

AN ORDINANCE AMENDING CHAPTER 89 ENTITLED “EXCAVATIONS” TO UPDATE PERMIT REQUIREMENTS, FEES, ENGINEERING AND OTHER REQUIREMENTS FOR EXCAVATIONS

WHEREAS, the Township of Bridgewater’s Road Opening Ordinance is outdated and requires updating to conform with modern road opening ordinance standards; and

WHEREAS, the best way to accomplish this is to amend the Township Code to adopt updated permit requirements, fees, deposits, engineering requirements, and other requirements for excavations; and

WHEREAS, the Township Engineer and Director of Municipal Services have reviewed Chapter 89 and recommended numerous changes to said Chapter; and

WHEREAS, in consideration thereof, the Mayor and Council of the Township of Bridgewater desire to amend Chapter 89 of the Municipal Code entitled Excavations;

BE IT THEREFORE ORDAINED, by the Township Council of the Township of Bridgewater in the County of Somerset and State of New Jersey that Chapter 89 of the Municipal Code of the Township of Bridgewater, County of Somerset, State of New Jersey entitled “Excavations” is amended pursuant to the provisions hereof (additions are noted thusly and deletions are noted ~~thusly~~):

Section I

Chapter 89-1 is hereby amended as follows:

§ 89-1 Definitions.

The following terms shall, for the purposes of this chapter, have the meanings herein indicated:

PERMITTEE

The person, firm or corporation obtaining a permit or his or its duly authorized representative.

STREET

Any street, road or other public right-of-way dedicated to and accepted by the Township of Bridgewater and shall include all of the area thereof lying within the bounds of the dedicated right-of-way.

[Added 1-4-1993 by Ord. No. 93-2]

PUBLIC PLACE

Any property or easement in which the Township of Bridgewater owns an interest. These include but are not limited to: conservation, drainage, detention basin, sanitary sewer, and utility easements, Township parks and open space properties.

Section II

Chapter 89-2 is hereby amended as follows:

§ 89-2 Permit required.

A. No person, firm or corporation, **nor any utility company**, shall for any purpose open, tear up, excavate, bore, tunnel or drive under or in any way impair the surface or subsurface within the limits of the right of way of any Township road ~~make any excavation in or break up or displace the surface of any street, highway or other public place within the Township of Bridgewater (excepting county and state roads), unless for the purpose of constructing or repairing a sidewalk, repairing an existing curb, constructing a driveway or laying a house leader drain to the curb,~~ except with a written permit from the Township Engineer as hereinafter provided.

B. Such permit shall be valid for 30 days unless an extension of time has been requested by the permittee and granted by the Township Engineer in writing.

C. A copy of the permit shall be available at the work site and available for inspection.

Section III

Chapter 89-3 is hereby amended as follows:

§ 89-3 Application for permit.

Application for a permit shall be made at the office of the Township Engineer by the applicant or his/**her** authorized agent. **A Plan or Sketch of work to be done including nearest cross Street and shall describe the location of the intended opening, excavation or tunnel, the size thereof, the purpose therefor and the person doing the actual excavation work and the name of the person for whom or which the work is being done and shall contain an agreement that the applicant will comply with all ordinances and law relating to the work to be done.**

The Township Engineer or his/her designated representative shall have the authority to issue a Stop Work Order. Said order may be issued if it is deemed necessary for safety issues or failure to follow this code.

Section IV

Chapter 89-4 is hereby amended as follows:

No permit for street openings for any purpose shall be issued until the applicant therefor shall have first paid to the Township ~~Treasurer~~ the fees as provided for in Chapter **94**, Fees.

Permits issued by the Township Engineer shall be subject to the following fees:

a. Application Fee of \$200.00

b. Deposit (Inspection) Fee of:

Minimum Deposit: \$500.

Each additional square yard of opening: \$50/SY

Amounts can be increased at the discretion of the Township Engineer. The Township Engineer may waive the deposit fee requirement at his/her discretion.

c. Performance/maintenance surety of \$100 per square yard of opening. Minimum surety shall be \$500. Surety amounts may be increased at the discretion of the Township Engineer. Upon completion of all work, the contractor or homeowner shall advise the Township Engineer and a final inspection shall be made. The surety shall be held for one calendar year from the date of final approval. After one year from the date of final approval, the work shall be re-inspected and any corrective work completed prior to the return of the surety.

d. Public utilities shall be allowed to establish an escrow account with the Township for the required Deposit (Inspection) fee, which amount shall be to the approval of the Township Engineer. The Township shall have the authority and right to draw upon the Deposit Fee to cover the cost of review and inspections of on-going road openings throughout the Township.

Section V

Chapter 89-5 is hereby amended as follows:

A. The permittee shall be responsible for the entire work and shall keep every portion of said work, including the temporary pavement, in perfect order and repair during the entire period of maintenance.

B. The period of maintenance shall be considered as a period of ~~six months~~ **one (1) year** after the date of final completion/**approval** of the work to be done, except that in the event that the termination of said ~~six month~~ **one (1) year** period shall fall within the month of December, January, February, March or April, then the period of maintenance shall be considered as extending until the first day of May next thereafter.

C. In the event that the Township finds it necessary to make emergency repairs during the period of maintenance, the permittee shall immediately deposit the cost of making such emergency repairs with the Township Treasurer. No permits shall be issued to any person, firm or corporation who is in default to the Township on any such payment.

Section VI

Chapter 89-6 is hereby deleted in its entirety and reserved.

Section VII

Chapter 89-7 is hereby amended as follows:

§ 89-7 Protection of existing structures.

It shall be the responsibility of the permittee to give proper notice of the proposed street opening to any person, firm or corporation whose pipe, conduits or other structures are laid in the portion of the street to be opened. Said notice shall be given to all utilities by calling the ~~Garden State Underground Plant Location Service 48 hours~~ **New Jersey One Call Center** before commencement of said opening or as provided by law. The permittee shall, at his own expense, carefully support, maintain in operation and protect from injury such pipes, conduits or other structures. The permittee shall restore any damaged structures or utilities, at his own expense, to the condition it was in prior to commencement of work.

Section VIII

Chapter 89-8 is hereby amended as follows:

§ 89-8 Guarding of excavations; traffic interference.

A. All excavations shall be completely backfilled at the end of each working day unless it would constitute a hardship to the permittee or where the scale of the excavation makes it impossible to backfill at the end of each working day, in which event a waiver may be granted by the ~~Superintendent of Public Works~~ Township Engineer **or his/her designated representative**. In the event that a waiver is granted, the contractor or owner shall cover the excavation with heavy one-inch-thick plates secured by existing pavement to prevent rattles and movement and erect appropriate barriers and lights around the entire excavation and arrange to provide appropriate security protection, if such security is necessary, at his own cost, and such other safeguards as may be needed to protect the public from an open excavation. If plates are placed for over a weekend or for an extended period, all edges are to be macadam-sealed and sloped. In no event shall an excavation be left open for more than 72 hours unless an emergency exists and permission has been secured from the Chief of Police, ~~Superintendent of Public Works~~, Township Engineer or their designated representatives.

B. Barricades, warning flags and lights shall be provided in accordance with the Manual on Uniform Traffic Control Devices, and watchmen shall be provided if so ordered by the Township Engineer **or Chief of Police**, and in accordance with his/her directions.

C. Where the free flow of traffic is interfered with, the permittee shall furnish competent persons to direct and expedite traffic.

D. Unless otherwise authorized by the **Township** Engineer, vehicular traffic shall be maintained at all times during the progress of the work. On paved streets, at least a nine-foot width of the pavement shall be open and unobstructed at all times.

E. The permittee shall notify the Police Department and Township Engineer of any work in a public right of way at the start of construction and each day thereafter until the work is complete.

Section IX

Chapter 89-10 is hereby amended as follows:

§ 89-10 Excavation regulations.

- A.** The use of power excavating equipment is prohibited within the pavement limits until each edge of the trench has been cut through the entire thickness of the pavement to an even, uniform line.
- B.** The maximum width of any trench for sewer or utility connections shall be 30 inches unless a greater width is approved in writing by the Engineer.
- C.** Excavated material shall be stored in neat piles, so placed as to cause the least inconvenience with the use of the roadway or sidewalk. If so ordered by the **Township** Engineer, such excavated material shall be promptly removed from the site of the work.
- D.** Special permission may be granted for tunneling under a pavement of concrete or one having a concrete base, in which case the tunnel shall be refilled with one-to-three-to-six concrete, well tamped in place.
- E.** Unless otherwise authorized, the work of passing under sidewalks and curbing shall be done by tunneling and refilling as provided under Subsection **D**.

Section X

Chapter 89-11 is hereby amended as follows:

§ 89-11 Backfilling.

- A.** As soon as the pipe or structures are in place and any required inspection has been made, the excavation shall be backfilled.
- B.** ~~With the exception of portions of the excavation lying back of the sidewalk or sidewalk lines,~~ **The** backfilling shall be placed in layers not more than six inches thick and each layer shall be thoroughly compacted with mechanical rammers of a type satisfactory to the Township Engineer. (The **Township** Engineer may permit layers in excess of six inches if, in his opinion, the rammers used will properly compact a greater thickness.)
- C.** **All excavations within a Township right of way shall be backfilled with dense graded aggregate.** If the material removed from the excavation is of such character that, in the opinion of the Engineer, it will not compact satisfactorily, the permittee shall provide suitable material from other sources for the backfilling.

D. When the trench is brought to grade, all surplus material shall be forthwith removed from the site by the permittee at his own expense.

E. ~~Only suitable backfill material shall be used for backfill.~~ **Unless dense graded aggregate is required, a** material whose composition is inorganic soil, blasted or broken rock and similar materials of natural or man-made origin, including mixtures thereof, with a maximum aggregate size of three inches shall be considered suitable materials. Backfill material shall be free from vegetable matter, rubbish, frozen earth, wood, cinders, broken paving or other foreign substances. The materials shall be free of shale or other soft, poor durability particles.

F. ~~The excavator may backfill the street opening with that portion of the excavated material conforming to this specification.~~ All materials used for backfill shall be free from bricks, blocks, excavated pavement materials and/or organic material or other debris.

G. All backfill must contain the moisture content necessary for the proper compaction of that material. The excavator shall be responsible for determining the proper limits as the work is progressed.

Section XI

Chapter 89-12 is hereby amended as follows:

§ 89-12 Temporary pavement.

Immediately after backfilling the excavation, the permittee shall replace any pavement disturbed with ~~bituminous concrete mix~~ HMA 9.5M64 surface course of the same thickness, but in no case less than four inches thick, placed in two lifts.

Section XII

Chapter 89-13 is hereby amended as follows:

§ 89-13 Driving small pipes beneath pavements.

Small pipes or conduits may be driven beneath pavements in such a manner that the surface shall not be disturbed or injured and provided that:

A. In the event of damage to a pavement or subsurface pipe or structure caused by driving such pipe or conduit, the permittee shall repair and make good the damage at the permittee's own expense.

B. Driving of pipes shall be prohibited at locations in the highways where there is existing underground construction of any ~~New Jersey Bell Telephone Company~~ **telecommunication**, electric or gas utility company.

Section XIV

Chapter 89-14 is hereby amended as follows:

§ 89-14 **Public utility corporations.**

A. All conditions of this chapter shall apply to public utility corporations, ~~with the exception of §89-4.~~ In **addition to** ~~in lieu of~~ an application **and deposit (inspection)** fee, each public utility shall post a continuing ~~maintenance~~ bond in the amount of \$2,000 **\$100,000.00 to insure and guarantee restoration of the roads, compliance with the specifications and all the obligations set forth in this ordinance.**

B. Permits shall be required of all public utility companies for work under this chapter. Applications must be made to the office of the Township Engineer at least 48 hours prior to the work starting. Where an emergency exists, excavation and repair may begin but the utility must notify the Township Engineer, ~~the Superintendent of Public Works~~ and the Township Police Department of the nature and location of the emergency before starting work and must apply for the necessary permit as soon as possible.

C. In the event that permanent pavement replacement is not made within the six-month period hereinbefore referred to **or within the one (1) year maintenance period**, then the Township, through its Engineer, shall have the right to give 10 days' notice of such fact to the public utility corporation, and if such permanent pavement has not been properly installed at the expiration of such ten-day period, then the Township may proceed to replace and install such pavement and to perform such work as may be required and charge the cost thereof to such public utility corporation.

Chapter XV

Chapter 89-15 is hereby amended as follows:

§ 89-15 **Road openings.**

~~Whenever an item is placed on the agenda of a Council agenda or regular meeting whose intent is to enact any ordinance or resolution providing for the improvement, paving or repaving of any street,~~ **The** Township Engineer shall provide notice to all persons owning property abutting on the street about to be paved or improved and to all public utilities and authorities operating in the Township, including any person, firm or corporation owning any sewer main or conduit or other utility in, above or under said street. This notice shall be made by mail (or email) as soon as the information is available, but no later than 30 days before the notice to proceed is sent to the contractor ~~the day of the Council meeting when the subject is first discussed~~. Such notice shall notify such persons, firms, corporations or public utilities that:

A. They shall make all connections, as well as repairs thereto, which would necessitate excavation of the street, within 30 days from the giving of such notice. The time shall be extended if permission is requested in writing and approved by the Township Engineer.

B. No excavation permit shall be issued for openings, cuts or excavations in said streets for a period of ~~three~~ **five (5)** years after the date of completion of said improvement, paving or repaving by the Township.

C. The application for excavation permits for work to be done prior to such paving or repaving shall be submitted promptly in order that the work covered by the excavation permit shall be completed as soon as practicable and in no event later than the date specified in the permit for the excavation work.

Section XVI

A new Chapter 89-15.1 shall be inserted as follows:

§89-15.1 Additional fees for excavation

In the instance where administration of this Code or inspection of an excavation is complex, and therefore unusually costly to the Township to monitor, the Township Engineer, may require an Applicant or permittee to pay any additional sum in excess of the amounts charged pursuant to this Code. This additional sum shall be sufficient to recover the actual costs incurred by the Township and shall be charged solely on a time and materials basis. Whenever additional fees are charged, the Township Engineer shall provide in writing the basis for their imposition.

Section XVII

A new Chapter 89-15.2 shall be inserted as follows:

§89-15.2 Liability and Indemnification

The Applicant shall indemnify and save harmless the Township, its officers and employees, from all suits, actions or claims of any character brought because of any injuries or damage received or sustained by any person, persons or property on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of said Applicant; or because of any claims or amounts recovered from any infringements of patent, trade work, or copyright; or from any claims or amounts arising or recovered under Workmen's Compensation Act, or any other law, ordinance, order, or decree; and so much of the money due the said applicant under and by virtue of his work under this permit as may be considered necessary by the Township for such purpose may be retained for the use of the Township; or in case no money is due, his surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Township; except that money due to the Applicant will not be withheld when the Applicant produces satisfactory evidence that he is adequately protected by Public Liability and Property Damage insurance.

The Applicant shall also notify its insurance company that it has entered into an indemnification agreement with the Township and that the terms of the indemnification should be covered by the applicant's insurance.

Contractor shall carry and maintain at all times while the contract is in full force and effect, the following insurance coverage with an insurance company or companies acceptable to the Township of Bridgewater, with limits not less than those shown below. A Certificate of Insurance shall be filed with the Township of Bridgewater prior to commencement of the work.

- a) Commercial General Liability (CGL): Coverage for all operations including, but not limited to, contractual, products and completed operations, and personal injury with limits no less than \$1,000,000 per occurrence/\$2,000,000 aggregate per project. The Township of Bridgewater, its officers, officials, employees, agents and volunteers shall be included as an additional insured.
- b) Automobile Liability: Coverage for all owned, non-owned and hired vehicles with limits not less than \$1,000,000 per occurrence, combined single limits (CSL) or its equivalent.
- c) Workers Compensation: As required by the State of New Jersey and Employers Liability with limits not less than \$1,000,000 per accident for bodily injury or disease.

Coverage on Primary and Non-contributory Basis: The Certificate of Insurance should indicate that all insurance coverages will provide on a primary and non-contributory basis to the Township of Bridgewater, its officers, officials, employees, agents and volunteers shall be included as an additional insured.

Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Special Risks or Circumstances: The Township of Bridgewater reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Section XVIII

Chapter 89-16 is hereby amended as follows:

§89-16 – Restrictions on opening newly paved streets

A. No permit shall be issued by the Township Engineer to any person, firm, corporation, public utility or authority given notice under § 89-15 above which would allow an excavation or opening in a paved or improved street surface less than ~~three~~ **five (5)** years old, unless the applicant can clearly demonstrate to the Township Engineer that public health or safety requires that the proposed work be permitted which could not have been reasonably foreseen at the time of the prior notice.

B. An emergency or hardship shall include a water main break, gas leak, sanitary sewer break, or any other situation which may result in harm to the public's health, safety welfare or damage to public or private property.

BC. If by special permission of the Township Engineer, a permit is issued to open any paved or improved street surface less than five (5) years old, the permittee shall be required to complete restoration in the following manner:

- (1) The applicant shall mill and resurface the entire street or portion thereof in which the opening or excavation is made, from curb to curb and for a minimum distance extending no fewer than ten ~~three~~ feet beyond the limits of the excavation.
- (2) Construction or repair work performed on, in or around manholes shall be subject to inspection and acceptance by the Township Engineer.
- (3) The permittee must also pay all required application and deposit (inspection) fees. The deposit (inspection) fee shall be calculated to cover the entire area that must be milled and resurfaced.

Section XIX

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

Section XX

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to this section, paragraph, subdivision, clause or provision and the remainder of this Ordinance shall be deemed valid and effective.

Section XXI

This ordinance shall take effect upon adoption and publication in the manner required by New Jersey general law but, in no event, less than 20 days after its final passage by the Township Council and approval by the Mayor, where such approval is required pursuant to N.J.S.A. 40:69A-181(b).

Adopted: December 6, 2021
Effective: December 27, 2021