Road Commissioner.
 - d. Replacement of existing bridges and culverts and any new bridges and culverts must be designed in accordance with the VTrans Hydraulics Manual, and, in the case of perennial streams, conform to the statewide Stream Alteration standards.
 - e. When installing or replacing culverts, use appropriate techniques such as headwalls and wingwalls, where there is erosion or undermining or where it is expected to occur.
 - f. Install a splash pad or plunge pool at the outlet of new or repaired drainage culverts where there is erosion or where erosion may occur. Splash pads and plunge pools are not appropriate for use in streams supporting aquatic life.
 - g. All bridges shall have a minimum two-lane width except the following:
 - Bridge #56 on Town Highway #6 Look Road

- Bridge #48 on Town Highway #38, Green Road
- Bridge #51 on Town Highway #54, Howe Drive

4. Ditches and Slopes:

Soil exposed during ditch and slope construction repair or maintenance must be treated immediately following the operation. and temporary erosion prevention and sediment control practices must be installed and maintained during construction activities and until the ditch or slope is permanently stabilized.

The following are minimum erosion control measures. Careful attention must be given to areas vulnerable to erosion and immediately adjacent or discharging to surface waters and/or roadway drainage facilities:

- a. Seed and mulch ditches with grades less than 5% when undertaking projects or repairs or maintenance activities that result in exposed soil. Vegetation must be established and monitored. If vegetation is not established within 10 days of placement, install biodegradable non-welded matting with seed.
- b. Stone line all new or reconstructed ditches or whenever soils are disturbed by maintenance activities with grades equal to and greater than 5%; alternatively, install stone check dams. The check dams must meet criteria outlined in the *"Standards and Specifications for Check Dams"*, from the *Vermont Standards and Specifications for Erosion Prevention and Sediment Control*. Specifically, dams must be placed so that the crest of the downstream check dam is at the same elevation as the base of the upstream dam.
- c. Create parabolic (wide "U" shaped) ditches when constructing new or substantially reconstructing ditches, rather than narrow "V" shaped ditches wherever lateral space allows. Ditches with gradual side slopes (maximum of 1:2, vertical to horizontal ratio) and a wide bottom (at least 2 feet) are preferred.
- d. Use biodegradable, non-welded matting to stabilize side-slopes where slopes are greater than 1:2 and less than 1:1 ½; ; apply seed and mulch to any raw or exposed side-slope if slopes are less than 1:2.
- e. All Ditches must be turned out to avoid direct outlet into surface waters. There must be adequate outlet protection at the end of the turnout, either a structural (rock) or vegetative filtering area.
- f. If in the best professional engineering judgment of the VTrans Operations Division, there is a cost effective ditch treatment that will meet the intent of the management practices described above, but represents a departure from these standards, the municipality may implement the more cost effective ditch treatment alternative with the professional recommendation submitted in written form by VTrans prior to the municipality executing the work.
- g. When constructing new or substantially reconstructing side slopes, use appropriately sized stone armament on slopes that are 1:1 1/2 or

greater. If perennial streams are affected by the toe of slope the project must conform to the statewide Stream Alteration standards.

5. Guardrail

When roadway, culvert, bridge, or retaining wall construction or reconstruction projects result in hazards such as foreslopes, drop offs, or fixed obstacles within the designated clear-zone, a roadside barrier such as guardrail must be installed. The most current version of the AASHTO Roadside Design Guide will govern the analysis of the hazard and the subsequent treatment of that hazard.

6. Access Management

The town must have a process in place, formal or informal, to review all new drive accesses and development roads where they intersect Town roads, as authorized under 19 V.S.A. Section 1111. Towns may reference VTrans A-76 Standards for Town & Development Roads and B-71 Standards for Residential and Commercial Drives; and the VTrans Access Management Program Guidelines for other design standards and specifications.

7. Training

Town highway maintenance crews must collectively attend a minimum total of 6 hours of training per year on best road management practices. The town must keep documentation of their attendance for a period of three years.

8. The Selectboard hereby adopts the following construction guidelines and/or standards as they may be amended from time to time from the Vermont Agency of Transportation which are considered integral to this ordinance: (for identification purposes only)

- a. A-76 Design Standard for Town and Development Roads
- b. B-71 Design Standard for Residential and Commercial Drives

9. All roads must possess the requisite E-911 signage (initial sign(s) at the owners' expense), along with any other required signage appropriate for the roadway, such as stop, yield, and/or curve signs.

10. The Selectboard or designee shall make final decisions over all questions arising during construction of new roads and shall approve all field changes.

§3. Existing Roadways:

A. Before the Town will take-over and lay-out as a Town highway any private roadway constructed prior to the date hereof, the roadway shall be improved, at the owner's expense, to the standards set forth in Paragraph 2A and shall follow the procedures for said take-over of said improvements as set forth below. Adjacent existing town highways may be required to be improved to the aforementioned standards at the discretion of the Selectboard.

B. Exception: In the Selectboard's sole discretion, the Town may accept, take-over and lay-out as Town highways existing roadways not meeting all of the standards set forth above, provided that said roadway, by a Town-hired Engineer's certification (paid for by the owners of the road), substantially complies with the above-stated standards, but does not meet all said standards due to unique physical or

topographical features, or to meet said standards, other than the State standards, would be unduly expensive in relation to the added benefit derived from the particular road standard

§4. Minimum Standards for Possible Acceptance or Reclassification as Town Highway:

The Town's action to lay out an existing or new private roadway or reclassify a town highway shall, in addition to the standards and procedures set forth herein, be guided by the following criteria:

The Town will consider it in the Town Good and Town Necessity only to accept a road as a town road, or reclassify an existing town highway:

- 1) which is at least .20 miles in length, and
- 2) has at least seven homes on said roadway;

These standards shall NOT apply as standards for whether or not the Town should discontinue a town highway. The statutory criteria of the Town good, necessity and convenience of the inhabitants of the Town shall apply to any determination as to whether or not to discontinue a town highway.

§5. Procedure for Laying-Out, or Reclassifying Town Highways:

- A. The provisions of 19 V.S.A. §701 et seq, as said statute may be amended from time to time, from the Vermont Agency of Transportation which are considered integral to this ordinance: (for identification purposes only) shall apply to any laying-out or reclassifying a town highway.
 - a. A-76 Design Standard for Town and Development Roads
 - b. B-71 Design Standard for Residential and Commercial Drives
- B. The following procedures are required in addition to the statutory requirements before a roadway may be laid out or reclassified as a Town highway:
 - 1) **Notice to Town Manager.** Road owner(s) or petitioners desiring the Town to lay-out or reclassify a road shall first give written notice to the Town Manager with written explanation as to why it is in the Town Good, Town Necessity and the Convenience of the Inhabitants of the Town.
 - 2) **Meeting with Town Manager and Town Highway Department.** A meeting shall be held with the Town Manager and Town Highway Supervisor to discuss the proposed action.
 - 3) **Measurement, Number of Homes.** The person proposing the action shall provide certified measurements of the roadway in question and the number of homes per the Grand List. The person proposing the action shall notify abutting property owners along the roadway of the proposed action and shall provide to the Selectboard a certificate of service of said notice.
 - 4) **Preliminary Review by Selectboard.** The Selectboard shall review the application and shall render a preliminary decision as to whether it believes it likely that the application will meet the standards set forth in Title 19, Chapter 7 (Town Good, Town Necessity and the Convenience of the Inhabitants of the Town) and the above stated standards. If the Selectboard exercises its discretion pursuant to Section 3(B), it shall state its reasons therefore.

- 5) **Site Visit.** If the above requirements are satisfied, a site visit shall be scheduled and conducted with the Town Manager, Town-hired Engineer (to be paid for by the applicant), Town Highway Supervisor, the applicant and applicant's engineer.
- 6) **Testing and Engineering.** Soil/Gravel test borings and engineering plans in accordance with the above stated standards shall be submitted to the Town for the Town and the Town-hired Engineer to review. The Town shall provide comment and recommendations on the proposed plans.
- 7) **Engineering Plans.** Final engineering plans shall be approved by the Town after review (at applicant's expense) by Town-hired Engineer.
- 8) **Proof of Financial Ability.** Applicant shall provide to the Town proof of the financial ability to perform said work. Performance bonds, Letters of Credit, Escrow Accounts, etc. shall be acceptable to the Town.
- 9) **Review by Selectboard.** The Selectboard shall review the application and shall render a written decision after consideration of the standards set forth in Title 19, Chapter 7 (Town Good, Town Necessity and the Convenience of the Inhabitants of the Town) and the above-stated standards. If the Selectboard exercises its discretion pursuant to Section 3(B), it shall state its reasons therefore.
- 10) **Construction.** Upon approval by the Selectboard, construction may begin after obtaining any other necessary state or local permits.
- 11) **Engineering Review during Construction.** At applicant's expense, the Town-hired Engineer shall periodically inspect and review the construction to ensure compliance with the standards set forth herein.
- 12) **Final Engineering Certification.** Upon completion of the construction, the applicant's engineer and the Town-hired Engineer shall certify to the Selectboard that the roadway was constructed in accordance with this ordinance and the standards set forth herein.
- 13) **Proof of Payment.** Applicant shall provide proof that all costs of construction and engineering have been paid in full.
- 14) **Warranty and Escrow.** Applicant shall warranty in writing approved by the Town the road construction for a period of two years. Upon recommendation from Town-hired Engineer adequate funds shall be placed in escrow for any warranty work or performance bonds issued to the Town for said work.
- 15) **Formal Action.** Upon completion of the construction and satisfaction of the above steps the Selectboard shall, pursuant to 19 V.S.A, Chapter 7, take formal action to lay-out or reclassify the roadway.

§6. The Town shall not be required to accept as Town highway more than a total of one mile of highway in any one year except when the roadway itself that is being accepted is longer than one mile. The Town will accept and formally lay out Town highways in the order that each applicant completes steps 1-13 in paragraph 5.B.

For the purpose of orderly budgeting, between the months of November through June, the Town may defer formal action under Section 5.B.15.

§7. **Civil Ordinance:**

- A. This Ordinance is designated a Civil Ordinance pursuant to 24 V.S.A. § 1971(b)
- B. Enforcement: A violation of this ordinance shall be a civil matter enforced in accordance with the provisions of 24 V.S.A. Section 1974a and 1977 et seq.

C. Penalties:

- 1) A civil penalty of \$100.00 shall be imposed for the initial violation of this ordinance. The penalty for the second offense within a six month period shall be \$150.00 and the penalty for subsequent offenses within a six month period shall be \$200.00.
- 2) The waiver fee shall be set at \$50.00 for the first offense, \$75.00 for the second offense within a six month period, and \$100.00 for subsequent offenses within a six month period.
- 3) Each day that the violation continues shall constitute a separate violation of this ordinance.
- 4) The custodial official of the Town's ticket books shall be the Town Administrative Assistant.
- 5) The issuing officials shall be the Road Supervisor or Town Manager.
- 6) The appearing officials shall be The Road Supervisor, Town Manager, or Town's Attorney, or any combination thereof deemed appropriate.

§8. Definitions:

Roadway -	Street, private way, Town way, - these terms shall have the same meaning as said terms are defined in the Wilmington Zoning Ordinance, as said ordinance may be amended from time to time.
Highway -	Means roadways laid out in the manner prescribed by Statute or roadways which have been constructed in accordance with the standards set forth herein and constructed for Town travel over land which has been conveyed to and accepted by the Town by deed or easement or roads which have been dedicated to Town use and accepted by the Town. The term highway includes right of ways, bridges, drainage structures, signs, guardrails, etc. See 19 VSA § 1.
Person -	Shall mean any individual, entity (corporate or otherwise), group or association and shall carry the meaning as defined in Vermont Statutes.
Lay-Out -	Means the legal procedure establishing the alignment or right of way of a highway.
Take-Over -	The acceptance or receipt of a right of way as a completed roadway for Town use as a Town highway.
Reclassify-	Means to change the classification of any highway from one classification of highway set forth in 19 VSA section 302 to another classification set forth in 19 VSA section 302. (Example: re-classifying a class four town highway to a class three town highway.)
Engineer -	Vermont Licensed Engineer

§9. Severability: If any provision within this Ordinance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such action shall not affect the validity of the remaining provisions of this Ordinance.

§10. Publication and Posting: This Ordinance shall be entered in the Selectboard minutes, filed with the Town Clerk, and posted in at least five (5) conspicuous places within the

Town. A copy of this ordinance shall be published in the Deerfield Valley News, not later than fourteen (14) days following the date specified below when this Ordinance is adopted.

- §11. **Information:** The Wilmington Town Manager whose telephone number is 464-8591, and whose address is Box 217, Wilmington, VT 05363, is a person knowledgeable about the Ordinance and is available to answer questions and provide persons with a full text thereof.
- §12. **Right to Petition:** Citizens of the Town of Wilmington are further hereby notified that within forty-four (44) days from the date of adoption they may petition for a vote on the above Ordinance at an annual or special town meeting as provided in 24 V.S.A. 1973.
- §13. **Recording:** This Ordinance shall be recorded by the Town Clerk in the Records of the Municipality.
- §14. **Effective Date:** This Ordinance shall become effective sixty (60) days from the date of adoption.

Adopted by the Wilmington Selectboard this fifth day of February, 2014

Margaret L. Streeter, Chair
James R. Burke, Vice Chair
Diane Chapman, Clerk
Susan Joy Haughwout
Jacob White