

CITY OF ESSEX JUNCTION

MUNICIPAL CODE

CHAPTER 22

ORDINANCE REGULATING EARTH WORK WITHIN THE CRESCENT CONNECTOR

RIGHT-OF-WAY

PURPOSE: The Crescent Connector Right-of-Way is located within or adjacent to railroad property that has been in rail use for over 150 years. Testing on the site has identified concentrations of polycyclic aromatic hydrocarbons (PAHs) and the metals arsenic, antimony, lead, and mercury in excess of US EPA Region Screening Levels. These conditions are believed to be attributed to former coal-burning emissions and maintenance associated with the railroad. As such, this Ordinance sets standards and conditions for any earth work activities within the Crescent Connector Right-of-Way.

SECTION 1: DEFINITIONS.

The following terms, for the purpose of this Ordinance, are defined as set forth below:

- A. Earth Work: Any activity that may result in the risk of exposure or disturbance of contaminated soil, including but not limited to excavation, grading, or resurfacing where soil is exposed.
- B. Corrective Action Plan: The Corrective Action Plan ("CAP") prepared by Stone Environmental Inc. for the Crescent Connector Roadway Project, SMS Number: 2012-4263, as revised March 15, 2017, a copy of which is filed with the City of Essex Junction ("City") office and the VT Department of Environmental Conservation ("VT DEC").
- C. Crescent Connector Right-of-Way: The permanent Right-of-Way established and on file in the Town of Essex Land Records for the Crescent Connector roadway, beginning at Park Street and continuing along its length to its intersection with Main Street, including properties leased from the New England Central Railroad, Inc. ("Railroad"). There are two plan sets recorded in the Land Records that identify the location of the Right-of-Way:
 - i. The Final Right-of-Way Plans entitled "Proposed Improvement Village of Essex Junction County of Chittenden STP 5300 (13) Crescent Connector" are recorded in the Town of Essex Land Records at Map Slide 519E – H, Map Slide 520A – H, Map Slide 521A – H, Map Slide 522A – H, Map Slide 523A – H, Map Slide 524A – H and Map Slide 525A – D.

- ii. Plans provided to locate right-of-way boundary points shown on the right-of-way plans are titled “Right-of-Way Control Plan Crescent Connector STP 5300 (13) for the City of Essex Junction, Essex Junction, VT 05452” and recorded in the City Land Records at Map Slide 3C, 3D, 4A, 4B, and 4C.

SECTION 2: ADMINISTRATION AND ENFORCEMENT.

The City Manager, the Zoning Administrator, or their designee (“Agent”) shall be responsible for the administration of this Ordinance and shall have the authority to enforce compliance through the use of civil and criminal penalties as authorized by this Ordinance. Further, compliance with State and Federal regulations pertaining to the exposure, transport, or disposal of contaminated soils shall apply and be enforceable by any State or Federal authority with jurisdiction.

SECTION 3: RIGHT-OF-WAY PROPERTY

- A. Any Earth Work proposed within the Crescent Connector Right-of-Way requires the approval of the City Manager or Agent and the VT DEC, Sites Management Section. The City Manager or Agent shall approve the Earth Work if: (1) the work is in compliance with the CAP; (2) an approval is provided by the Vermont DEC; and (3) the Earth Work conforms with best practices. The City Manager or Agent may, in their sole discretion, rely on a qualified environmental professional of their choosing, to be selected by the City Manager or Agent, to determine compliance with the CAP. Any applicant seeking approval under this Ordinance may be assessed the costs expended by the City for the qualified environmental professional’s review of the proposed Earth Work.
- B. Earth Work that disturbs contaminated soils shall be performed in Level D or Modified Level D personal protective equipment by workers trained and medically monitored in accordance with the OSHA HAZWOPER regulations (29 CFR 1910.120 or as revised modified).
- C. Engineered barriers installed to prevent exposure to contaminated soils (including concrete caps such as sidewalks; asphalt, concrete and aggregate caps such as parking lots or roadways; or soil or geotextile fabric caps in green spaces) shall be monitored and maintained pursuant to Section 6.9 of the CAP (or as modified or revised) in perpetuity to ensure their integrity and functionality as designed.
- D. In addition to any other conditions, obligations, or requirements, any Earth Work conducted within the Crescent Connector Right-of-Way shall adhere to the conditions and requirements within the CAP.
- E. The contractor performing the Earth Work, unless otherwise agreed by the City Manager or Agent in a written agreement, is responsible for obtaining the necessary approval from the DEC and is responsible for payment of all cost associated with complying with the CAP and State or Federal regulations concerning exposure to, handling of, transporting of and/or disposal of contaminated soils.

SECTION 4: EQUITABLE REMEDIES.

In addition to penalties set forth in this Ordinance, the City Manager or Agent may initiate an action for an injunction, mandamus, abatement, or any other appropriate legal action to remediate, remove, or prevent further violation of any of the provisions of this Ordinance. Any and all costs for such actions are the sole responsibility of the violator. This Ordinance in no way exempts compliance with other applicable State or Federal regulations, including any fines or penalties associated therewith.

SECTION 5: PENALTY.

A violation of any provision of this Ordinance shall be punishable by a fine of up to \$500 per day, per violation until the unlawful condition is abated, corrected, or removed.

SECTION 6: SEVERABILITY.

If any section of this Ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other provisions of the Ordinance.

SECTION 7: APPEAL OF NOTICE OF VIOLATION PENALTY.

A person or entity aggrieved by a decision, revocation, suspension, or penalty pursuant to this Ordinance may appeal to the City Council. An appeal of this Ordinance does not void or stay any action of a State or Federal agency with proper independent jurisdiction.

Adopted by the City Council: August 13, 2025