

ASK THE LEAGUE, APRIL 2016

Frequently Asked Mud Season Questions

This article is an update of articles posted in the May 2014, April 2012, March 2011, and June 2005 issues of the VLCT News.

Can a town restrict the use of its roads during mud season?

Yes. The selectboard is authorized by 19 V.S.A. §§ 303 and 1110 to restrict the use of a town highway or even close that highway for a period of time when necessity demands. Selectboards frequently use this authority to prevent damage that might otherwise occur to a town highway during mud season. This authority is not seasonal, however; the selectboard may restrict or close a highway at any time when conditions are such that the traveling public, or the highway itself, might suffer harm caused by vehicles.

To restrict or temporarily close a town highway, a selectboard must pass a resolution at a duly warned open meeting. An example of such a resolution is as follows:

RESOLUTION FOR TEMPORARY CLOSURE of [insert name of town highway]
[insert name of town], VERMONT

WHEREAS the present conditions on [insert name of highway] are such that the traveling public, or the highway itself, might suffer harm caused by vehicular use of that highway due to [insert reason such as "excessive mud," "erosion from recent storm," etc.], and WHEREAS, the [insert name of town] Selectboard is authorized under 19 V.S.A. §§ 1110, 1112 and 24 V.S.A. § 2291(4), to regulate the use of motor vehicles on town highways and to adopt rules to restrict the use of town highways,

NOW THEREFORE, the [insert name of town] Selectboard does RESOLVE that motor vehicle travel on [insert name of town highway] shall be [insert "prohibited" if the highway is to be closed; otherwise, insert restriction such as "prohibited except for travel by residents"] from [insert dates/times of closure].

DATED [insert date]

Signed [insert signatures].

Notice of the restriction or closure must be posted in at least two public places in town and signs provided by the Agency of Transportation must be "conspicuously placed" at each end of the portion of the highway that is restricted. 19 V.S.A. § 1110. The Municipal Assistance Center recommends as a best practice that the town maintain documentation of the time and date that a highway or bridge is posted for a seasonal restriction or closure and keep this documentation on file with the Vermont Department of Motor Vehicles (DMV), even though such documentation is not explicitly required in statute. The selectboard may also have physical barriers placed in the

highway to prevent travel as long as those barriers are clearly visible and are accompanied by clear signage. 23 V.S.A. § 1112.

The penalty for violating a road closure is set by statute and therefore a town may not alter that penalty. Nineteen V.S.A. § 1110 states that “A person who violates these rules shall be guilty of a traffic offense under 23 V.S.A. chapter 23, for which he or she shall be fined not more than \$100.00, and shall be liable to the State or town in which the damage is done for all damages to the highway to be recovered in a civil action.” This means that the person who is found to be in violation may be issued a traffic ticket by a law enforcement officer. In addition to that ticketing process, the town may sue the person in small claims court or superior court for the cost of repairing the damage caused to the road. A town may also recover the cost of aiding a stranded operator or moving a disabled vehicle that has been operated on a closed highway. 23 V.S.A. § 1112(c).

Can the selectboard lower the allowable weight limits during mud season?

Yes. The selectboard may lower the allowable weight limit on a town highway or bridge at any time, provided that it follows statutory process. Maximum allowable weight limits on highways and bridges are set by 23 V.S.A. § 1392. However, a selectboard may set lower limits on any of its class 2, 3, and 4 town highways or bridges based on its judgment of the best interest of the town. 23 V.S.A. § 1396. It is sometimes in the best interest of a town to lower weight limits on certain highways during mud season (or at other times) when operation by heavy vehicles might otherwise cause significant ruts or structural problems to the highway.

Local weight limits are set when the selectboard passes a resolution on the subject at a duly warned open meeting. In addition, the town must follow the procedures in 23 V.S.A. §§ 1397, 1400b. Specifically, signs giving notice of the limits must be posted at each end of each restricted highway or on the approaches to each restricted bridge. 23 V.S.A. § 1397. The town must also maintain documentation of the time and date a highway or bridge is posted, and keep all current restrictions on file with the DMV. Weight limits must be filed with the DMV within three working days of the date of posting in order to be enforceable. In addition, the town must annually file a “complete copy of the limitations” with the DMV not later than February 10 of each year. 23 V.S.A. § 1400b. Once conditions improve and the selectboard decides it is appropriate to raise the weight limits, it must go through the entire process of passing a resolution to change the local limit, posting the road, and notifying the DMV.

What kind of vehicles are exempt from road restrictions?

Our interpretation of the law is that no vehicles are exempt from highway closures, seasonal or otherwise, and therefore all vehicles must abide by those closures. The same is true for restrictions such as those that limit travel over a highway to “residents only.”

On the other hand, certain vehicles are exempt from locally imposed weight restrictions, even when those weight limits are imposed to protect roads during mud season. The vehicles that are exempt include state and municipal fire-fighting and construction machinery as well as “agricultural service vehicles” that weigh less than 60,000 pounds. 23 V.S.A. §§ 4(71), 1399, 1400d. An “agricultural service vehicle” is defined as “a motor truck” that is registered with the DMV and “is used for the purpose of transporting to or from a farm either: (A) agricultural

inputs, including lime, fertilizer, commercial feed, or forages; or (B) agricultural outputs, including milk, vegetables, fruit, horticultural crops, forages, or livestock.” 23 V.S.A. § 4(71). Vehicles that fit such definition do not have to abide by local weight limits, even if they are set specifically to protect a highway during mud season.

Outside of the above exemptions, the operation of a vehicle in excess of the posted weight limit of a town highway without a permit is a statutory traffic violation for which the operator may be issued a state traffic ticket from a law enforcement officer. The penalties for violation of weight limits are established in 23 V.S.A. § 1391a and may not be changed by the municipality. In addition to that ticketing process, the town may sue the offender in small claims court or superior court for the cost of any damage caused to the road.

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