

23 §704-A. TRAFFIC MOVEMENT PERMIT

23 §704-A. TRAFFIC MOVEMENT PERMIT

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Department" means the Department of Transportation. [1999, c. 468, §2 (NEW).]

A-1. "High-speed rural arterial highway" means an arterial highway as defined in section 704 that is not located in the urban compact area of an urban compact municipality as described in section 754 and where the posted speed limit at the time of the application for a traffic movement permit is 40 miles per hour or greater. [2003, c. 363, §1 (NEW).]

B. "Passenger car equivalents at peak hour" means the number of passenger cars or, in the case of nonpassenger vehicles, the number of passenger cars that would be displaced by nonpassenger vehicles at that hour of the day during which the traffic volume generated by the development is higher than the volume during any other hour of the day. For purposes of this paragraph, one tractor-trailer combination is the equivalent of 2 passenger cars. [1999, c. 468, §2 (NEW).]

C. "Project" includes any construction, alteration or conversion of a building, or any development of state or regional significance that may substantially affect the environment as defined in Title 38, section 482, subsection 2. [1999, c. 468, §2 (NEW).]

D. "Traffic demand management techniques" means measures taken to reduce or spread peak hour traffic over a longer period of time. Such measures include, but are not limited to, on-site facilities or on-site design considerations to support local, regional or state bicycle, pedestrian, passenger rail, transit and ride-sharing efforts or plans. The department may not require operational support of passenger transportation systems or require parking management strategies of the permit applicant. [2003, c. 363, §2 (NEW).]

[2003, c. 363, §§1, 2 (AMD) .]

2. Permit. A traffic movement permit must be obtained from the department for any project that generates 100 or more passenger car equivalents at peak hour. A person receiving a permit under this section is not required to obtain a permit pursuant to section 704.

A. For any project that generates 100 or more passenger car equivalents at peak hour, the person responsible for the project is required to make adequate provision for traffic movement of all types into and out of the project area. Before issuing a permit, the department shall determine that any traffic increase attributable to the proposed project will not result in unreasonable congestion or unsafe conditions on a road in the vicinity of the proposed project. [1999, c. 468, §2 (NEW).]

B. The department, together with the appropriate representative of the municipality or municipalities where the project is located, shall discuss with the applicant at a meeting, referred to in this paragraph as a "scoping meeting," the scope of impact evaluation required for the proposed project and the type of proceedings warranted. The applicant shall provide notice to abutting municipalities. If the department determines as a result of these communications that the applicant has demonstrated that the proposed project satisfies standards adopted for projects that generate 100 to 200 passenger car equivalents at peak hour and the department determines that there are no other significant traffic-related issues presented, the department may issue a permit to the applicant without further proceedings. The department shall adopt rules establishing the submission requirement for a scoping meeting. Those rules must, at a minimum, establish 2 submission standards: one for an expedited review without further proceedings and one for a preliminary review with further proceedings anticipated. The rules must also establish the level of professional certification required by any submission and may not impose undue professional liability on the applicant. [1999, c. 468, §2 (NEW).]

C. [2003, c. 363, §3 (RP).]

D. If a project is located in an area designated as a growth area in a local growth management plan that has been found by the State to be consistent with the growth management program in Title 30-A, chapter 187 and the project does not have an entrance or exit located on a high-speed rural arterial highway and the applicant for a traffic movement permit implements traffic demand management techniques recommended by the department, then the required improvements are limited:

- (1) To those necessary to mitigate the impact of the project provided all safety standards are met, even if part or all of the traffic impact occurs outside the boundaries of the growth area; and
- (2) To the entrances and exits of the project, if the project reuses previously developed land area and buildings with no more than a 10% increase in building footprint regardless of the extent of vertical development. [2003, c. 363, §4 (RPR) .]

E. Adequate provision for traffic movement may be provided through payment of funds pursuant to section 57-A. [1999, c. 468, §2 (NEW) .]

F. Prior to issuing a traffic movement permit, the department must find that the applicant has right, title or interest to the property necessary to execute the traffic-related conditions of the permit, and that no inconsistent control of access provision exists with respect to access to the property. The department shall also advise the applicant that following issuance of the permit yet prior to construction of any improvements affecting the right-of-way of the department, the applicant must demonstrate through a developer agreement the financial, legal and technical ability to develop such improvements. [1999, c. 468, §2 (NEW) .]

[2003, c. 363, §§3, 4 (AMD) .]

3. Exemptions. A permit is not required for any project reviewed under Title 38, section 1310-N, 1319-R or 1319-X. A permit is not required for any project exempt from review under Title 38, chapter 3, subchapter I, article 6 pursuant to Title 38, section 488, subsection 7 or subsection 18.

[1999, c. 468, §2 (NEW) .]

4. Registered municipalities. The department may register municipalities for issuing traffic movement permits under this section for projects generating 100 or 200 passenger car equivalents at peak hours upon finding that:

- A. The municipality has in effect an ordinance or regulation for reviewing traffic movement permits that is consistent with the policy and purpose of this section; and [1999, c. 468, §2 (NEW) .]
- B. The ordinance or regulation is administrable and enforceable and will be properly administered and enforced. [1999, c. 468, §2 (NEW) .]

Whenever any of the conditions set forth in this subsection are no longer being met, the department shall resume promptly the administration of reviewing traffic movement permits upon written notice to the municipality.

Upon a determination by the department that there will be no adverse traffic impact in a municipality other than the municipality in which the project is located, the department may register any municipality for issuing traffic movement permits under this section for any project generating more than 200 passenger car equivalents at peak hour.

The department may provide technical assistance to municipalities upon request for projects reviewed under this section.

The department may review projects for registered municipalities if the local reviewing authority for the municipality in which the project is located petitions the department in writing. Any neighboring municipality affected by the project may petition the department in writing to review the project no later than 30 days after it has been approved by the local reviewing authority.

[1999, c. 468, §2 (NEW) .]

5. Reconsideration. Requests for reconsideration by the commissioner under this subsection must be made in accordance with this subsection. Nothing in this subsection may be construed to limit a person's lawful right to appeal a final agency action.

If the department issues an order without a hearing, a person may request reconsideration by the department within 30 days after notice of the department's decision. This request must set forth, in detail, the findings and conclusions of the department to which that person objects, the basis of the objections and the nature of the relief requested. Upon receipt of the request, the department may schedule and hold a hearing limited to the matters set forth in the request.

[1999, c. 468, §2 (NEW) .]

6. Fees. The department shall assess fees for the issuance and processing of a permit under this section. Fees may not exceed \$500 for issuance of a permit following a scoping meeting as described in section 704-A, subsection 2, paragraph B, with no further review. Fees may not exceed \$2,000 for issuance of a permit requiring review beyond a scoping meeting.

[1999, c. 468, §2 (NEW) .]

7. Consolidation. If an applicant is required to obtain both a permit from the department pursuant to this section and a permit under the site location of development laws from the Department of Environmental Protection pursuant to Title 38, chapter 3, subchapter I, article 6, the applicant may either apply individually to each agency for the appropriate permit or request that the department and the Department of Environmental Protection provide a consolidated application process.

A. On the request of an applicant prior to the submission of applications for permits pursuant to this section and Title 38, chapter 3, subchapter I, article 6, the department and the Department of Environmental Protection shall provide a consolidated application process. As long as an application is not withdrawn, the process must result in a consolidated order issued by both the department and the Department of Environmental Protection, either approving or denying the applicable permits. Any necessary findings or conditions relevant to the individual permits must be separately identified in the order. All applicable fees and the longer of the applicable processing times apply. The processing period may be extended pursuant to Title 38, section 344-B, subsection 3 or if a hearing is required pursuant to subsection 5. [1999, c. 468, §2 (NEW) .]

B. If an aggrieved party seeks an administrative appeal of a consolidated order, and there are issues relevant to both permits, the department and the Department of Environmental Protection shall provide a consolidated administrative appeal process. If there are issues relevant to only one permit, the relevant portion of the order may be appealed to the appropriate agency. [1999, c. 468, §2 (NEW) .]

C. The department and the Department of Environmental Protection shall enter into a memorandum of agreement establishing procedures for coordination of the consolidated application process and the consolidated administrative appeal process by June 30, 1999. [1999, c. 468, §2 (NEW) .]

This subsection does not apply to a project reviewed by a municipality under subsection 4 or Title 38, section 489-A.

[1999, c. 468, §2 (NEW) .]

8. Modification of existing permits. A permit issued under Title 38, chapter 3, subchapter I, article 6 prior to the effective date of this section may be modified by the department to address issues relating to traffic movement and adequate provision of roads. At the department's request, a person holding such a permit shall send a copy of the permit application to the department and to the Department of Environmental Protection. The department shall notify the Department of Environmental Protection of any substantive changes in the permit and shall provide that department with a copy of the final revised permit.

[1999, c. 468, §2 (NEW) .]

9. Rules. Rules adopted under this section are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 468, §2 (NEW) .]

10. Violation. A violation of this section or the rules adopted pursuant to this section is punishable by a fine of not more than \$100 per day per violation. The fine begins to accrue 30 days after the Department of Transportation sends notice of the violation to the landowner. The department shall establish procedures for administrative enforcement of this section, establishing fines and reconsideration and appeals of enforcement actions.

[2003, c. 363, §5 (NEW) .]

SECTION HISTORY

1999, c. 468, §2 (NEW). 2003, c. 363, §§1-5 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Special Session of the 124th Legislature, and is current through December 31, 2009, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.