



MEMORANDUM

To: Selectboards and other Municipal Legislative Bodies
From: Municipal Assistance Center
Date: November 17, 2015
RE: **Model Class 4 Highway and Trail Policy**

Town highways and trails are under the general supervision and control of the selectboard of the town in which they are located. The selectboard has the authority to regulate or restrict the use of highways and trails. 19 V.S.A. §§ 303, 304.

The term “highway” in Vermont law includes all public roads and bridges. 19 V.S.A. § 1(12). Class 4 town highways are town highways that are not class 1, 2, or 3 town highways. 19 V.S.A. § 302(a)(4). A town “trail” is a public right-of-way that was either a former town highway that has been reclassified by the town as a trail, or a new right-of-way laid out as a trail to provide access to abutting properties or for recreational use. 19 V.S.A. § 301(8).

Class 1, 2, and 3 highways must be kept “in good and sufficient repair during all seasons of the year.” 19 V.S.A. § 310(a).¹ On the other hand, a town is *not* required to regularly maintain its class 4 highways and may therefore exercise discretion in doing so. *Town of Calais v. County Road Com’rs*, 173 Vt. 620 (2002). The law allows that 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.” 19 V.S.A. § 310(b). A town has no legal duty to maintain town trails. 19 V.S.A. § 310(c).

Selectboards can manage and control town highway rights of way through the use of local ordinances, selectboard resolutions, and town policies. Each of these management methods is described below.

ORDINANCES

Once an ordinance is duly-adopted (according to statutory process), it becomes local law and may be enforced according to the enforcement provisions contained in that ordinance. Because Vermont is a “Dillon’s Rule” state, a town may only adopt an ordinance on a subject over which the town has been given authority by state statute. The highway-related topics over which towns have statutory are described below.

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¹ The law allows the selectboard, after following statutory procedure, to decide whether a class 2 or 3 highway or section of highway should be plowed and made negotiable during the winter. This decision must be based on safety considerations for the traveling public and municipal employees. 19 V.S.A. § 310(a).

Speed limits. Speed limits on town highways may be set only by municipal ordinance. 23 V.S.A. §1007; 19 V.S.A. § 304(a)(7). Generally, speed limits may only be set based on a traffic and engineering investigation.

Parking restrictions. The selectboard has the authority to impose parking restrictions on public highways and on public property within the town. 19 V.S.A. § 304(a)(6). This is done by adopting an ordinance that describes the location and parameters of the parking restriction, and describes the enforcement and appeal process. 23 V.S.A. § 1008; 4 V.S.A. § 32(11). Signs regarding such restrictions must be clearly posted at the location where the restrictions are in place.

Traffic signs and signals. State law enables selectboards to install traffic signs such as stop signs and yield signs at highway intersections. 23 V.S.A. § 1008(a). However, such signs are not enforceable unless they are backed up by a duly adopted local ordinance that describes their type and location. All traffic signs and signals must meet the standards of the U.S. Department of Transportation Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD).

Highway Use by ATVs and Snowmobiles. State law allows snowmobile and ATV use on all public highways that are not maintained by the town for vehicle use in winter. 23 V.S.A. §§ 3206, 3506. A municipality may not prohibit such use during the winter. A municipality may, however, impose restrictions regarding the time and manner of operation of snowmobiles and ATVs on those highways. 23 V.S.A. §§ 3210, 3510; 24 V.S.A. § 2291(4). Such restrictions must be imposed in an ordinance in order to be enforceable.

In addition, a municipality may allow for the use of snowmobiles and ATVs on any of its maintained highways and sidewalks in accordance with 23 V.S.A. §§ 3206, 3506 after posting by the town. A decision to open a maintained highway or sidewalk to snowmobiles or ATVs may be made in a town policy or by resolution of the selectboard. However, if the town wishes to impose any enforceable restrictions on the time and manner of such operation, those restrictions must be imposed in an ordinance in order to be enforceable.

RESOLUTIONS

The authority to set weight limits, temporarily close highways, or restrict the use of highways is exercised by selectboard resolution at a duly warned open meeting. The selectboard may also have to adhere to reporting and signage requirements, as discussed below.

Weight Limits on Town Roads². The state sets maximum allowable weight limits on highways and bridges by statute (23 V.S.A. § 1392) and a selectboard may set different 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. §1396.³ The selectboard exercises this authority by passing a resolution at a duly warned open meeting. In addition, the town must follow the procedures in 23 V.S.A. §§ 1397 and 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. § 1397.⁴ The town must also maintain documentation of the time and

² Dimensional limits are set by state statute and are not subject to alteration by municipalities. 23 V.S.A. §§ 1431 et seq.

³ The selectboard does not have legal authority to set a limit on a class 1 town highways other than that which is already established by statute. However, the selectboard may request that the secretary of transportation set limits on a class 1 highway in certain circumstances. 23 V.S.A. § 1393.

⁴ 23 V.S.A. § 1397 provides an exception for class 4 highways and class 3 highways that only serve one residence.

date a highway or bridge is posted, and keep all current restrictions on file with the Department of Motor Vehicles. Weight limits must be filed with the DMV within three working days of 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.

State and municipal fire-fighting and construction machinery is generally exempt from local weight limitations, as are agricultural service vehicles that weigh less than 60,000 pounds. 23 V.S.A. §§ 4(71), 1399, 1400d.

The penalties for violation of weight limits are established in 23 V.S.A. § 1391a. Those penalties may not be modified by the municipality.

Closing or Restricting the Use of Town Highways. The selectboard may impose restrictions on a town highway or close that highway for some period of time when it is necessary to prevent damage during mud season or at other times of the year. These restrictions may be accomplished without an underlying policy or ordinance; a selectboard need only pass a resolution on the subject at a duly warned open meeting, and post notice of the closure in at least two public places in town. In addition, 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.

We recommend that the town maintain documentation of the time and date that a highway or bridge is posted for a seasonal closure and keep all current restrictions on file with the Department of Motor Vehicles, no matter such documentation is not explicitly required in statute.

The penalty for violating a road closure is set by statute and therefore a town may not alter that penalty. The applicable statute 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 the damage caused to the road.

Private parties may not block or obstruct a public highway, including class 4 roads or trails, except with permission of the selectboard. 19 V.S.A. § 1105. There is an exception to this rule for “one or more items of logging or other equipment temporarily within the right-of-way of a trail ... if located in such a way as not to unreasonably impede passage.” Enforcement of this statute requires the town to sue the individual responsible for the obstruction in Small Claims Court or Superior Court. A court may impose a financial penalty of not more than \$1,000.00 plus the actual costs of repairing the damage and reasonable attorneys fees.

Closing or Restricting the Use of Town Trails. The selectboard may impose limits on the use of town trails, such as prohibiting use at certain times of the year or prohibiting motorized traffic. Such limits may be imposed by town policy or by resolution of the selectboard. However, if a town wishes to impose financial penalties for noncompliance with trail restrictions, the selectboard must adopt an ordinance on the subject.

Street Signs. Naming streets, numbering lots, and erecting street signs on public roads and trails is within the discretion and authority of the selectboard and does not require a town policy or ordinance. 24 V.S.A. §§ 2291(16), 4421. Naming and numbering should be done according to the standards set by

Vermont's 911 Emergency Response Board. The selectboard may require the owner of a building to which a number has been assigned to post or affix that number so that it is visible from the road.

All traffic signs and signals must meet the standards of the U.S. Department of Transportation Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD).

Pent Roads and Trails. A pent road is not a separate classification of highway; it is a town highway that, with written permission of the selectboard, is enclosed by adjoining landowners with unlocked stiles, gates, and bars. 19 V.S.A. § 301(4). Likewise, a pent trail is a trail that, with written permission of the selectboard, is enclosed by adjoining landowners with unlocked stiles, gates, and bars. 19 V.S.A. § 301(4).

A selectboard's permission to install fences, stiles, gates, and bars must be given in writing and recorded in the clerk's office. Such fences, stiles, gates, and bars are installed at no cost to the town and they remain the responsibility of the party that installed them. Permission to install fences, stiles, gates, and bars on a road or trail does not change the status of that road or trail, and they must be unlocked at all times so that the public is able to use the road or trail even after the fence, stile, or gate is installed.

While it is unnecessary to adopt an ordinance to create a pent road or pent trail, a selectboard must adopt an ordinance in order to establish regulations regarding the pent road or trail that are enforceable against the public. Such an ordinance may include financial penalties of up to \$50.00 for noncompliance. 19 V.S.A. § 304(a)(5).

POLICY

A town policy is a statement about how the town and its elected and hired officials will make decisions and conduct internal town operations; a policy does not create legally enforceable obligations and requirements. Nevertheless, a policy can be a very useful document because it clearly defines town standards and sets reasonable expectations for maintenance, repair, and use.

VLCT recommends that every town communicate to its residents how it will deal with its class 4 highways and trails. This is most effectively achieved by adopting a class 4 highway and trail policy.

This Model Class 4 Road and Trail Policy has been developed for illustrative purposes only. VLCT makes no express or implied endorsement or recommendation of any policy or any express or implied guarantee of legal enforceability or legal compliance. VLCT also does not represent that any policy is appropriate for any particular municipality. Please seek legal counsel to review any proposed policy before adoption.

If you have specific questions about this policy please contact us at 800-649-7915 or info@vlct.org.

TOWN OF _____
CLASS 4 HIGHWAY AND TRAIL POLICY

1. Definitions.

Highway shall mean a public road or highway that is classified as class 1, 2, 3, or 4 for purposes of receiving state aid.

Class 4 highways are all other highways not falling under definitions of class 1, 2, or 3 highways. Class 1, 2, and 3 highways are defined for the purpose of receiving state aid and are passable with a pleasure vehicle on a year-round basis.

Trail means a public right-of-way which is not a highway and which:

- a. previously was a designated highway having the same width as the designated town highway or a lesser width if so designated; or
- b. a new public right-of-way laid out as a trail by the Selectboard for the purpose of providing access to abutting properties or for recreational use.

2. Existing Use. Existing rights-of-way of class 4 highways and trails as of the date of adoption of this policy shall be retained by the Town for purposes of recreational multi-use activities, access to private property, and agricultural and forest management.

3. Maintenance.

- a. Trails. The Town shall not provide any maintenance or upkeep on trails.
- b. Class 4 highways
 - i. The Town shall not provide any summer maintenance of class 4 highways except to the extent required by necessity and the public good and convenience of the inhabitants of the town.
 - ii. Permission for repair, maintenance, improvement, or restoration of a class 4 highway shall not be unreasonably withheld by the Selectboard. The road shall be left in as good as or better condition than when permission was granted.
 - iii. The Town shall not provide any winter maintenance on class 4 highways. Plowing by private parties shall be only with advance permission from the Selectboard. Any winter plowing of a class 4 road allowed by the Selectboard to parties other than a municipality shall not nullify the snowmobiling privileges under 23 V.S.A. § 3206 (b)(2).

4. Control. The Selectboard shall exercise control of class 4 highways and trails to ensure their integrity as public rights-of-way by means which may include, but are not limited to, the following:

- a. establishment of vehicle weight limits;
- b. prohibition or restriction of use by motorized vehicles;

- c. imposition of requirements for temporary permit for heavy equipment access which may include a stipulation that any highway damaged will be repaired by or at the expense of the user, or posting of bond or other security to guarantee that repairs are made may be required as a condition of any permits;
- d. establishment of speed limits; and
- e. granting permission to pent a town highway or trail.

5. Change in classification.

- a. Class 4 highways may be altered, reclassified to trail status, discontinued, or upgraded to class 3 or higher status.
- b. Trails may be reclassified, discontinued, or upgraded to class 4 or higher status.
- c. Reclassification or discontinuance will be done in accordance with 19 V.S.A. §§ 708-716 and upon findings by the Selectboard that the public good, necessity, and convenience of the inhabitants of the town require such action.

At a minimum, no class 4 highway or trail may be upgraded in status or discontinued without the permission of the Selectboard. The Selectboard may require that the cost of upgrading a class 4 highway to a class 3 highway will be borne by those seeking the change in classification.

Pursuant 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.

- 6. New Structures.** New structures on lots fronting on a class 4 highway are subject to the requirements of applicable town ordinances and zoning bylaws.
- 7. Right-Of-Way Access.** Pursuant to 19 V.S.A. § 1111, the Selectboard shall control access to the highway right-of-way for the installation or repair of utilities and for access of driveways, entrances, and approaches. No development, construction, excavation or installation shall take place within or adjacent to the highway right-of-way without prior permission from the Selectboard. The Selectboard shall control access into the road right-of-way for the installation or repair of utilities and for driveways, entrances, and approaches.

[Insert language here regarding the town’s curb cut policy or local zoning provision, if applicable.]

- 8. Overweight Vehicles.** Pursuant to 23 V.S.A., Chapter 13, Subchapter 15, vehicular use of highways and bridges is subject to limitation and regulation regarding gross vehicle weights, tire and axle weights, and overall length and width. In addition, vehicular use of a particular highway or bridge is subject to restrictions including temporary closure as per 19 V.S.A. § 1110.

Upon application to the town, the electboard or their authorized agent may grant written permission for use or travel over town highways by vehicles in excess of the legal weight and/or size limitations. Written agreement may be made by and between the electboard and such an applicant for compensation for wear and tear on highways anticipated or caused by use. Vehicles used for agricultural or forest management shall not be held to a higher standard than other vehicles.

9. Highway and Trail Closure. No highway of any class or any trail may be intentionally closed by a gate or other obstruction except upon approval of the Selectboard. 19 V.S.A. §§ 304, 1105. The Selectboard may restrict the use of a highway or trail in accordance with 19 V.S.A. § 1110.

10. Compliance with Other Regulations. This policy is intended to supplement state law and local ordinance. All other ordinances and policies adopted by the town shall remain in full force and effect.

Adopted by the Selectboard this __ day of _____, 20__.
