

ORDINANCE NO. 885

**AN ORDINANCE OF THE BOROUGH OF HOPEWELL,
COUNTY OF MERCER, NEW JERSEY, REGARDING
EXCAVATIONS AND ROAD OPENINGS IN MUNICIPAL
STREETS, AND AMENDING CHAPTER 8 OF "THE REVISED
GENERAL ORDINANCES OF THE BOROUGH OF
HOPEWELL, 1975"**

BE IT ORDAINED by the Mayor and Council of the Borough of Hopewell, County of Mercer and State of New Jersey, as follows:

1. Updates to Section 8-8, Excavations in Streets. Section 8-8 of "The Revised General Ordinances of the Borough of Hopewell, 1975" is hereby amended by repealing section 8-8, inclusive of subsections 8-8.1 through 8-8.16, and establishing a new section 8-8 to govern street openings and excavations in municipal streets as follows:

§ 8-8. EXCAVATIONS AND ROAD OPENINGS IN STREETS.

§ 8-8.1. Permit Required.

It shall be unlawful for any person to tunnel under or to make any opening or excavation in any street, road, right of way, alley or other public place in the Borough (referred to herein interchangeably as "street" or "road"), other than a county road over which the County of Mercer has exclusive jurisdiction, without having obtained a permit as is herein required or without complying with the provisions of this section or in violation of or variance from the terms of any such permit. No permit shall be issued to open any Borough road for five years after the road was paved, except pursuant to subsection 8-8.6 hereinbelow.

§ 8-8.2. Applications

- a. Applications for such permits shall be made to the Borough Clerk and shall describe the location of the intended opening, excavation or tunnel, the size thereof, the purpose therefor and the person(s) 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, laws and regulations relating to the work to be done.
- b. Any person seeking a permit for the opening of a street or tunneling therein shall make application to the Borough Clerk setting forth the following information:
 1. Name and address of applicant.
 2. Name of the street where the opening is to be made and the street number, if any, of the abutting property.
 3. Nature of the surface in which the opening is to be made.
 4. Character and purpose of the work proposed.

5. Plan showing the exact location and dimension of all openings.
6. The name and address of the workers or contractor who is to perform the work, if different from the applicant. As used hereinafter, "applicant" shall refer to the applicant and its designated workers, contractors and subcontractors.
7. A statement that the applicant agrees to replace, at the applicant's own cost and expense, in accordance with Borough specifications and requirements, the opening to the same state and condition as it was at the time of the commencement of the work and further agrees to comply with all other regulations, laws and ordinances relative to the work.
8. Such other information as the Borough Clerk may consider pertinent or relevant for purposes of consideration and processing the application.

§ 8-8.3. Fee.

The fee for a road opening permit shall be set by the Borough Council by resolution, and shall be based on the administrative and other costs involved in the application review and permit enforcement.

§ 8-8.4. Performance and Maintenance Guarantee, Insurance and Indemnity.

- a. Before issuance of any such permit, the applicant shall file with the Borough Clerk a cash bond in the amount of the estimated value of the excavation and restoration, which amount shall be confirmed with the Borough Engineer. This cash bond shall serve as both a performance bond to guarantee completion of the work and also as a maintenance bond for a period of twelve months following completion of the work to guarantee that the excavated area does not settle or otherwise deteriorate. If the applicant does not complete the excavation and restore the surface in accordance with requirements of this section or if the applicant does not restore the surface and make any necessary repairs resulting from the settling or any other deterioration within a reasonable time after receipt of notice of settling from the Borough, then the Borough may perform the necessary work itself and deduct the cost of such work from the posted bond. At the end of the twelve-month period, the Borough Engineer or Engineer's designee shall inspect the area of the excavation to determine whether it has been restored in compliance with the requirements of this section. The Borough Engineer shall then submit a written report to the Borough Council recommending that the bond be returned in whole or part, or in the alternative that the Borough should perform additional repairs and charge the cost of those repairs against the bond. The Borough Council shall then act upon recommendation of the Borough Engineer and return any unused portion of the bond to the responsible person.
- b. In addition, the applicant shall file with the Borough Clerk satisfactory proof of insurance against injury to persons and damage to property caused by an act or omission of the applicant or the applicant's agent, employees, contractors or subcontractors in the course of the work covered by the permit. The insurance shall cover all hazards likely to arise in connection with the work, including but

not limited to collapse and explosion, and shall also insure against liability arising from completed operations. Such insurance shall be for a minimum of \$1,000,000, with a minimum of a combined single limit of \$1,000,000 for bodily injury and/or property damage per occurrence. Coverage shall include commercial general liability, auto liability and property damage coverage. The Borough and Borough Engineer shall be named as an additional insured on such policies. Evidence of coverage shall be provided by certificates of insurance issued by an authorized agent of the insurance carrier(s).

- c. The applicant shall defend, hold harmless and indemnify the Borough and Borough Engineer from damages or personal injuries caused by the opening of the street, and the condition of the disturbed area until release of the maintenance bond.
- d. The provisions of paragraph a. of this subsection 8-8.4 shall not apply to public utilities.

§ 8-8.5. Manner of Excavating.

- a. It shall be unlawful to make any such excavation, opening or tunnel in any way contrary to or at variance with the terms of the permit therefor. Proper bracing shall be maintained to prevent the collapse of adjoining ground, and, in excavations, the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface.
- b. No injury shall be done to any pipes, cables or conduits in the making of such openings, excavations or tunnels, and proper notice shall be given to the persons maintaining any such pipes, cables or conduits which are or may be endangered or affected by the making of any such opening, excavation or tunnel before such pipes, cables or conduits shall be disturbed.
- c. No unnecessary damage or injury shall be done to any tree or shrub or the roots thereof.
- d. All openings, excavations or tunnels shall be guarded with adequate safety measures as may be necessary and with adequate warning devices. The safety measures and warning devices shall be placed in such a manner as to not unduly restrict traffic. Where the Police Department determines that such safety measures and warning devices are not adequate for the free movement of traffic during road construction and/or excavation, a Police Officer may be assigned to direct traffic in the area involved during working hours, and the cost thereof shall be charged by the Borough to the permit holder. The provisions of this subsection shall not affect or relieve the permit holder, contractor or any other person from any other obligations imposed by the contract or by operation of law.
- e. All refuse and material shall be removed within 48 hours.
- f. All excavation shall be completely backfilled and compacted using bank run gravel, crushed stone or other approved material.
- g. If tunneling operations are required, the tunnel shall be backfilled with rammed sand or sand and concrete mixed 10 to one (10:1), respectively.

- h. It blasting is required in the course of any excavation, it shall be done in strict compliance with all applicable state laws and regulations and municipal ordinances.
- i. Under normal, nonemergency situations, street paving, whether new or improved, will carry a minimum no-cut period of five years.

§ 8-8.6. Moratorium.

- a. Except as provided in paragraph b. below, there shall be a five-year moratorium on the issuance of road opening permits for newly paved or improved streets. The date of the last road improvement shall be recorded and maintained by the Borough Engineer and shall be made publicly available.
- b. Exceptions to the five-year moratorium may be granted for utility emergencies or road openings that impact the safety and welfare of property owners (e.g., electric service to new home). Any exception shall be approved by the Borough Council, upon recommendation of the Borough Administrator.
- c. In the event that exception is granted during the moratorium period, the applicant shall be responsible for limiting the area of disturbance, saw cut all excavations and restore the trench to its original condition, including but not limited to the pavement, surface treatments and striping. Restoration of the top course of asphalt shall be done utilizing the infrared pavement method.
- d. The Borough Engineer may require a larger area of the roadway to be restored to avoid trench marks across the roadway. This will be done in a manner that creates a rectangular patch across the entire width of the roadway.
- e. A nonrefundable exemption fee to be deposited in a dedicated account for road repairs shall be paid in accordance with the following schedule:

Opening 0-1 year before expiration of moratorium	\$500
Opening 1-2 years before expiration of moratorium	\$1,000
Opening 2-3 years before expiration of moratorium	\$1,500
Opening 3-4 years before expiration of moratorium	\$2,000
Opening 4-5 years before expiration of moratorium	\$2,500


2. Repealer. All ordinances and resolutions or parts thereof inconsistent with this ordinance are repealed.


3. Severability. If any section, paragraph, subsection, clause or provision of this ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and the remainder of this ordinance shall be valid and enforceable.

4. Effective Date. This ordinance shall take effect upon its adoption and publication as provided by law.

INTRODUCED: 4/4/2024
PUBLISHED: 4/12/2024
ADOPTED: 5/2/2024
INTRODUCED BY: Mr. Mackie

ATTEST:


Regina Toth
Municipal Clerk


Ryan P. Kennedy
Mayor

ROLL CALL VOTE				
COUNCIL MEMBER	YES	NO	ABSTAIN	ABSENT
HOOK	✓			
MACKIE	✓			
MCAULIFFE	✓			
STUHLER				✓
WEAVER	✓			
WILENIUS	✓			