

MODEL CLASS 4 HIGHWAY POLICY AND GUIDANCE



Municipal Assistance Center
November 2018
Vermont League of Cities & Towns
89 Main St., Suite 4
Montpelier, Vt. 05602

Questions?
Contact Us
P: 1-800-649-7915
E: info@vlct.org

GUIDANCE FOR CLASS 4 MODEL HIGHWAY POLICY

Town highways 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. 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 categorized as class 1, 2, or 3. 19 V.S.A. § 302(a)(4).

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). 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).

While a selectboard has the discretionary authority to manage and control its class 4 town highways regardless of whether it has a class 4 highway policy, that discretion is not unlimited and a policy helps ensure that decisions made are not arbitrary or applied in a discriminatory fashion. Accordingly, VLCT recommends that every town communicate to its residents how it will deal with its class 4 highways by adopting a class 4 highway policy. **Town decisions regarding class 4 roads are more likely to sustain legal challenge if those decisions are based on a written town policy. See e.g. *Demarest v. Town of Underhill*, 2016 VT 10.**

A town policy is a statement about how town officials will make decisions and conduct internal town operations; a policy does not create legally enforceable obligations and requirements.¹ Nevertheless, a policy can be a very useful document because it clearly defines town standards and sets reasonable expectations for maintenance, repair, and use. Even with a policy, towns need to be diligent in ensuring that their decisions regarding class 4 highway maintenance and reclassification are consistently administered.

Town’s allowing private individuals to maintain class 4 highways should require an access permits pursuant to 19 V.S.A. § 1111. This statute requires that any individual or corporation seeking to occupy or alter any part of a municipal right of way must first obtain a permit from the Selectboard. The VLCT MAC Model Town Highway Access Policy and accompanying forms will help municipalities formalize the access permit process that is required by 19 V.S.A. § 1111. 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. The model Access Policy is available at <https://www.vlct.org/resource/highway-access-policy-model-and-guidance>.

Customizing this Model Policy

¹ This is in contrast to an ordinance which becomes local law once it is duly-adopted (according to statutory process), and therefore may be enforced according to the enforcement provisions contained in that ordinance.

Your town is responsible for editing this document so that it reflects the practices and policies adopted by your town in conformance with federal and state requirements. Opportunities for customization are bracketed and marked with italic text. **Guidance** text marked in **bold** should be removed before adoption.

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. Your legal counsel should review any proposed public records policy before adoption. Contact the Municipal Assistance Center for information about our legal review service at 1- 800-649-7915 or info@vlct.org.

Copy or print below this line

TOWN OF _____
CLASS 4 HIGHWAY POLICY

1. Purpose.

The purpose of this Policy is to define the standards by which the Town will maintain its class 4 highways and to set reasonable expectations for the use of those highways.

2. 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.

"Selectboard" shall mean the Selectboard of the Town of _____.

"Town" shall mean the Town of _____.

"Right of Way Permit" or "Permit" shall mean a permit authorized by the Selectboard for access to a Town highway pursuant to 19 V.S.A. § 1111.

3. Maintenance by the Town.

a. **[Guidance: Insert language here regarding the Town's summer maintenance policy, if one exists. If no such policy exists, the following language can be used and customized as necessary:]** 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 and when staff and financial resources allow. Such work will in no way obligate the Town to perform any additional maintenance or repairs of any nature.

b. **[Guidance: Insert language here regarding the Town's summer maintenance policy, if one exists. If no such policy exists, the following language can be used and customized as necessary:]** The Town shall not provide any winter maintenance on class 4 highways except to the extent required by necessity and the public good and convenience of the inhabitants of the Town and when staff and financial resources allow. Plowing by private parties shall only be allowed with an advance permit agreed to by the Selectboard pursuant to Section 4 of this Policy. Any winter plowing of a class 4 highway granted by the Selectboard to parties other than a municipality shall not nullify the snowmobiling privileges under 23 V.S.A. § 3206(b)(2).

4. Maintenance and Right-of-Way Access of Class 4 Highways.

- a. Any person who wishes to perform or arrange for the repair, maintenance, improvement, restoration, or installation on a class 4 highway may do so only after receiving a signed right of way permit from the Selectboard. Permission for repair, maintenance, improvement, restoration, or installation shall be given in accordance with 19 V.S.A. § 1111 [insert “and the Town’s Highway Access Policy” if the Town has adopted such a policy].

[Guidance: The VLCT MAC Model Town Highway Access Policy and accompanying forms will help municipalities formalize the access permit process that is required by 19 V.S.A. § 1111. The Model is available at <https://www.vlct.org/resource/highway-access-policy-model-and-guidance>.]

[Guidance: Sections “b.” and “c.” below should only be used if the Town has not adopted a Town Highway Access Policy as described above.]

- b. All work within the highway right-of-way shall be in conformance with current Town highway specifications and the highway shall be left in as good as or better condition than when permission was granted. In addition, the Selectboard may attach any or all of the following conditions to the Permit:
 - i. Posting of a surety bond or damage deposit with the Town in an amount that reflects reasonable estimates of repairs that may be necessary in the event of noncompliance with the provisions of this Policy or permits conditions issued for the project;
 - ii. Supervision by the Road Commissioner or Highway Foreperson; and
 - iii. Any other reasonable conditions as deemed necessary.
 - c. By submission of an application for a Right of Way Permit the applicant agrees to bear all costs associated with the work on the highway, that all the requirements for signage, work safety, and public safety required by law or reasonable prudence will be adhered to in connection with the work done under the Permit, and that all work will be done in conformance with the Permit. The applicant also agrees that the applicant and the applicant's agents shall not hold the Town responsible for any claims or injuries which may arise out of the work, and agrees to indemnify and hold the Town harmless against legal liability for any and all damage, loss or claim associated with the work.
- 5. Control.** The Selectboard shall exercise control of class 4 highways 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; either or both of which may be required as a condition of any permits;
 - d. establishment of speed limits; and

e. granting permission to pent a Town highway.

6. Change in Classification.

- a. It is the policy of the Selectboard to discourage the reclassification and/or upgrading of class 4 highways. However, upon receipt of a petition filed pursuant to 19 V.S.A. § 708, the Selectboard will consider a request to alter, reclassify or discontinue a class 4 highway.
- b. Reclassification or discontinuance will be done in accordance with 19 V.S.A. §§ 708-717. A decision to alter, reclassify or discontinue a class 4 highway will only be made in situations where the Selectboard determines that the public good, necessity, and convenience of the inhabitants of the Town require such action.
- c. 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.
- d. Pursuant to 19 V.S.A. § 708(b), a class 4 highway need not be reclassified to class 3 merely because there exists within the Town one or more class 3 highways with characteristics similar to the class 4 highway.

7. Highway Closure. No class 4 or other highway of any class may be intentionally closed by a gate or traffic otherwise impeded by other obstruction. 19 V.S.A. §§ 1102, 1111(b). The Selectboard may grant permission to an adjoining landowner to enclose pent roads by erecting stiles, unlocked gates, and bars in the places designated. 19 V.S.A. §§ 304(a)(5), 1105. The Selectboard may restrict the use of a highway in accordance with 19 V.S.A. § 1110 and 24 V.S.A. § 2291(4).

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

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