TOWN OF LEDYARD
PRIVATE EASEMENTS AND RIGHTS-OF-WAY ORDINANCE

Be it ordained by the Town Council of the Town of Ledyard:

Section 1. Authority:

Section 47-42f of the Connecticut General Statutes addresses the burden of maintenance of private easements and rights-of-way. This statute stipulates terms and obligations regarding such maintenance. The Town has also assumed obligations for maintenance on certain pentways in accordance with past practices on certain pentways, as described in Section 5 below.

Section 2. Purpose:

The purpose of this ordinance is to reiterate the statutory terms and obligations governing the maintenance of private easements and rights-of way, and to establish the manner and methods by which the Town shall provide maintenance of certain recognized pentways, and to define the scope and procedures for the changing of such Town maintenance.

Section 3. Definitions:

a. "Benefited property or property that benefits" – includes residential real property burdened by an easement or right-of-way, the owner of said residential real property uses such easement or right-of-way for access to public roads in the Town of Ledyard.

b. "Easement or Right-of-way" – an interest in property that provides the right to pass and repass on foot, by vehicle, and for utilities by access and use of adjoining property which property right transfers with the land.

c. "Pentway" – a road on privately-owned property that provides public passage and access to public roads and has not been given to or accepted by a government entity.

d. "Residential real property" – all privately owned residential land and buildings, but does not include property owned by the State of Connecticut or the Town of Ledyard.

Section 4. Maintenance of Private Easements and Rights-Of-Way:

A) FUNDAMENTAL MAINTENANCE AND COST OBLIGATIONS

In the absence of terms and conditions that specify otherwise, the owner of any residential real property that benefits from an easement or right-of-way, the purpose of which is to provide access to and from such residential real property, shall be responsible for the cost of maintaining such easement or right-of-way in good repair and the cost of repairing or restoring any damaged portion of such easement or right-of-way. Such maintenance shall include, but not be limited to, the removal of snow from such easement or right-of-way.

B) SHARED MAINTENANCE COST OBLIGATIONS

If more than one residential real property benefits from such easement or right-of-way, the cost of maintaining and repairing or restoring such easement or right-of-way shall be shared by each owner of a benefited property, pursuant to the terms of any enforceable written agreement entered into for such purpose. In the absence of such agreement, the cost of maintaining and repairing or restoring such easement or right-of-way shall be shared by each owner of the benefited property in proportion to the benefit received by each such property.

C) PAYMENT OBLIGATIONS REGARDING DAMAGE

Notwithstanding the provisions of paragraphs A) and B) of this section, any owner of a benefited property who directly or indirectly damages any portion of the easement of right-of-way shall be solely responsible for repairing or restoring the portion damaged by such owner.

D) FAILURE TO MEET COST OBLIGATIONS

If any owner of a benefited property refuses to repair or restore a damaged portion of an easement or right-of-way in accordance with paragraph C) of this section, or fails, after demand in writing, to pay such owner's proportion of the cost of maintaining or repairing or restoring such easement or right-of-way in accordance with paragraph B) of this section, an action for specific performance or contribution may be brought in the Superior Court against such owner by other owners of benefited properties, either jointly or severally.

E) RESOLUTION OF CONFLICTS BETWEEN TERMS

In the event of any conflict between the provisions of this section and an agreement described in paragraph B) of this section, the terms of the agreement shall control.

Section 5. Obligations of the Town Regarding Pentways

A) EXCEPTIONS

The provisions of Section 4 shall be qualified by the provisions set forth in this section for specific pentways.

B) LIST OF PENTWAYS

The Town shall perform maintenance for the following recognized pentways, as described.

1) Cider Hill Pentway. Improved surface beginning at Long Pond Road, continuing approximately .19 miles, then unimproved surface terminating after approximately .25 more miles, for a total length of approximately .44 miles.

2) Homestead Pentway. Improved surface beginning at Homestead Road, continuing approximately .3 miles.

3) Hurlbutt Circle. Improved surface beginning at Hurlbutt Road, continuing approximately .06 miles.

4) Sawmill Pentway. Improved surface beginning at Iron Street, continuing approximately .33 miles.

5) Sleepy Hollow Pentway. Improved surface beginning at Military Highway, continuing approximately .15 miles.

6) Smith Pond Way. Improved surface beginning at Woodland Lane, continuing approximately .11 miles and terminating at Inchcliffe Drive.

7) Thames View Pentway. Improved surface beginning at Route 12, continuing approximately .23 miles.

C) SPECIFIC MAINTENANCE OBLIGATIONS

The Town shall perform a level of maintenance for the pentways listed in paragraph B) of this section equivalent to that which was previously provided by the Town through longstanding past practices, as reflected and/or adjusted herein.

1) Improved Roadway: resurfacing/patching, drainage repairs, snow removal, sweeping (as necessary), roadside mowing (as necessary), brush/limb removal (as necessary).

2) Unimproved Roadway: grading (as necessary), drainage repairs, snow removal.

D) LIMITS ON TOWN OBLIGATIONS

Maintenance above and beyond the scope of paragraphs B) and C) of this section shall not be the responsibility of the Town. Owners of property shall continue to be responsible for any maintenance and repairs over and above that provided by the Town under this section.

Several maintenance activities cited in paragraph C) of this section involve or otherwise impact the shoulder area beyond the paved surface. Structures, plantings, and other fixed objects placed within ten feet of the edge of the paved surface are subject to this impact and are placed there at the owner's risk. The Town does not assume liability for repairs to such objects or items that incur damage because of routine maintenance activities.

E) CHANGE OF SCOPE

No change in scope of the Town of Ledyard's obligations regarding pentway maintenance, whether additions or deletions to the list of authorized pentways or nature of maintenance applied to authorized pentways, shall be undertaken apart from official approval of the Town Council as enacted through revision to this ordinance.

F) EXCLUSIONS

Nothing in this section shall be construed to modify or change any requirements established by the Planning and Zoning Commission and/or included in the Town of Ledyard Planning and Zoning regulations.

Section 6. Severability

If any section, or part of a section, of this Ordinance shall be held by a court of competent jurisdiction to be invalid, such holding shall not be deemed to invalidate the remaining provisions hereof.

Section 7. Effective Date

Adopted: May 23, 2018

Effective Date: June 21, 2018

Renumbered by the Ledyard Town Council on: September 25, 2019

_____
Linda C. Davis, Chairman

_____
Fred B. Allyn, III, Mayor

_____
Patricia A. Riley, Town Clerk

****

Revisions: Ordinance #150 *"An Town of Ledyard Private Easement and Rights-of-Way Ordinance"* Adopted May 23, 2018; Effective: June 21, 2018.

History:
The Twenty-fourth Town Council (2017- 2019) Ordinance Update Initiative: Renumbered Ordinance #150 *"An Town of Ledyard Private Easement and Rights-of-Way Ordinance"* to Ordinance #300-028.

2018: (Public Act No. 14-67) revised CGS 47-42f explicitly "*assigns maintenance liability for accessways to properties acquired through easement(s) to the beneficiaries for access of such easements"* Ledyard has seven Pentways (Cider Hill Pentway (off Long Pond Road), Homestead Pentway (off Homestead Road), Hurlbutt Circle (off Hurlbutt Road), Saw Mill Pentway (off Iron Street), Sleepy Hollow Pentway (off Military Highway), Smith Pond Way (between Woodland Lane and Inchcliffe Drive), and Thames View Pentway (off Route 12) that the Town has essentially maintained, at the level accepted for local streets, several Pentway which included Cider Hill Pentway (off Long Pond Road). Pentways are not owned by the Town, and traverse property owned by one or more property owners. The Town currently has an undocumented arrangement that has been passed down and inherited from Public Works Director to the next in terms of maintenance obligations for these roads because of the historic public access it provides to the lots off these Pentways. Because there is no formal documentation to lay out specific obligations, liabilities, exclusions, etc. this Ordinance serves to codified what the town was already doing in terms of Pentways. This Ordinance does not obligate the town to do any more than what they were currently doing and that it adds further protection regarding the status of any other Pentways. Additional Pentways would have to go thru a formal approval process, as dictated by this Ordinance to be accepted if the Pentway was not on the List. In addition, there is also a formal process for a Pentway to be removed from the List. Because the Pentway land was not owned by the town, and was owned by others, this Ordinance served to document what the town's obligations were and it included a stipulation to limit the town's liability for damages that occur on a Pentway.

2019: No substantive changes were made to the ordinance.