

RO-09-23

**AN ORDINANCE OF THE TOWNSHIP OF WASHINGTON, COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING PART II, "GENERAL LEGISLATION," CHAPTER 172, "STREETS AND SIDEWALKS," ARTICLE "V" "STREET OPENINGS" AND TO ADD AS NEW ARTICLE X "STREET AND RIGHT-OF-WAY OPENINGS BY PUBLIC AND PRIVATE UTILITY COMPANIES, BUSINESSES, AND OWNERS OF COMMERCIAL, INDUSTRIAL, MULTI-FAMILY, AND CERTAIN RESIDENTIAL PROPERTIES" TO THE CODE OF THE TOWNSHIP OF WASHINGTON.**

**WHEREAS**, Chapter 172, Article V "Street Openings" of the Township Code contains regulations, procedures, and permit fees associated with the openings of public roads, streets, road shoulders, curbs, sidewalks and rights-of-way under the control of the Township of Washington; and

**WHEREAS**, over the last several years the Township has experienced considerable problems with persons, contractors, utility companies and other businesses, regarding the opening of public roadways, streets, road shoulders, curbs, sidewalks and rights-of-way of the Township without complying with the Township's Code, or without taking measures to adequately repair and repave same; and

**WHEREAS**, the Township Engineer and the Township Attorney have recommended that amendments and additions be made to Chapter 172 the Township Code to better address and resolve the problems encountered by the Township and the Township's residents when public roadways, streets, road shoulders, curbs, sidewalks and rights-of-way of the Township are not satisfactorily restored; and

**WHEREAS**, the Township Committee has determined that, at this time, a formal change to the Township's Code is appropriate and in the best interest of the residents of the Township.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Washington, County of Morris, State of New Jersey, as follows:

**SECTION ONE.** Part II, Chapter 172, Article V "Street Openings" of the Township Code is hereby amended at §172-31 to include as new paragraph "E" the following:

**§172-31**

A-D. No Change

E. The provisions of Article V shall only apply to the individual owner(s) of an existing: single-family dwelling, single-family detached dwelling, single-family semidetached dwelling, a single townhouse dwelling within a townhouse development, and a duplex dwelling, as defined under §111-46 of the Township's Land Use Procedures, and owner-occupied residential rental property consisting of no more than three residential apartment units within a single structure. The provisions of Article X of Chapter 172 shall apply to all other persons, firms, partnerships, associations,

corporations, other businesses, utility companies (whether public or private, including any electric, telecommunications, cable, television, telephone, water, sewer, gas, and other utility companies); the owner(s)/developer(s) of existing or proposed commercial, industrial, agricultural/horticultural property; the owner(s)/developer(s) of existing or proposed multi-family developments, quadruplexes, homeowners/condominium associations, townhouse developments and/or planned developments (including planned unit developments, planned unit residential developments, residential cluster developments, planned commercial developments, planned industrial developments); owner(s)/developer(s) of any undeveloped residential, mixed-use, commercial or industrial property; owners owners/developers and/or applicants seeking site plan, minor or major subdivision, and/or other development/redevelopment approvals; applicants seeking a permit to demolish/raze, build, reconstruct, and/or redevelop any previously developed residential, mixed-use, commercial and/or industrial lot/tract(s).

**SECTION 2.** Part II, Chapter 172, of the Township Code is hereby amended to add as new Article X, the following:

**TITLE: “STREET AND RIGHT-OF-WAY OPENINGS BY PUBLIC AND PRIVATE UTILITY COMPANIES, BUSINESSES, AND OWNERS OF COMMERCIAL, INDUSTRIAL, MULTI-FAMILY, AND CERTAIN RESIDENTIAL PROPERTIES”**

**§172-55 Purpose & Applicability.**

A. The purpose of this Ordinance is to regulate the opening and restoration of public roadways, streets, road shoulders, curbs, sidewalks and rights-of-way within the Township of Washington by any persons, contractors, other businesses, property owners, and utility companies, whether public or private (including any electric, telecommunications, cable, television, telephone, water, sewer, gas, and other utility companies).

B. Except for the Township of Washington, the provisions of this Article shall apply to: all persons, firms, partnerships, associations, corporations, other businesses when Article V of Chapter 172 does not apply. In addition thereto, this Article shall apply to all utility companies, whether public or private, including any electric, telecommunications, cable, television, telephone, water, sewer, gas, and other utility companies); the owner(s)/developer(s) of existing or proposed commercial, industrial, agricultural/horticultural property; the owner(s)/developer(s) of existing or proposed multi-family developments, quadruplexes, homeowners/condominium associations, townhouse developments and/or planned developments (including planned unit developments, planned unit residential developments, residential cluster developments, planned commercial developments, planned industrial developments); owner(s)/developer(s) of any undeveloped residential, mixed-use, commercial or industrial property; owners owners/developers and/or applicants seeking site plan, minor or major subdivision, and/or other development/redevelopment approvals; and applicants

seeking a permit to demolish/raze, build, reconstruct, and/or redevelop any previously developed residential, mixed-use, commercial and/or industrial lot/tract(s).

C. Unless otherwise stated herein, the above-listed categories of persons properties, firms, partnerships, associations, corporations, other businesses, utility companies, property owners, developers and properties shall be collectively referred to hereinafter as “Entity” or “Applicant.”

### **§172-56 Permits Required & Restrictions.**

A. No Entity, person, firm, partnership, association, corporation, other business, utility company, whether public or private, including any electric, telecommunications, cable, telephone, water, sewer, gas, and other utility company, shall make any excavation, tunnel under, open, tear up the surface of, or make change to the surface of any public road, street, road shoulder, curb, sidewalk or right-of-way under the control of Washington Township, for any purpose, without first applying for and obtaining a road/right-of-way opening permit from the Township as hereinafter provided.

B. A separate application shall be filed and obtained for each road/right-of-way to be affected, if multiple roads and/or rights-of-way are included in the same project.

C. **Five Year Moratorium.** No Entity shall be permitted to or shall excavate, tunnel under, open, tear up the surface of, or make change to the surface of any public road, street, road shoulder, curb, sidewalk or right-of-way under the control of Washington Township, for a period of five years from the most recent date in which the Township has completed the improving, paving, surfacing, installation, resurfacing, repaving and/or reinstallation of the such public road, street, road shoulder, curb, sidewalk or right-of-way unless a waiver for same is first obtained in accordance with this Article.

D. No Entity shall encumber, obstruct or endanger the normal flow of vehicular or pedestrian traffic, by the placing of any barricade, structure, building or other material, or equipment in or on any public road, street, road shoulder, curb, sidewalk or right-of-way without first applying for and obtaining a written permit from the Municipal Engineer or consulting engineer.

### **§172-56 Application Process; Forms; Drawings & Review Procedure.**

All road/right-of-way opening permits shall be applied for and obtained in the following manner:

A. Applications for road/right-of-way opening permits shall be submitted in writing on the Township’s approved standard form, must be filled out completely, and filed with the Municipal Engineer, either electronically or by certified mail, along with the

required permit fee, drawings, insurance, indemnification/holdharmless agreement, and any other exhibits and documentation that may be required (collectively referred to as the "Application Packet").

1) The Application and all documents, drawings, and exhibits, shall be submitted electronically or by hard-copy, filed in triplicate.

B. The application shall be made by the Entity, and signed by the Entity's principal owner or authorized/designated representative, and shall also be signed by the individual responsible for supervising/overseeing the performance of the proposed work and shall be submitted to the attention of the Township of Washington Municipal Engineer.

C. The Entity shall include within the application a current New Jersey "One-Call" confirmation number to document compliance with the underground utility location law.

D. The application shall set out the location of the proposed opening or excavation; the size thereof, and the purpose therefor and list the full legal name, principal address, primary telephone number, and emergency contact information for the Entity and contractor/or on-site supervisor responsible for performing the work.

E. The application shall state the proposed date upon which the proposed work will start and the proposed date upon which the work will be completed. These dates will be contingent upon weather conditions and subject to final approval by the Municipal Engineer.

F. A permit for a specific project shall require completion of the project no later than 10 consecutive days from the starting date. "Specific project" shall mean a single installation, such as a waterline, sewer connection, utility line, a storm sewer or other utility. Any project seeking more than one installation type, shall constitute a separate project and require a separate permit.

G. Upon a demonstration of special or unusual conditions, an application for a special permit may be approved for an extended period of time of not more than 30 consecutive days subject to such conditions as may be imposed by the Municipal Engineer or consulting engineer, pursuant to a recommendation from the Department of Public Works and the Police Department. If the work is not completed within this extended period, a new or additional permit shall be required along with the payment of additional fees for same.

H. In addition, the Entity shall further submit a Township Approved Indemnification, insurance and hold-harmless file an agreement, in writing, to hold the Township harmless for any such loss and reimburse the Township for any attorney's and/or professional fees required in conjunction with any claims made as a result of such opening or excavation.

I. **Drawings.** In addition to the application form, the Entity shall file, appropriate drawings, signed/sealed by a New Jersey Licensed Professional Engineer, which shows the following details:

- 1) Key map, showing schematically the location of the proposed opening relative to surrounding streets and/or rights-of-ways or other key landmarks.
- 2) Existing facilities such as pavement, curbing, sidewalk, driveways, drainage, culverts, structures, and utilities in the working area.
- 3) Details of the proposed opening and work to be done, including excavations, plan profile, and appropriate sections of the opening and construction details.
- 4) The required drawings shall be submitted in triplicate.

J. **Review.** Such application shall be subject to review and the prior approval by the Municipal Engineer, and the proper fee collected by him/her and endorsed on the application.

1) Once the application package is received by the Township, the Municipal Engineer shall conduct an initial review of the application package and make a determination if the application is complete, incomplete or if additional information is needed from the applicant. The Municipal Engineer will make a good faith effort to conduct his/her initial completeness review within 10 business days of the Application Package being received by the Township.

(a) If the Municipal Engineer determines the application package is materially incomplete, the Municipal Engineer shall issue a written notice of rejection to the Entity, listing the defects and any additional information that must be provided and returning the Application to the Entity for resubmission as a new application. If rejected, the Entity must rectify the defects/omissions and resubmit the application package in its entirety. If rejected, any resubmitted application package shall be treated as a new application and the Municipal Engineer shall have the full opportunity to review the application package as if it is a new application.

(b) If the Municipal Engineer determines that the application package is complete, but the proposed work requires additional fees information/documentation is required; the Municipal Engineer shall issue written notice to the Entity that the application is accepted, but additional information, fees, charges, or bonds is/are required before a permit can be issued. Such notice shall list the additional information/documentation that must be supplied and/or the additional steps necessary for the permit to be issued. The Municipal Engineer, in his/her discretion, may require a preconstruction meeting with the Entity and other Municipal Officials as a condition to issuance of a permit.

2) If the Municipal Engineer is satisfied that the application package provided is complete and all necessary documentation has been provided, the Municipal Engineer shall advise the applicant of the determination in writing, and either issue the permit or issue a conditional approval subject to the applicant satisfying certain conditions such as attendance at a pre-construction meeting and/or posting the required bond.

K. No permit shall be issued before the Entity makes satisfactory payment of all fees, bonds, charges.

L. The Entity and its on-site contractor making and signing the application shall comply with all the provisions of this Article and all conditions of any permit as hereinafter set forth.

**§172-57 Bonds; Fees.**

A. **Fees for 150 Square Feet of Surface or less.** Except for public and private utility companies, when the road/right-of-way opening is less than 150 square feet of surface, the Entity shall satisfy the following fees:

<b>TYPE</b>	<b>Ordinary Openings (Per Square Foot)</b>	<b>Openings Within Five- Year Period Following Reconstruction and Resurfacing, When Permitted,  (Per Square Foot)</b>
Untreated or unimproved surface	\$4.00	\$4.00
Bituminous concrete	\$7.50	\$13.00
Bituminous concrete on concrete	\$8.50	\$15.00
Concrete pavement on surface	\$9.00	\$16.00

1) For excavations between November 1<sup>st</sup> and April 1<sup>st</sup> each year, an additional lump sum fee of \$1,000 shall be submitted, along with an additional \$2 per square foot calculated in addition to each of the above-listed figures.

2) In addition, there shall be a fee of \$200 for the first inspection by the Municipal Engineer or any other representative of the Township.

3) There shall be an additional charge of \$30 per hour for any inspections after 3:00 p.m. on weekdays by the Municipal Engineer or any other representative from the Township.

4) There shall be an additional fee for any follow-up and subsequent inspection(s) by the Municipal Engineer or any additional inspections other representatives of the Township. If additional inspections and/or inspectors are needed, an additional fee shall be assessed and billed to the permit holder as per §173-70 of this Article.

5) All persons, firms or corporations, including public utility corporations, granted a permit under the above schedule of fees shall, in addition to refilling and repaving the opening or excavation area as provided in §§173-59, -63, -67 thru -69 of this Article, replace and repair the street and/or right-of-way surface with the same materials and in the same manner as the street and/or right-of-way was originally constructed before the opening or excavation was made, unless, upon report and recommendation of the Municipal Engineer a different material is recommended and such recommendation is approved by a majority of the Township Committee.

**B. Work by any Public/Private Utility Companies, and for openings of 150 square feet or more.** The following shall be required for any work by a utility company, and/or for any road/right-of-way openings of 150 square feet or more:

1) Before the permit shall be issued by the Municipal Engineer, the Entity, including any public/private utility company, making the application shall file/post a continuous renewable surety bond of \$10,000 issued by a surety company authorized to do business in the State, which shall cover the amount of the opening/excavation set out in the application and any and all future openings and excavations to be made in a calendar year. Said bond shall be conditioned upon the applicant/permittee's compliance with this article and to indemnify the Township of any loss, liability or damage that may result or accrue from or because of the making, existence, or manner of construction or guarding any such opening or excavation.

2) Fees. The fees for such permits shall be as follows:

<b>TYPE</b>	<b>Ordinary Openings (Per Square Foot)</b>	<b>Openings Within Five- Year Period Following Reconstruction and Resurfacing, When Permitted  (Per Square Foot)</b>
For 150 square feet or less (only in the case of public utility corporation)	\$2.50	\$3.00
	\$3.00	\$4.00

For 150 square feet to 600 square feet		
For 600 square feet to 1,000 square feet	\$3.25	\$5.50

(a) The fee for street and/or right-of-way openings in excess of 1,000 square feet shall be a flat fee of \$1,500 if outside the five-year moratorium, and \$7,500 for those made within a five-year moratorium period following reconstruction and resurfacing. For excavations occurring between November 1<sup>st</sup> and April 1<sup>st</sup> of each year, an additional lump sum fee of \$1,000 shall be submitted.

(b) The total fee shall include a charge of \$200 for one inspection by the Municipal Engineer or other representative of the Township of Washington. If additional inspections and/or inspectors are needed, an additional fee shall be assessed and billed to the permit holder as per §173-70 of this Article.

3) All persons, firms or corporations, including public utility corporations, granted a permit under the above schedule of fees shall, in addition to refilling the opening or excavation as provided in §§173-59, -63, -67 thru -69 of this Article, replace and repair the street and/or right-of-way surfaces with the same materials and in the same manner as the street and/or right-of-way originally was before the opening or excavation was made, unless, upon report and recommendation of the Municipal Engineer, a different material is recommended and such recommendation is approved by a majority of the Township Committee.

4) The fee for road/right-of-way openings pursuant to this section shall be waived in the instance where the Township shall require that a property owner must connect to any public sanitary sewer system upon approval by the Township Committee.

C. All utility companies shall post a continuous renewable surety bond of \$10,000 issued by a surety company authorized to do business in the State. Said bond shall be conditioned upon the utility company's compliance with this article and to indemnify the Township for any loss, liability or damage that may result or accrue from or because of the making, existence or manner of construction or guarding any such opening or excavation.

**§172-58 Conditions of Permit.**

A. Opening permits are not transferable.

B. Work under the permit must be completed within 10 consecutive business days from the date issued.



C. A permit may be renewed or extended for a period of time not to exceed the total time of the original permit upon request of the permittee and upon payment of a new fee.

D. All work will be done between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding Federal and State recognized holidays, unless otherwise authorized by the Municipal Engineer.

E. Upon completion of any installation, the road or right-of-way shall be restored in accordance with

### **§172-59 Maintenance**

A. The Entity assumes the responsibility of refilling the excavation, as it may sink, consolidate or break out from time to time, whether the repair be temporary or permanent, and of keeping the surface level and smoothly blended with the surrounding undisturbed pavement. After permanent repavement and approval by the Municipal Engineer, the Entity/permittee shall be responsible for maintaining the opening site for a period of five years or, in the case of newly paved roadways and/or right-of-ways, repaving, repairing damage, restoring turf or shrubbery, all as directed by the Municipal Engineer when necessary, and, in the case of undue trench settlement, the Entity/permittee may be required to reopen the trench or excavation to ascertain the cause of undue settlement and to remedy the fault or cause, all as required by the Municipal Engineer.

B. In order to assure performance of any and all maintenance required in connection with the excavation, the permittee shall post a maintenance bond of a period of two years or in the case of a newly paved street and/or right-of-way for the life of the five-year moratorium or the maintenance period of two years, whichever shall be longer, in an amount to be determined by the Municipal Engineer. The bond may be reduced or released upon recommendation by the Municipal Engineer.

### **§172-60 Display of Placard.**

The Municipal Engineer shall provide each Entity/permittee, at the time a permit is issued hereunder, a suitable placard which shall be posted in a conspicuous place at the site of the excavation work. It shall be unlawful for any person to exhibit such placard at or about any excavation not covered by such permit, or to misrepresent the number of the permit or the date of expiration of the permit.

### **§172-61 Compliance with Permit Required; Bracing; Excavation not to Extend Beyond Opening.**

A. It shall be unlawful to make any opening or excavation in any way contrary to or at variance with the terms of the permit issued.

B. Proper bracing shall be maintained to prevent the collapse of adjoining ground; and the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface.

#### **§172-62 Interference with Pipes, Cables and Conduits.**

No injury shall be done to any pipes, cables or conduits in the making of such excavations or openings, and 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 excavation or opening, before such pipes, cables or conduits shall be disturbed.

#### **§172-63 Backfilling.**

A. Backfilling in any street and/or right-of-way opened or excavated pursuant to a permit issued hereunder shall be compacted to a degree equivalent to that of the undisturbed ground in which the trench was dug. The permittee will be required to backfill all excavations in layers not to exceed six inches in depth, and each successive layer shall be thoroughly compacted to maximum density. The entire trench shall be backfilled with dense graded aggregate base course (quarry-processed stone). Compacting shall be done by mechanical tampers or vibrators or such other recognized method in the construction industry, as determined by the Municipal Engineer. The permittee shall be required to maintain the area of the street and/or right-of-way backfilled in safe traveling condition until such time as permanent restoration of the surface is made.

B. Frozen material shall not be used for backfill at any time. All excavations shall be backfilled within a reasonable time allowed for the work to be performed. The municipal Engineer shall notify the permittee when efficient time has elapsed. No permit shall be issued for the opening or digging up of any street and/or right-of-way in the Township between November 1<sup>st</sup> and April 1<sup>st</sup> of any year, for any purpose other than repairing leaking or damaged water, gas, electric, sewer, telephone or drain damage on an emergency basis, and then only with the consent of the Municipal Engineer.

#### **§172-64 Tunneling and Undermining.**

No part of a trench or excavation shall be tunneled or undermined except in such cases as may be approved by the Municipal Engineer. If approved, the fees, bond(s) and other charges shall be the same as if the surface had been removed.

#### **§172-65 Failure to Complete Work.**

If the Entity/permittee fails to complete the excavation work covered by the permit, including backfilling and restoration within the time set by said permit, the Municipal Engineer, if he/she deems it advisable, shall have the right to do all work and things necessary to complete the excavation work. The permittee shall be liable for the actual cost thereof and 25% of such cost in addition for general overhead and administrative

expenses, plus any damages attorneys' fees, and costs of suit and such further relief as a court deems equitable and just.

**§172-66 Emergencies.**

In the event of any emergency in which a sewer, main, conduit or utility in or under any street and/or right-of-way breaks, bursts or otherwise is in such condition as to immediately endanger the property, life, health or safety of any individual, the person, firm or corporation owning or controlling such sewer, main, conduit or utility, without first applying for and obtaining an excavation permit hereunder, shall immediately notify the Police Department and then take proper emergency measures to cure or remedy the dangerous condition for the protection of property, life, health, and safety of individuals. However, such Entity person, firm or corporation owning or controlling such facility shall apply for a road/right-of-way opening permit not later than the end of the next succeeding day during which the Municipal Engineer's office is open for business, and shall not proceed with permanent repairs without first obtaining a road/right-of-way opening permit hereunder.

**§172-67 Saw-Cutting of Surface Construction.**

The existing pavement, blacktop or concrete shall be cut in a straight line or lines, prior to any subsurface excavation, which shall be confined to the area between the cuts. If pavement, curbing, sidewalk or other surface construction becomes damaged, ragged or zigzagged when it comes time to repave or replace the facility, then the edges shall be cut or recut in a straight line or lines, to the satisfaction of the Municipal Engineer, in general, parallel to the lines of the excavated trenches and in a width sufficient to accommodate the entire excavation and to create a smooth finished appearance when the construction is completed. When cutting through the reinforced concrete pavement, the saw-cutting will be done in such a way as to permit the exposing of existing reinforcement, which is not to be cut, but is to be exposed, retained and allowed to project into the excavation at least 18 inches. These exposed bars will later be reformed to tie into the patched concrete.

**§172-68 Responsibilities of Entity/Permittee.**

A. After the width of excavation has been determined, the outlines shall be marked on the pavement. A concrete saw shall then be used to cut through the pavement before the excavation digging machinery shall operate.

B. The pavement on all sides of the opening shall then be cut to a sharp line 12 inches beyond the edge of the trench or as otherwise specified and all material removed to a depth specified in the permit. Unless otherwise specified, a temporary pavement patch of compacted bituminous materials shall be neither higher nor lower than the existing pavement. Upon any further settlement, the trench shall be brought to grade by adding more compacted temporary bituminous material.

C. Final restoration

1) Final restoration, unless otherwise specified, shall be made by removing the temporary materials to its full depth and replacing it with bituminous established base course, HMA 19 M 64, four-inch thickness, and bituminous stabilized base course, HMA 9.5 M 64, two-inch thickness. Prior to placing the bituminous concrete, the existing pavement edges shall be painted using tack coat material. The finished surface also shall be neither higher nor lower than the existing pavement. If, in the opinion of the Township, the condition of the base course is unsatisfactory, or undue settlement has occurred, the base course shall be removed and replaced with new material in a like manner to that required for the temporary pavement patch. The specific method of restoration regarding individual utility opening permits shall be delineated on said permits and accompanied by a related detailed sketch.

2) After the bituminous pavement is installed, a bituminous sealer, approved by the Municipal Engineer, shall be placed along the perimeter of the trench where the new pavement meets the existing pavement to prevent raveling. When the pavement abuts a curb, inlet, or manhole, the joint shall also be covered with a bituminous sealer. The bituminous sealer shall be brushed on and have a minimum six-inch width around the entire perimeter of the street and/or right-of-way opening. The sealed area shall be immediately covered with a light application of acceptable dry sand.

3) In cases where there are large linear excavations or multiple service excavations on the same street and/or right-of-way, the portion of the street and/or right-of-way within the limits of the excavations shall be resurfaced from the center line to the curblineline on the side of the street and/or right-of-way where the excavation occurred. Should multiple service excavations be required on both sides of the street and/or right-of-way, the entire street and/or right-of-way, within the project area shall be milled by a depth of 2" with a restoration surface course.

4.) All restoration work as hereinabove specified shall be completed within 10 days following commencement of excavation work, unless otherwise specified, in writing, by the Municipal Engineer.

D. The individual or firm to whom a permit is issued shall assume all responsibility for the excavation made, for refilling the same and for all damages that may arise by reason of the digging of such excavations. The permittee shall have a qualified supervisor at the site of the opening work during all working hours.

E. Each Entity/permittee shall notify the Municipal Engineer, Department of Public Works, Police Department, and all utility companies which might have underground service in the proposed location of the intent to perform excavation; notice is to be given at least 24 hours prior to commencing any such excavation. Any form of drilling and/or probing is considered excavation under this section.

F. Every Entity/permittee shall notify the Municipal Engineer at least 24 hours prior to commencement of any excavations, backfill or resurfacing operation and shall not commence work until inspection and approval of that phase of the operation is given by the Municipal Engineer.

G. Any Entity/permittee individual or firm that anticipates the possibility of emergency excavation at times other than during regular office hours shall advise the Municipal Engineer and Police Department of such possibility and shall make such arrangements as may be necessary to provide for such emergencies.

H. In the areas where blasting is permitted, such blasting shall be performed only by a person or person showing proper credentials to be fully qualified to handle blasting materials and perform blasting. The contractor shall assume the risk of and be responsible for all blasting by him or under his supervision.

#### **§172-69 Extension of Permit.**

Whenever more of the public street, sidewalk, curb line and/or right-of-way shall be dug up than specified in any permit, the Entity/permittee to whom such permit shall have been issued shall secure from the Municipal Engineer an extension of the original permit and shall pay for the extra square feet of surface removed, over and above the amount specified in the original permit at the prices mentioned in §172-57. In all cases where an extension of permit to cover such extra excavation shall not have been obtained within 48 hours of the time of making an extra excavation, such person violating the provisions of this section shall, in addition to paying the fees provided for in the extension of the permit, be subject to the penalties provided in §172-80 up to \$2,000 per day.

#### **§172-70 Extra Inspectors & Inspections.**

Whenever, because of the need to make certain corrections or due to the length or extent of any openings/excavations or because of the number of streets in which the same may be made, the Municipal Engineer shall deem it necessary to conduct additional inspections or employ any extra inspector(s) to supervise the placing of material and refilling the excavation, such additional inspections and/or inspector(s) shall be paid by the Entity obtaining the permit at a rate per day to be fixed by the Municipal Engineer.

#### **§172-71 Reconstructed and Resurfaced Streets, Sidewalks, Curbs, & Right-of-Ways.**

Whenever the Township Committee enacts any Ordinance or Resolution providing for the reconstruction, replacement, repavement or resurfacing of any street, road and/or right-of-way, the Municipal Engineer and/or Municipal Clerk shall promptly mail a written notice thereof to each person, firm or corporation owning any sewer, main or conduit or other utility in or under said street, road and/or right-of-way. Such notice shall notify such persons, firms of corporations that no excavation permit shall be issued for openings, cuts or excavations in said street and/or right-of-way for a period of five years after the date of

enactment of said Ordinance or Resolution, except as set forth below. Such notice shall also notify such person, firm or corporation that application for road/right-of-way opening permits for work to be done prior to such paving or repaving shall be submitted promptly (in order that the work to be done prior to such paving or repaving shall be submitted promptly) in order that all work covered by the road/right-of-way opening permit shall be completed as soon as possible, and in no event later than the date specified in the permit for the excavation work therefor.

A. Emergency. During the five-year moratorium period, a road/right-of-way opening permit shall only be issued to open, cut or excavate in said street, curblineline, sidewalk, road shoulder and/or right-of-way if, on application to the Township, in the judgment of the Municipal Engineer, an emergency, as described in § 172-66 of this Article, exists which makes it absolutely essential that the excavation permit be issued.

B. New construction or restoration. Aside from emergencies, during the five-year moratorium period, a road/right-of-way opening permit shall only be issued to open, cut or excavate in said street, curb line, road shoulder, sidewalk and/or right-of-way for the purpose of providing utility or other service to a newly constructed residence or other newly constructed structure adjacent to a newly paved street and/or right-of-way or for the purpose of providing utility or their service to a preexisting residence or structure which is being reconstructed and for which the reconstruction encompasses 60% or more of the structure. Under such circumstances, the Entity shall make an application to the Township for a waiver of the 5-year moratorium requirement, which shall be considered by the Township Committee in accordance with sub-paragraph C below.

C. Waiver. During the five-year moratorium period, road/right-of-way opening permits may be issued to open, cut or excavate in any said street, road, roadway shoulder and/or right-of-way for the purposes of providing utility or other service to a preexisting residence or structure or for new construction or restoration of any building or structure, only upon making an application to and securing prior approval by a majority vote of the Township Committee, which the Township Committee shall determine whether to permit or deny same on good cause shown, with the advice and recommendation of the Municipal Engineer and Director of the Department of Public Works.

#### **§172-72 Inconvenience to Public to be Avoided.**

Each Entity/permittee shall conduct and carry out the excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce, to the fullest extent practicable in the performance of the excavation work, noise, dust, and unsightly debris, and shall promptly remove from the street and/or right-of-way all excess of excavated materials.

#### **§172-73 Safety Precautions: Street Obstruction.**

All Entities granted a permit to make an opening or excavation in the public streets, rights-of-ways and/or highways of the Township shall, at all times, maintain suitable barricades and guards, display proper warning signals and flags and provide all necessary watchmen to prevent injury to any person or damage to any vehicle by reason of the work. Such barricades shall be protected by adequate flashing warning lights from one hour before sunset until one hour after sunrise. Streets, rights-of-ways, and highways must be kept open for traffic at all times except when otherwise ordered or approved by the Municipal Engineer. The Entity/permittee will not be permitted to store material or park equipment within the right-of-way, except as necessary during actual working operations and then only by permission by the Municipal Engineer.

#### **§172-74 Responsibilities to Private Property Owners.**

Prior to starting work on the opening, it shall be the responsibility of the Entity/permittee to advise each nearby or adjacent property owner, whose property will be temporarily inconvenienced or disturbed by the project, when the work will be commenced and what effect the work will have on the owner's use of his property. The Entity/permittee will be solely responsible for any damage, inconvenience or disruption to nearby or adjacent properties, and will save the Township harmless from any claims arising from the conduct of work. It will be the Entity/permittee's obligation and responsibility to arrange for any rights of entry or easements needed. The Entity/permittee shall not store tools, machinery, materials, dirt or debris on private property, nor use water, electricity, telephone or other private facilities, without first obtaining permission from the property owner.

#### **§172-75 Maps of Underground Structures & Installations.**

Users of subsurface street and/or right-of-way space shall file accurate drawings, plans and profiles showing the location and character of all existing underground structures and installations with the Municipal Engineer within two years after enactment of this article. Corrected maps shall be filed with the Municipal Engineer within 60 days after installations, changes or replacements are made.

#### **§172-76 Liability Insurance.**

A Entity/permittee, prior to commencement of excavation work hereunder, shall furnish the Municipal Engineer satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and the period of the excavation permit public liability insurance of not less than \$500,000 for any one person and \$1,000,000 for any one accident and property damage insurance of not less than \$250,000 duly issued by an insurance company authorized to do business in this state.

#### **§172-77 Powers and Duties of Municipal Engineer.**

The Municipal Engineer shall verify the extent of the excavation or opening and shall inspect and generally supervise the work on behalf of the Township.

**§172-78 Final Release.**

All openings made and restored under terms of this article and any permits issued shall be subject to final release and approval in writing by the Municipal Engineer. No deposit money shall be returned or bond released until after said written release has been affected. This release will not normally be affected until the expiration of the twenty-four-month period specified in §172-50.

**§172-79 Waiver of Liability.**

This Article shall not be construed as imposing upon the Township or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation/restoration/maintenance work for which a road/right-of-way opening permit is issued hereunder. Nor shall the Township or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any excavation/refilling/restoration/maintenance work.

**§172-80 Violations and Penalties.**

Every person, firm or corporation found guilty of violating any of the provisions of this Ordinance shall be liable to a fine of not more than \$2,000 or imprisonment in the county jail of not more than 90 days, or both. Each and every day such violation continues and shall be deemed a separate violation.

**§172-81 Inspection Fees.**

The Entity issued the permit shall be required, in addition to any other fees required in connection with this article, to pay for professional review and consultation fees and services associated with the review, processing and inspection of the excavation and street and/or right-of-way restoration as performed by the Municipal Engineer and/or representatives of the Municipal Engineer. Said fees shall be deposited into an escrow account maintained by the Township. The amount of escrow shall be determined by the Township Engineer.

All remaining provisions of this Section not addressed herein shall remain unchanged.

**SECTION THREE. RENUMBERING.** This Ordinance may be renumbered for codification purposes.

**SECTION FOUR. SEVERABILITY.** The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged or declared unconstitutional or invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other provision or application of this ordinance which may be given effect and, to realize this intent, the



provisions and applications of this ordinance are declared to be severable.

**SECTION FIVE. REPEALER.** Should any provision of this ordinance be inconsistent with the provisions of any prior ordinances, the inconsistent provisions of said prior ordinances are hereby repealed, but only to the extent of such inconsistencies.

**SECTION SIX. PURPOSE OF CAPTIONS**

Captions contained in this ordinance have been inserted only for the purpose of facilitating reference to the various sections, and are not intended and shall not be utilized to construe the intent and meaning of the text of any section.

**SECTION SEVEN. EFFECTIVE DATE**

This ordinance shall take effect immediately upon final adoption and publication in accordance with the laws of the State of New Jersey.

**NOTICE OF FINAL ADOPTION**

Notice is hereby given that the Ordinance published herewith was introduced and passed upon first reading at a meeting of the Township Committee of Washington Township, in the County of Morris, New Jersey, held on the 15<sup>th</sup> of May, 2023, and the same came up for final passage at a meeting of said Township Committee on the 19<sup>th</sup> day of June, 2023 at which time, after persons interested were given an opportunity to be heard concerning said ordinance, the same was passed and will be in full force in the Township according to law. By order of the Township Committee of the Township of Washington, County of Morris and State of New Jersey.

Dated: June 19, 2023

**TOWNSHIP OF WASHINGTON  
COUNTY OF MORRIS  
STATE OF NEW JERSEY**

**ATTEST:**

\_\_\_\_\_  
Denean Probasco, Township Clerk

\_\_\_\_\_  
Matthew T. Murello, Mayor

Attest: I herein certify that the foregoing Ordinance was duly adopted by the Washington Township Committee at a regular meeting held by the Township Committee on June 19, 2023.

\_\_\_\_\_  
Denean Probasco, Township Clerk

