



MEMORANDUM

To: Selectboards, Municipal Managers, Road Commissioners, Highway Supervisors (Road Foremen)

From: VLCT Municipal Assistance Center

Date: July 19, 2017

RE: Model Town Highway Access Policy

Title 19 V.S.A. § 1111 requires all individuals and corporations to obtain a permit to occupy or alter any part of a municipal right of way. That statute makes it unlawful to “develop, construct, regrade or resurface any driveway, entrance or approach, or build a fence or building, or deposit material of any kind within, or to in any way affect the grade of a highway right of way, or obstruct a ditch, culvert or drainage course that drains a highway right of way, or fill or grade the land adjacent to a highway so as to divert the flow of water onto the highway right-of-way,” without a permit. Such permits are commonly referred to as “access,” “curb cut,” or “driveway” permits and are issued by the municipal legislative body or its designee.

It is essential that every municipality establish a permitting process, including rules and regulations that set forth any required construction standards and conditions that must be complied with before an access permit may be issued. State statute specifically authorizes the legislative body to “make such rules to carry out the provisions of this section as will adequately protect and promote the safety of the traveling public, maintain reasonable levels of service on the existing highway system, and protect the public investment in the existing infrastructure...” 19 V.S.A. § 1111(b). **MAC has developed this Model Access Policy and Model Access Forms to assist municipalities in carrying out the requirements of 19 V.S.A. § 1111.** Having a clear policy that spells out the process and standards in place will ensure that all applicants for access permits understand what is required of them and that all applicants are treated fairly and consistently.

Although this document is written in the form of a free-standing policy, access issues may also be regulated by municipal ordinance and/or municipal zoning regulation.

Sponsor of:

VLCT Employment Resource and Benefits Trust, Inc.

VLCT Municipal Assistance Center

VLCT Property and Casualty Intermunicipal Fund, Inc.

PLEASE NOTE THAT this model policy is not comprehensive. It does not address technical issues such as traffic volume, deceleration lanes, traffic impact studies, parking, loading, safety, drainage and other issues associated with various types of development, especially commercial development. However, this model may be supplemented so that it does address such issues. Sources for technical information include: the Vermont Agency of Transportation’s “B-71 Standards for Residential

and Commercial Drives,” “A-76, Standards for Town and Development Roads” and “Access Management Program Guidelines” as well as other VTrans documents. For stormwater drainage management standards, see guidance developed by VLCT’s Water Resources Program.

This model policy has been developed for illustrative purposes only. VLCT makes no express or implied endorsement or recommendation of any policy, nor does it make any express or implied guarantee of legal enforceability or legal compliance, nor does VLCT represent that any policy is appropriate for any particular municipality. You are advised to seek legal counsel to review any proposed policy before adoption.

Customizing this Model Policy

Your municipality is responsible for editing this document so that it reflects the practices and policies adopted by your municipality in conformance with federal and state requirements. Opportunities for customization are bracketed and marked with italic text.

Permitting and Refusing a Permit

State statute requires that the legislative body or its designee consider whether the project as authorized by the permit: 1) protects the safety of the traveling public; 2) maintains reasonable levels of service on the existing highway system; and 3) protects of the public investment in the existing highway infrastructure. 19 V.S.A. § 1111(b). However, a municipality *may not deny reasonable entrance and exit* to or from property abutting the highways, *except* “on limited access highways, using safety, maintenance of reasonable levels of service on existing highway infrastructure and protection of the public investment in the existing highway infrastructure as the test for reasonableness, and *except* as necessary to be consistent with the planning goals of 24 V.S.A. § 4302 and to be compatible with any regional plan, state agency plan, or approved municipal plan.” 19 V.S.A. § 1111(b) (emphasis added).

Therefore, the legislative body or its designee may not deny an access permit *unless* the legislative body, or its designee, finds the request “unreasonable.” A permit application may be deemed unreasonable if, in the opinion of the legislative body or its designee, it does not adequately: 1) protect the safety of the traveling public; 2) maintain reasonable levels of service on the existing highway system; 3) protect of the public investment in the existing highway infrastructure; or 4) comply with the planning goals of 24 V.S.A. § 4302 and any regional, state, or approved Town Plan. 19 V.S.A. § 1111(b).

Permission to Proceed

One way to ensure that driveways, accesses, and curb cuts are constructed in accordance with municipal approval involves the issuance of a “Notice of Permission to Proceed,” as described in this Model Policy. Using this process, a final permit is not issued until construction is completed, inspected, and deemed to comply with the terms and conditions imposed by the municipality in its written “Notice of Permission to Proceed.” That Notice, at a minimum, should set forth all of the conditions, specifications and restrictions applicable to the project and state that any violations of those conditions, specifications, and restrictions are subject to fines ranging from \$100.00 to \$10,000.00 for each violation in accordance with 19 V.S.A. § 1111(j). The Notice may also state that the applicant’s access point may physically be closed, in accordance with 19

V.S.A. § 1111(g), if it is deemed to be a safety hazard or if the safety of the highway users is or may be affected. A provision should be included in the Notice that states that it is the applicant's responsibility to repair any damage, in accordance with the town's minimum standards, it has caused to town property as a result of its work conducted pursuant to the Notice.

The Notice states that a permit recognizing the completion of the permitted access will be issued and become effective when it is determined that the access, as constructed, complies with all policies, conditions, specifications, and restrictions described in the Notice. If upon final inspection, the legislative body or its designee determines that the project complies with the terms and conditions of the Notice, the legislative body or its designee can issue a final permit.

Recording Approvals and Permits

The statute requires that initial and subsequent permits must be recorded at the expense of the applicant in the land records of any municipality in which the affected property is located, unless the legislative body determines that such action is not warranted in specific instances or for certain categories of permits. 19 V.S.A. § 1111(l).

Enforcing the Policy

Although this document is written in the form of a policy rather than an ordinance it is nonetheless enforceable because municipalities are given specific authority in State Statute to enforce access issues.

When a person does not obtain a required access permit, or fails to comply with the terms and conditions of an issued permit, a municipality has several ways to proceed, which are described below.

Assurance of Discontinuance

The legislative body, or its designee, may (not must) also accept an "assurance of discontinuance" of any access violation, including a schedule for abatement of a violation. 19 V.S.A. § 1111(i). If such assurances are allowed, they must be in writing and must be filed not only with the town, but also with the attorney general, the Superior Court, and the town clerk's land records.

Prior to instituting any legal action regarding a highway access or an access permit, the legislative body or its designee may (not must) issue a notice of violation setting forth the nature of the violation, the corrective action necessary to abate the violation, and notice of intention to institute an action or proceeding against the person responsible for the violation. 19 V.S.A. § 1111(i).

Permit Suspension and Access Closure

The legislative body, or its designee, may suspend the permit until compliance with statute and permit conditions requiring compliance with any local ordinance and regulation relating to highways and land use is obtained. 19 V.S.A. § 1111(g). The law allows the legislative body, or its designee, may physically close the driveway or access point, if there is continued use or activity after suspension of a permit, and in the opinion of the legislative body, or its designee, the safety of highway users is or may be affected.

19 V.S.A. § 1111(g). MAC recommends seeking legal advice prior to taking action to physically block an access.

Injunction

If the legislative body, or its designee, believes that any person is in violation of the provisions of Title 19 V.S.A. §§ 1111 *et seq.*, it may bring an action in the name of the town against the person to collect civil penalties as provided in 19 V.S.A. § 1111(j) and to restrain by temporary or permanent injunction the continuation or repetition of the violation. 19 V.S.A. § 1111(h).

Civil Penalties

Persons who violate the requirements of obtaining a permit, permit conditions, or the terms of an order issued by a court may be subject to civil penalties of not less than \$100.00 and not more than \$10,000.00 for each violation. When the violation of an order is of a continuing nature, each day during which the violation continues after the date fixed by the court for correction or termination of the violation constitutes an additional separate and distinct offense except during the time an appeal from the order may be taken or is pending.