

Ordinance

No. 11-2018

**AN ORDINANCE REPEALING CHAPTER 336, STREETS AND SIDEWALKS,
ARTICLE IV, STREET EXCAVATIONS AND ADOPTING A NEW CHAPTER 336,
ARTICLE IV OF THE CODE OF THE BOROUGH OF WESTVILLE**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of Westville, County of Gloucester and State of New Jersey, that Chapter 336, Streets and Sidewalks, Article IV, Street Excavations is hereby repealed and a new Article IV is hereby adopted to read as follows:

Section 1. Article IV shall be entitled "Street Openings."

Section 2. Permit required; fees; deposit; bond requirements.

- A. It shall be unlawful for any person or persons, firm, partnership, association or corporation to disturb, cut, break into, excavate or open any of the roads, streets, avenues, thoroughfares, alleys, sidewalks or highways in the Borough of Westville without first having obtained a permit therefor from the Borough Clerk and having paid a permit fee of \$200, along with escrows of \$500 for engineering reviews and \$300 for inspections, which shall accompany the application. Unused escrow fees shall be returned to the applicant. If, at any time during the review and/or inspection of the work, it becomes evident that the escrow is or will be insufficient to cover the cost thereof, the applicant shall make such additional deposits in the amounts to be determined by the Borough Clerk. An additional permit fee of \$500 shall be required for each street opening on a street improved within the last five years, if such opening is approved by the Director of Public Works.
- B. Every application for such permit shall also be accompanied by the sum of \$1,500, which shall be deposited with the Borough Clerk and which shall be refundable at the request of the applicant for such permit after restoration of the area has been completed in a manner and condition satisfactory to the Director of Public Works.
- C. The foregoing permit shall be valid for a period of six months from the date of issue.
- D. Any public utility, as defined in N.J.S.A. 48:2-13, municipal corporation or authority, joint municipal authority or commission may file a bond in the amount of \$25,000 with the Borough Clerk in lieu of the cash deposit of \$1,500 which is required with each application. The filing of such a bond shall eliminate the necessity for such an organization to provide the specified cash deposit, regardless of the number of applications made by or outstanding to it. Said bond shall be issued annually by a bonding company, surety company or corporation or organization approved by the Borough Council. Said bond shall be conditioned upon the restoration of the surface and foundation of the road, street, avenue, thoroughfare, alley or highway for which the permit was granted, in a manner prescribed in Section 7 hereof, and the bond shall continue in full force and effect for a period of two years after the completion of the work and construction of the permanent patch or patches.

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- E. Prior to the issuance of any permit under this section, the application for such a permit may be reviewed by the Borough Engineer.
- F. Size of disturbed segment.
 - (1) For purposes of Section 2(A), a permit shall be required for any excavation or opening of 100 linear feet or less parallel to the nearest adjacent curb. Any excavation or opening greater than 100 linear feet or less parallel to the nearest adjacent curb shall require a separate permit for each one-hundred-linear-foot segment of disturbance, cut, break, excavation or opening on or into any of the roads, streets, avenues, thoroughfares, alleys, sidewalks or highways in the Borough of Westville.
 - (2) Notwithstanding the provisions of Section 2(F)(1), any and all excavations performed by any municipally owned utility shall require one permit for any excavation or opening on or into any of the roads, streets, avenues, thoroughfares, alleys, sidewalks or highways in the Borough of Westville.

Section 3. Application requirements.

- A. A separate application shall be filed for and a separate permit shall be obtained for each and every opening, and the permit fee and deposit required by Section 2 hereof shall accompany each separate application. For the purposes of this section, a series of excavations made for the installation of a continuous pipe, conduit or other line by boring or jacking methods shall be deemed a single opening and shall require only a single permit for the entire installation.
- B. Each application shall state:
 - (1) The kind and character of the proposed excavation.
 - (2) The location of the proposed opening.
 - (3) The size and depth of the proposed opening.
 - (4) The type of existing paving.
 - (5) The name of the contractor who will repave or restore the street.
 - (6) The name and address of the applicant.
 - (7) The name and address of the owner in behalf of whom or which the application is made.
 - (8) The date of the application and the anticipated completion date of the work to be undertaken under the permit.
- C. Said preparation shall be signed by the applicant guaranteeing complete conformance with this chapter and shall be accompanied by a plan or sketch showing the location of the proposed opening.

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Section 4. Emergencies.

In the event of a sudden and emergent break of any water, sewer, gas, oil or other underground line or facilities which endangers the life, health or safety of the public or where immediate repair is imperative to prevent loss or damage to streets or property or discontinuance of service, it shall not be necessary to obtain a permit before commencing such repair or before opening the surface of the street. The making of any such opening or excavation shall be reported to the Police Department and to the Borough Clerk within 24 hours thereafter, and an application for a permit therefor shall be made within 48 hours thereafter.

Section 5. Tunneling.

A permit as described herein shall be required for any tunneling under the surface of any street for any purpose whatsoever, regardless of whether or not it involves an opening in the surface of the street. Any such tunneling shall not be commenced or undertaken until the Borough Engineer has recommended in writing to the Director of Public Works that it be permitted, and such shall be accomplished only under the supervision of the Borough Engineer, whose services shall be paid for by the applicant.

Section 6. Scheduling of work.

Where the excavation is to extend the full width of the road, only 1/2 of it shall be made at one time and shall be backfilled before the other half is excavated so as not to interrupt traffic. The excavation and backfilling shall be made within seven days.

Section 7. Method of opening.

- A. The sides of each opening shall be perpendicular at the top and converge toward the bottom, so that the width at the bottom shall be less than the width at the surface of the pavement.
- B. Streets with a bituminous surface shall be cut cleanly with an air hammer before beginning excavation.

Section 8. Backfill and patching.

- A. Upon completion of the excavation of the work to be accomplished therein, and prior to replacing any of the material removed therefrom or placing fill material therein, the applicant shall request that the Director of Public Works perform an inspection thereof. No material or fill shall be placed in the excavation until permission to fill the excavation has been given by the Director of Public Works.
- B. Backfill material shall be such as is approved by the Director of Public Works. Such backfill material may not necessarily be the material removed in the excavation but shall be a granular material such as to provide a base free of settlement. All backfill must be tamped.
- C. Before patching, concrete surface pavements shall be saw-cut. Where pavement patching includes the construction of a concrete base or surface course, the concrete patch shall extend over undisturbed subgrade for a width of not less than one foot on each side of the excavation.

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- (1) Temporary patch. It shall be the responsibility of the applicant to apply a temporary patch to the street when said applicant has completed the backfill of the excavation. Said patch may be temporary in nature and it is not necessary that the patch be inspected by the Director of Public Works. In all streets, the temporary patch shall be bituminous cold patch, two inches in thickness. Said cold patch shall be maintained by the applicant at an even level with the road surface until application of the permanent patch.
- (2) Permanent patch. The applicant shall install or cause to be installed a permanent patch after six months of application of the temporary patch. The permanent patch shall be of all new materials, and the finished patch shall be equal to or superior to the best adjacent pavement, including all base and surface course. Prior to installation of the permanent patch, the Director of Public Works shall perform an inspection. No permanent patch shall be applied until such an inspection has been performed and permission has been given by the Director of Public Works to install same. Said permanent patch shall be installed within 30 days after permission to install same has been granted by the Director of Public Works. The Director shall have the right at any time when he has a reason to believe that such is necessary to guarantee that satisfactory fill material has been utilized, or that it has been properly placed in the excavation, or that a permanent patch has been properly applied and is of satisfactory material, to require that a portion or portions of the surface and base materials be excavated for an additional inspection or that a reasonable number of test holes be drilled. Either of these acts shall be accomplished at the expense of the applicant. The applicant shall be required to maintain the permanent patch in good repair and at a level with the surrounding street for a period of two years from the date of installation.

D. Reconstruction of roads.

- (1) It shall be the responsibility of the applicant to reconstruct the entire road, street, avenue, thoroughfare, alley, sidewalk and/or highway, the length of which to be determined by the Borough Engineer, if the excavation and/or opening of the same causes:
 - (a) The disturbance of 20% or greater of the width of the road, street, avenue, thoroughfare, alley, sidewalk and/or highway, as determined by the Borough Engineer; or
 - (b) Any disturbance of the width of the road, street, avenue, thoroughfare, alley, sidewalk and/or highway which occurs within 10 years of the reconstruction, repaving and/or replacement of the road, street, avenue, thoroughfare, alley, sidewalk and/or highway by the Borough or any other public, quasi-public or private entity, under the conditions as follows:
 - [1] The reconstruction, repaving and/or replacement of the road, street, avenue, thoroughfare, alley, sidewalk and/or highway must replace in kind and match the material finish, color, texture and pattern, as well as the specifications, of the road, street, avenue, thoroughfare, alley, sidewalk and/or highway being reconstructed, repaved and/or replaced;

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- [2] The reconstruction, repaving and/or replacement of the road, street, avenue, thoroughfare, alley, sidewalk and/or highway will not change the flow of water on the road, street, avenue, thoroughfare, alley, sidewalk and/or highway, unless demonstrated to improve the condition, nor shall said reconstruction, repaving and/or replacement create any hardship on adjoining properties;
 - [3] The length of the reconstruction, repaving and/or replacement of the road, street, avenue, thoroughfare, alley, sidewalk and/or highway shall be solely and exclusively determined by the Borough Engineer, the length of which shall be no less than the distance between adjacent intersections, as identified by the Borough Engineer.
 - [4] The criteria as required under Subsections D(1)(b)[1] and [2] of Section 8 shall be solely and exclusively determined by the Borough Engineer.
- (2) This section shall not be construed as requiring the Borough of Westville, or any of its subparts, to reconstruct, repave and/or replace any of road, street, avenue, thoroughfare, alley, sidewalk and/or highway which the Borough may cause to open to effect emergency repairs.
 - (3) Any and all excavations performed by any municipally owned utility be and hereby are exempt from the responsibilities created under this section.
 - (4) In the event that any person, firm, entity or corporation requests a street opening permit for any street which was constructed or reconstructed within five years from the date of the request to repair a problem or condition which existed prior to the time of the construction or reconstruction and the requestor was sent notice of the construction or reconstruction, no permit will be issued without the approval of the Director of Public Works and payment of a permit fee of \$10,000 and posting of an escrow in the amount of \$10,000 to cover any engineering or inspection costs. Should a permit be issued, all repairs/restoration of the roadway shall be in accordance with this chapter; however, the surface course shall be infrared to blend the new pavement with the old pavement.
- E. Restoration; refund or forfeit of deposit.
- (1) As directed below, the street shall be completely and properly restored within 30 days after the issuance of the permit, and, upon approval thereof by the Director of Public Works of the Borough of Westville; the deposit will be refunded by action of the Borough Council. If, in the opinion of the Director of Public Works, weather conditions require a temporary repair of the street opening, with permanent repair to take place with the advent of better weather conditions, then the person to whom the permit was issued shall temporarily repair the excavation, and permanent restoration of the street shall be completed within 14 days of the time that weather conditions permit. If not restored or should a hazardous condition exist, the Director of Public Works shall see to its proper restoration, and all deposit moneys shall be forfeited to the Borough of Westville.

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- (2) The street shall be repaired to the same or better condition as the original roadway. At a minimum, existing pavement shall be sawcut in neat lines one foot beyond the excavation or broken bituminous material and shall be patched with six inches of dense graded aggregate; six inches of bituminous stabilized base course, Mix 1.2; and two inches of bituminous wearing course, FABC-1, Mix 1-5. Prior to the restoration, all excavated material shall not be utilized as backfill material and shall be lawfully disposed of. All trenches shall be backfilled with select backfill, N.J.D.O.T. Designation I-11, compacted to 95% of the maximum modified density ASTM D1557. The Director of Public Works may, at his discretion, require compaction testing.
 - (3) In the event that the street has been constructed or reconstructed within five years from the date of the repair, the roadway shall be repaired in accordance with this chapter; however, the surface course shall be infrared to blend the new pavement with the old pavement.
 - (4) Speed humps shall be repaired to the same or better condition as the original speed hump. At a minimum, the pavement surrounding the speed hump shall be sawcut in neat lines one foot beyond the excavated or broken/damaged pavement, the underlying pavement restored in accordance with this chapter and then the hump restored with bituminous wearing course, FABC - 1, Mix I-5 or SP Mix to the thickness, shape and dimensions of the existing hump and in accordance with all applicable guidelines and tolerances and as approved by the Director of Public Works.
- F. Responsibility for public safety. The person to whom the permit is issued shall be responsible to see that the public is warned of and protected from any opening which is or may be dangerous to the public in accordance with the latest "Manual on Uniform Traffic Control Devices" (M.U.T.C.D.) for work zone traffic control/safety. No open trench of any kind shall be permitted overnight. No stockpiling of materials or storage of vehicles shall be permitted within the municipal right-of-way.

Section 9. Public safety.

The permittee shall be under a duty to properly guard the excavation and stored materials and equipment by the erection of suitable barriers by day and approved-type lights or flares by night. He shall be liable for any neglect to safeguard the traveling public.

Section 10. Supervision.

The Director of Public Works or such other officer as the Mayor and Council may designate shall:

- A. Ascertain whether the permits required by this article have been issued.
- B. Supervise all excavations and backfilling.
- C. Report all violations of this article to the Police Department.

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Section 11. Enforcement.

The Police Department and/or the designated Code Enforcement Officer of the Borough of Westville shall enforce the regulations covering storage of materials, erection of suitable barriers, warning signs and lights or flares and all other provisions of this article, so as to safeguard the traveling public.

Section 12. Violations and penalties.

Except as otherwise provided, any owner, occupier, and/or contractor performing work within the Borough of Westville who violates, refuses to comply or neglects to comply with any provision of this article or any rule, regulation or directive promulgated pursuant thereto shall be liable for penalties as provided in Chapter 1, Article 1, Section 1-15, General Penalty of the Code of the Borough of Westville. The continuation of such violation for each successive day shall constitute a separate offense, and the owner, occupier, and/or contractor performing work within the Borough of Westville allowing or permitting the continuation of the violation may be punished as provided above for each separate offense.

Section 13. Repealer

All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistencies.

Section 14. Severability:

Each section of this Ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective, shall not be deemed to affect the validity or constitutionality of any other sections or parts hereof.

Section 15. Effective date:

This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

Introduced: May 31, 2018

Adopted:

BOROUGH OF WESTVILLE

**Russell W. Welsh, Jr.
MAYOR**

ATTEST:

**Kathleen Carroll
DEPUTY MUNICIPAL CLERK**