

WHEREAS, the Borough Council of the Borough of Waldwick spends significant funds on maintaining and paving public roads for the benefit of its residents; and

WHEREAS, street excavation and other activities cause negative effects on such roadways that have been recently maintained and paved by the Borough of Waldwick; and

WHEREAS, the best way to protect the residents of the Borough and the Borough’s investment in its roadways is to limit unnecessary activities, including road openings, from transpiring on the roads of the Borough of Waldwick; and

WHEREAS, in consideration thereof, the Mayor and the Council of the Borough of Waldwick desire to repeal and replace Chapter 84 of the Municipal code entitled “Street Excavations’

NOW THEREFORE BE IT ORDAINED, by the Mayor and Council of the Borough of Waldwick, County of Bergen, State of New Jersey, the following section is repealed and replaced as follows:

Section I

Chapter 84 is repealed and replaced as follows:

CHAPTER 84

STREET MAINTENANCE AND EXCAVATION

§ 84-1 Permit Required

It shall be unlawful to excavate, dig in, tunnel or open any public street in the Borough of Waldwick for any purpose without a permit being first secured from the Borough Clerk and approved by the Borough Superintendent of Public Works and only upon compliance with the provisions of this article. "Street" for the purpose of this article shall mean any road, thoroughfare, highway, public way, public alley, easement or other right-of-way accepted or maintained by the Borough as a public street, as well as any other State or county road or highway over which the Borough has acquired jurisdiction by agreement.

§ 84-1 Application Procedures

1. Any person, firm, or corporation desiring a permit for the opening of a street or tunneling therein shall make application to the Borough Clerk’s office setting forth the following information:

- a. The name and address of the applicant.
 - b. The name of the street where the opening is to be made and the street number, if any, of the abutting property.
 - c. The Borough Tax Map, block and lot number of the property for the benefit of which the opening is to be made.
 - d. The nature of the surface in which the opening is to be made.
 - e. The character and purpose of the work proposed.
 - f. The time when the work is to be commenced and completed.
 - g. The plan showing the exact location and dimension of all openings.
 - h. The name and address of the workmen or the contractor who is to perform the work, if different from the applicant.
 - i. A statement that the applicant agrees to replace, at his own cost and expense, in accordance with Borough specifications and details, the opening to the street and conditions described herein, and further agrees to comply with all other applicable ordinances, regulations and laws relative to the work.
 - j. Agreeing to indemnify and hold harmless the Borough from all loss, damage, claim or expense, including expenses incurred in the defense of any litigation arising out of injury to any person or property resulting from any work done by the applicant under the permit.
 - k. Such other information as the Borough may consider pertinent.
 - l. The registration number from the underground location service "New Jersey One Call" indicating that they have been properly notified and will locate underground facilities in the area of the proposed opening or tunneling operation.
 - m. Proof of insurance coverage as required by this article.
2. Upon receipt of a complete application, the Borough Clerk shall forward all documentation to the Borough Superintendent of Public Works for review and approval. The Borough Superintendent of Public Works shall review the application and supporting documents and shall calculate the requisite permit fee required, pursuant to § 84-6 herein.
 3. Once approved, the Borough Superintendent of Public Works shall transmit his approval to the Borough Clerk who shall collect the permit fee and escrow from the applicant and upon payment shall issue the permit.

§ 84-3 Authority to Grant or Refuse Permit

The Borough Clerk is hereby authorized to refuse the issuance of any permit if such refusal is in the interest of public safety, public convenience or public health. If a permit is refused by the Borough Clerk, the Borough Clerk shall advise the applicant of the same and the reasons for such denial and the Applicant shall be permitted to file an appeal to the Borough Council. The Borough Council, after hearing the applicant, the Borough Clerk, the Superintendent of Public Works or any other interested party and such evidence as may be produced, may either direct the issuance of such permit or sustain the refusal of the Borough Clerk.

§ 84-4 Requirements for Issuance of Permits

All permits issued under this Chapter shall require the applicant to comply with the following:

- a. All excavations shall be kept properly barricaded at all times and, during the hours of darkness, shall be provided with the proper warning lights. The applicant shall provide such signs, controls, barricades, warning lights, and personnel necessary for safe operation and compliance with applicable federal and state laws at its own cost and expense.
- b. All excavations or tunneling shall be sheeted, shored, or braced in accordance with applicable safety codes and Occupational Safety and Health Administration ("OSHA") standards.
- c. All work shall be done in such a manner as to cause a minimum of interference with travel on the street affected. No street shall be closed to traffic unless the closing is approved by the Chiefs of both the Police and Fire Departments. The Police and Fire Departments shall be notified of all street closings at least twenty-four (24) hours in advance, except where the work is of an emergent nature, when notice shall be given to the Police and Fire Departments at the time work commences.
- d. All refuse and material shall be removed within forty-eight (48) hours in accordance with applicable federal and state laws.
- e. All excavations shall be completely backfilled with a controlled low-strength material (CLSM), more commonly referred to as "soil cement," to a level six (6) inches below the adjacent roadway surface. A temporary patch must immediately be installed until such time as the final topcoat can be applied. After installation of soil cement, the applicant shall create a final topcoat consisting of a four-inch compacted thickness of bituminous stabilized base course, and a two-inch compacted thickness of bituminous surface course, that, when filled, shall result in an opening that is flush with the existing contour of the road. If conditions exist that do not allow for the installation of bituminous material as required, a temporary patch must immediately be installed until such time as the final topcoat can be applied. Permanent patches must have all edges sealed. CLSM shall have a twenty-eight-day minimum compressive strength of 120 psi, and the applicant shall submit a mix design to the Borough Superintendent of Public Works for approval prior to use.

- f. All street patch repairs and/or trench restoration must use the infrared paving method pursuant to the most recent standards promulgated by the Borough Superintendent of Public Works so as to blend uniformly with the adjacent existing roadway. All backfilling and patching operations of any such excavation project must be supervised by the Borough Superintendent of Public Works or his/her designated representative to ensure compliance with the Borough Superintendent of Public Works's standards.
- g. If blasting is required in the course of any excavation, it shall be done in strict compliance with all applicable federal and state laws and regulations.
- h. Restoration of any street foundation or surface shall not commence until the Borough Superintendent of Public Works or his/her designated representative has determined that settlement of the subsurface is complete and the area is properly prepared for restoration.
- i. Any contractor hired to perform a street excavation in the Borough shall provide proof that it is licensed with the State of New Jersey.
- j. All materials and work shall be in accordance with Borough regulations, specifications, and details as required by the Office of the Borough Superintendent of Public Works.
- k. Requirements for "moratorium" roads.
 - 1. After the Borough has paved or repaved any street of the Borough of Waldwick, no excavation permit shall be issued for openings, cuts, or excavations in said street for a period of five (5) years from the date of such paving, subject to the exceptions described herein.
 - 2. The Borough Clerk and the Borough Superintendent of Public Works shall keep a list of all such streets subject to this five-year moratorium, which may be inspected in the Office of the Borough Clerk or the Borough Superintendent of Public Works.
 - 3. Prior to the start of any such paving or repaving work, the Borough Clerk or the Borough Superintendent of Public Works shall notify each utility company of said work so any in-progress or contemplated excavations may be completed before paving is started. Such notice shall state that no excavation permit shall be issued for openings, cuts, or excavations in said street for a period of five (5) years from the date of such paving. The notice shall also provide that applications for excavation permits for work to be done prior to such paving or repaving shall be submitted promptly so that any work may be completed not later than ninety (90) days from the date of such notification.
 - 4. During such five-year period, the applicant must restore the street opening. Such restoration must include pavement restoration (milling and repaving) for the full width of the roadway to a distance of 100 feet around the area of the opening. Notwithstanding these requirements, the Borough Superintendent of Public Works may, in his/her sole discretion, waive the requirements of this subsection under the following

circumstances:

- i. Where necessary, as determined by the Borough Superintendent of Public Works. For example, if there is an excavation on a small cul-de-sac of less than 100 feet in length within the Borough, or if such a distance will unreasonably interfere with an existing utility, the Borough Superintendent of Public Works may use his/her discretion in determining the overall distance of the restoration.
 - ii. If, in the judgment of the Borough Superintendent of Public Works, an emergency exists that makes it absolutely essential that the road be opened for purposes of a utility repair or replacement.
5. In any circumstance in which the Borough Superintendent of Public Works waives the curb-to-curb and/or 100-foot requirements above, the Borough Superintendent of Public Works shall require that the street opening be patched and restored via infrared pavement repair technology so as to blend uniformly with the adjacent existing roadway.
1. Requirements for non-moratorium roads.
 1. For all streets that have not been paved within the five (5) years, the applicant must patch and restore the street opening via infrared pavement repair technology so as to blend uniformly with the adjacent existing roadway. If the street opening to be trenched is greater than or equal to 50 linear feet, upon completion of same, the applicant shall restore (milling and repaving) the entire street surface from edge to edge, or curb to curb, for the full length of the excavation to the nearest intersection or as directed by the Borough Superintendent of Public Works as described herein.
 - m. All sidewalks, when being restored or replaced as part of the operations hereunder, must also be restored pursuant to the Borough's standards.
 - n. The street surface shall be restored to its original condition subject to the satisfaction and approval of the Borough Superintendent of Public Works.

§ 84-5 Other Conditions Applicable to Permits

The following conditions and regulations shall apply to all permits issued under this Chapter:

- a. Transferability. All permits shall apply only to the applicants to whom they are issued and for the purposes described in the application and shall not be transferable.
- b. Commencement of work. Work under a permit shall commence within thirty (30) days from the date of issuance of the permit, which shall be valid for thirty (30) days therefrom. If work is not commenced within that time, the permit shall automatically terminate, unless extended in writing by the Borough Clerk. The Borough Clerk and the Borough Superintendent of Public Works shall be notified at least twenty-four (24) hours prior to

the work commencing, except where the work is of an emergent nature, when notice shall be given to the Borough Clerk and Borough Superintendent of Public Works no later than at the time work commences.

- c. Possession of permit. The applicant shall keep a copy of the permit and same shall be exhibited on demand to any duly authorized employee or police officer of the Borough at the location where the work is occurring.
- d. Revocation of permit. The Borough Clerk or the Borough Superintendent of Public Works may revoke a permit for any of the following:
 - 1. Violation of any provisions of this Chapter or any other applicable rules, regulations, laws, or ordinances.
 - 2. Violation of any condition of the permit issued.
 - 3. Carrying on work under the permit in a manner which endangers life or property, or which creates any condition which is unhealthy, unsanitary, or a nuisance, in the sole discretion of the Borough Superintendent of Public Works.
- e. Modification of permit conditions. In a special case, the Borough Council may, by resolution, impose special conditions to which the issuance of the permit may be subject, or may decide that any provision of this chapter shall not be applicable or may be modified.
- f. Rules and regulations. The Borough may make and implement any and all rules and regulations that they consider necessary for the administration and enforcement of this chapter, but no regulation shall be inconsistent with, alter, or amend the intent of any provision of this chapter, or impose any requirement that is in addition to those expressly or by implication imposed by this chapter. Copies of all current regulations shall be furnished to each permittee at the time of the issuance of the permit.

§ 84-6 Permit Application Fees

- a. Prior to issuance of any permit pursuant to this chapter, the applicant shall file an application for said permit at least forty-eight (48) hours prior to the requested time of issuance and shall pay for said permit in accordance with the following schedule:
 - 1. Permit fee:
 - i. Excavation up to twenty-five (25) square feet: \$200.
 - ii. Excavation between twenty-five (25) square feet and fifty (50) square feet: \$300.
 - iii. Excavation larger than fifty (50) square feet: \$300 plus \$1 per square foot in excess of fifty (50) square feet. For example, if an application is made for

an excavation of seventy-five (75) square feet, the permit fee would be \$325.

- iv. Excavations made within five (5) years of previous paving (in addition to the fees described above):
 - a. Within the preceding year: \$2,000.
 - b. Within the preceding two (2) to three (3) years: \$1,500.
 - c. Within the preceding four (4) to five (5) years: \$750.

2. Escrow: An escrow shall also be deposited with the Borough in an amount of \$1,500 to assure that any road opening on roadways is restored satisfactorily.

- b. All permit fees are nonrefundable, and said permit, once issued, is valid for a period of sixty (60) days.
- c. The fee and escrow will be waived for work done by Bergen County, provided Bergen County files an application prior to any work being done.
- d. Public utilities will be allowed to establish an escrow account with the Borough of Waldwick for the required escrow. Public utilities shall deposit a bond of \$100,000 in the escrow account running to the Borough of Waldwick which is conditioned for the temporary and permanent restoration of any road, street, or pavement thereof which may be opened or excavated by such utility, its employees or contractors, without undue delay, to as good condition as the same was at the time of the opening thereof, and to the satisfaction of the Borough Superintendent of Public Works; which bond shall further provide that the obligation thereof shall be a continuing obligation to the full amount thereof for each opening of any road or pavement.
- e. The Borough shall have the authority and right to use the escrow funds to restore or maintain the work covered by the permit if the applicant fails to do so within twenty-four (24) hours of notification by the Borough.

§84-6 Refund of Escrow

One (1) year after the permanent restoration is completed, the Borough shall reinspect the area. If the restoration is satisfactory, the escrow or any remainder thereof shall be refunded; if additional restoration is required, the Borough shall notify the applicant of the additional work to be performed and will reinspect the restoration area again one (1) month after the corrective action. A refund shall then be made if restoration is satisfactory.

§84-7 Permit—Not Required for Work Done by Borough or Under Contract with Borough

Nothing in this Chapter shall be construed as requiring the issuance of a permit for the performance

of any work done by the Borough or under a contract with the Borough.

§ 84-8 Liability and Indemnification

- a. The applicant shall indemnify and save harmless the Borough, 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 the Workers' 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 Borough for such purpose may be retained for the use of the Borough; 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 Borough; 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.
- b. The applicant shall also notify its insurance company that it has entered into an indemnification agreement with the Borough and that the terms of the indemnification should be covered by the applicant's insurance.
- c. The 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 Borough of Waldwick, with limits not less than those shown below. A certificate of insurance shall be filed with the Borough of Waldwick prior to commencement of the work.
 - i. 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 Borough of Waldwick, its officers, officials, employees, agents and volunteers shall be included as an additional insured.
 - ii. 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.
 - iii. 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.
- d. Coverage on primary and noncontributory basis: The certificate of insurance should indicate that all insurance coverages will provide coverage on a primary and

noncontributory basis to the Borough of Waldwick, its officers, officials, employees, agents and volunteers, who shall be included as an additional insured.

- e. Notice of cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the entity.
- f. Special risks or circumstances: The Borough of Waldwick reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

§ 84-9 Protection of Existing Structures

It shall be the duty of a permittee under this Chapter to give notice of the proposed street opening to any companies or organizations whose pipes, conduits, wires, or other structures are laid in the portion of the street to be opened not less than twenty-four (24) hours before commencing such opening. The permittee shall, at his/her own expense, carefully support, maintain in operation and protect from injury such pipes, conduits, wires, or other structures. If any damage is caused to such structures the permittee shall restore same, at his/her own expense, to as good a condition as they were before the beginning of the work.

§ 84-10 Driving Small Pipes Beneath Pavement

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

- a. A permit is obtained as provided herein.
- b. The application fee shall have been paid, provided there shall not be a requirement to pay a permit fee or escrow.
- c. In the event of damage to a pavement or subsurface pipe or structure caused by driving such pipe or conduit, the permittee under this Chapter shall repair and make good the damage at the permittee's own expense.
- d. Driving of pipes shall be prohibited at locations in the highways where there is existing underground construction of any telecommunication, electric, or gas utility company.

§84-11 Emergencies

In case of an emergency, such as would be occasioned by a leak of gas, or water, a sewer blockage or such other situation which poses an immediate hazard to public safety or interruption of utility services, the Borough Clerk or Borough Superintendent of Public Works may issue an emergency permit without the necessity of the applicant complying with the application process described herein, provided that after such emergency has been abated, a normal application will be filed on the next business day thereafter.

§ 84-12 Damaging Surface of Street

Aside from those acts expressly permitted by the Borough, no person shall do any act or thing which in any way mars, injures, or damages the surface or other part of any roadway within the municipality which shall include, but not be limited to, setting off of fireworks, disposing of any garbage, waste, litter, or rubbish, operating a vehicle in a careless/reckless manner, etc.

§ 84-13 Violations and Penalties

Any person, firm or corporation who or which shall violate any provision of this Chapter shall be subject to a fine not exceeding \$1,000 or imprisonment for a term not exceeding ninety (90) days, or both, for each offense. Each day during which any such violation occurs or is permitted to continue shall constitute a separate violation.

Section II

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

Section III

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 IV

This ordinance shall take effect upon adoption and publication in the manner required by New Jersey general law but, in no event, less than twenty (20) days after its final passage by the Borough Council and approval by the Mayor, where such approval is required pursuant to N.J.S.A. 49:69A-181(b).

INTRODUCED: May 7, 2024
ADOPTED: May 21, 2024

Attest: _____
Kelley Halewicz, RMC/CMC
Municipal Clerk

Thomas A. Giordano, Mayor