

**BOROUGH OF WILDWOOD CREST
COUNTY OF CAPE MAY
STATE OF NEW JERSEY**

ORDINANCE NO. 1428

**ORDINANCE REPEALING AND REPLACING CHAPTER 67,
STREET EXCAVATIONS, OF THE CODE OF THE BOROUGH
OF WILDWOOD CREST WITH A NEW CHAPTER 67
ENTITLED STREET OPENINGS AND EXCAVATIONS**

WHEREAS, the Board of Commissioners of the Borough of Wildwood Crest has determined that it is necessary and proper for good government, order and the protection of persons and property, and for the preservation of the public health, safety and welfare of the Borough and its inhabitants to repeal and replace Chapter 67 of the Code of the Borough of Wildwood Crest 2015, which regulates the opening and excavation of streets in the Borough of Wildwood Crest.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Borough of Wildwood Crest in the County of Cape May and State of New Jersey, as follows:

Section 1. Ordinance No. 473, adopted December 20, 1974, Ordinance No. 480, adopted April 23, 1975, Ordinance No. 530, adopted October 17, 1978, Ordinance No. 683, adopted December 5, 1988, Ordinance No. 935, adopted June 25, 2003, Ordinance No. 973, adopted March 9, 2005, Ordinance No. 984, adopted October 26, 2005, Ordinance No. 1197 adopted November 5, 2015, Ordinance No. 1243, adopted August 10, 2016 and Ordinance No. 1245, adopted November 30, 2016, that has been codified as Chapter 67, entitled Street Excavations, of the Code of the Borough of Wildwood Crest is hereby repealed and replaced with the following:

Chapter 67

STREET OPENINGS AND EXCAVATIONS

§ 67-1 Permit required.

It shall be unlawful to dig, excavate, open or in any manner interfere with or disturb within the right-of-way of any municipal street or curb within the Borough of Wildwood Crest for any purpose whatsoever without first securing a permit therefor as hereinafter provided. For repairs of 200 square feet of sidewalk, or less, see Chapter 63, Sidewalks, Curbs and Alleyways. For replacement, reconstruction, or repair, of curbing, gutter or over 200 square feet of sidewalk, this chapter shall apply.

§ 67-2 Application for permit; fee.

- A. Application for permission to make an excavation in any Borough street between the curblines, driveways or in any sidewalk area shall be made to the Borough Construction Official. Such application shall be made on the required application form and shall be signed by the applicant and shall specify:
- (1) The applicant's name, address and phone number (local and out-of-town, if applicable);
 - (2) The name, address and phone number of the person or firm who will be performing the work;
 - (3) The length and width of such excavation;
 - (4) The purpose for which the excavation is to be made;
 - (5) The estimated time required to complete the work and restore the surface; and

(6) Such other information as may be required by the Borough Engineer.

- B. An administrative application fee of \$350 and construction inspection fee of \$1,000 shall be paid to the Construction Office prior to the issuance of the permit for all excavations of curbing or more than 200 square feet of sidewalk. If said area to be opened, disturbed, or undermined exceeds six square yards, the additional yardage shall be classified as excess yardage, and an additional fee shall be due and payable by the applicant for all yardage in excess of six square yards at a rate of \$10 per square yard. For repairs of 200 square feet of sidewalk, or less see Chapter 63 Sidewalks, Curbs and Alleyways.
- C. The applicant shall be responsible to provide all additional fees associated with multiple reinspections that are necessary due to defective workmanship, lack of coordination, lack of work progression and any aspect of work that is unacceptable to the Borough. The Borough Engineer shall advise the applicant, in writing, of said additional fee, if warranted.
- D. The area to be opened, disturbed or undermined by the applicant shall be measured and determined by the Borough Engineer or the Department of Public Works.
- E. All utility companies, including companies with existing franchise agreements with public utilities, shall be required to post one general inspection escrow in an amount to be determined by the Engineer based upon the application(s) submitted and the scope of work to be performed and/or an amount estimated and projected to be completed within one calendar year. The general escrow account shall be maintained by the Borough and shall have a minimum balance maintained at all times, which shall not be less than 25% of the initial escrow amount required to be posted. All escrow fund balances shall be calculated by the Borough Engineer.

§ 67-3 Issuance of permit.

- A. The Borough Engineer, upon receipt and examination of the application and the fee referred to hereinabove, shall issue a permit under their hand for the excavation. The Borough Engineer shall specify on the permit that it is good for a ninety (90) day period from the date of issuance and shall further specify on the permit that such work shall be completed and restored within 48 hours after work is commenced or within a duration of time which in his opinion is reasonable and fair. The applicant shall notify the Borough Engineer 24 hours before the commencement of any work so that appropriate inspection can be made where required.
- B. Whenever the Borough resurfaces or reconstructs a street, no permit shall be issued for the opening of said street for a period of five (5) years subsequent to the completion of the reconstruction and acceptance of such work by the Borough, provided the property owners have been properly notified. The Borough Clerk shall give written notice, by certified mail, to all owners of property abutting the portion of the street or streets to be reconstructed or resurfaced, and to the public utilities and authorities who routinely locate their facilities in the beds of public streets, no less than four months prior to commencing the Borough's construction. The notice shall specify the anticipated start date for the construction and advise the property owner that any anticipated new facilities or repairs to their existing facilities must be completed prior to the start of the Borough's project. Emergency situations are exempt from the five-year restriction.
- C. The Borough may, in its sole and absolute discretion, attach conditions to any permit issued under this chapter that prohibits work, which is otherwise authorized by the permit, from being performed on or around the Memorial Day, Independence Day and Labor Day holiday weekends depending upon the scope and location of the work as needed to protect the health, safety and welfare of the community. Any timelines imposed upon permittee by this section shall be tolled accordingly in the event of same.
- D. All permits shall be prominently displayed in a front window or upon the front door of the structure on the subject property, and in the event the property is vacant land, such permit shall be displayed on the temporary electric pole if one exists, or a pole placed on the property in the front yard area for the purpose displaying the permit.

§ 67-4 Restoration of excavated area.

A. The applicant to whom such permit is issued shall, within the time limited in such permit, replace the earth and pavement in the excavation in such manner that the same shall be left in as good condition as it was before the excavation was commenced. Except as otherwise herein stated, all street work performed shall be in accordance with the applicable provisions of the New Jersey Department of Transportation (NJDOT) Standard Specifications for Road and Bridge Construction, including all amendments. Reference to articles or sections hereinafter refer to said NJDOT standard specifications.

(1) Trenches shall be backfilled in layers not to exceed six inches, and a vibratory tamper must be used. Compaction of 95% shall be required. Puddling of backfill is strictly prohibited. Should there be a deficiency, additional backfill material shall be supplied by the permittee. Whenever the Borough Engineer shall deem the material unsatisfactory for backfill, the permittee shall provide acceptable material for the backfill.

(2) Roadways with a concrete base shall be restored using a combination of concrete and asphalt. The amount of concrete and asphalt to be used at each such excavation shall be as directed by the Borough Engineer. See detail at end of chapter.

(3) Hot mix asphalt street restoration specifications.

(a) Gravel.

[1] Gravel shall be installed six inches thick. The gravel shall consist of compact soil aggregate, Type I-5. The use of a recycled asphalt product (RAP) or recycled concrete product may be substituted for the soil aggregate as long as it meets the NJDOT requirements for 1-5 materials. The Borough Engineer may, at his discretion, submit samples of the soil aggregate for a gradation analysis, with the costs of said analysis borne by the applicant.

(b) Temporary restoration.

[1] Less than 100 square feet.

[a] For openings in asphalt roadways that are less than 100 square feet, the temporary restoration will consist of the installation of six inches of soil aggregate, Type I-5, to a level of six inches below the level of adjacent paved surfaces, a four-inch lift of hot mix asphalt base course, Mix I-2, followed by a two-inch lift of a bituminous concrete cold patch installed to grade.

[b] These temporary surfaces shall be in place for a period of not less than 45 days to allow sufficient settlement to occur. Should settlement continue to occur, the Borough Engineer shall determine when the work is acceptable for final restoration. The permittee shall be responsible for all maintenance deemed necessary by the Borough Engineer until such time as the final restoration is completed.

[2] Greater than 100 square feet.

[a] For openings in asphalt roadways that are greater than 100 square feet, the temporary restoration will consist of the installation of six inches of soil aggregate, Type I-5, to a level six inches below the level of the adjacent paved surfaces. A six-inch lift of hot mix asphalt, Mix I-2, shall then be installed to grade.

- [b] These temporary surfaces shall be left in place for a period of not less than 45 days to allow sufficient settlement to occur. Should settlement continue to occur, the Borough Engineer shall determine when the work is acceptable for final restoration. The permittee shall be responsible for all maintenance deemed necessary by the Borough Engineer until such time as the final restoration is completed.
 - (c) Final Restoration.
 - [1] Less than 100 square feet.
 - [a] For openings less than 100 square feet, the final restoration will involve the removal of the top two inches of bituminous concrete cold patch. All edges shall be saw cut six inches beyond the actual trench width disturbed to produce a clean edge, and said edges shall be prepared with an asphaltic tack coat. A two-inch lift of hot mix asphalt surface course, Mix I-5, shall then be placed to a level even with the existing road grade.
 - [2] Greater than 100 square feet.
 - [b] For openings greater than 100 square feet, the trenches shall be milled to a depth of two inches to a distance of at least 12 inches beyond the actual trench width to produce a clean edge. All edges shall be coated with an asphaltic tack coat prior to a two-inch lift of hot mix asphalt surface course, Mix I-5, being placed to a level even with the existing road grade.
 - (d) No surface water shall be entrapped or ponded on the resurfaced areas. If any ponding occurs, the permittee will be responsible for performing whatever remedial action is required by the Borough Engineer.
 - (4) If more than two (2) individual excavations would be required within a one-hundred-foot length, a single trench must be used rather than the individual excavations. Final restoration will require a minimum of 1/2 width of the cartway. The trench shall be milled to a depth of two inches to a distance of at least 12 inches beyond the actual trench limit from the center line of the cartway to the curblines. (See construction detail at end of chapter.) All edges shall be coated with an asphaltic tack coat prior to a two-inch lift of hot mix asphalt surface course, Mix I-5, being placed to a level even with the existing road grade.
 - (5) In all cases where concrete has to be removed prior to any excavation, saw cut methods of removal shall be used. The restoration of the concrete shall be according to the following specifications:
 - (a) It shall be NJDOT Class B with a class design strength of 3,700 psi at 28 days.
 - (b) It shall have a minimum thickness of not less than four inches for sidewalk, six inches for driveway aprons and eight inches for gutter.
 - (c) It shall have a minimum width of not less than five feet for sidewalks.
 - (d) It shall have control joints not more than five feet for sidewalk, 10 feet for curb and gutter and expansion joints not more than 20 feet for sidewalk, curb and gutter.
- B. By the acceptance of such a permit, the applicant shall be deemed to have agreed to comply with the terms hereof, and upon his failure to do so to pay on demand any cost or expense that the Borough may incur by reason of any shrinkage or settlement in the excavated area

resulting from such excavation if such shrinkage or settlement shall occur within three months from the time the surface thereof is restored.

§ 67-5 Newly paved streets; establishment of moratorium.

- A. Prior to any street within the Borough being reconstructed, improved, repaved, or overlaid in accordance with a scheduled project approved by the Borough Commission, the Borough Clerk shall distribute notice to all property owners abutting the street, from corner to corner, including if said property is located in an adjacent municipality, and to all public utilities and authorities operating in the Borough that the street is scheduled for improvement and indicating that a five-year moratorium will be in effect thereafter. Said notice shall declare that all connections and repairs to existing utilities in the street and all extensions, replacements or other such work, including the installation of service laterals and other utility connections from sewer, gas or water mains, electric and/or communications lines to the curb line of any lot, including unimproved lots, which requires excavation and disturbance of the street shall be completed within 30 days of receipt of notice. The time for the completion of the work may be extended by the Engineer, upon application by the person performing the work. This section shall not excuse any person, firm or entity from the requirement to obtain a permit as provided herein.
- B. No permit shall be issued for any street opening which would disturb the pavement of any road having been constructed, reconstructed or overlaid until a period five (5) years after the completion of said construction, reconstruction or overlay, except in the event of an emergency or hardship as described below. The five-year period as articulated herein shall be calculated from December 31 of the year in which said road was constructed, reconstructed or overlaid and run five years thereafter.
- C. Emergency opening. In the event that an entity shall be required to open a street and/or roadway as a result of an emergency, said emergency opening shall be reviewed by the Borough Engineer, and if the said Borough Engineer shall determine that no such emergency existed, then the entity so opening the street and/or roadway shall have a fine imposed upon such entity in the amount of \$5,000 for the first nonemergency opening, a fine of \$10,000 for a second nonemergency opening, and a fine of \$15,000 for a third nonemergency opening.
- D. Hardship condition. In the event in which a property owner has a hardship condition which requires a street opening permit to be issued contrary to Subsection B above, the Borough of Wildwood Crest may grant relief if all of the following conditions are met:
 - (1) A letter addressed to the Borough, c/o the Borough Clerk, is received detailing the hardship and necessity of opening the street in lieu of waiting the prescribed period of time.
 - (2) Upon receipt of the letter, a public meeting date will be set for the Board of Commissioners to take formal action.
 - (3) The property owner making request shall serve a notice to all property owners abutting the street, from corner to corner, by certified mail, return receipt requested, or by personal hand delivery, a minimum of 10 days prior to the public meeting.
 - (4) The property owner shall file a copy of the notice served to the property owners as required herein, with an affidavit of proof of delivery of notice with the Borough Clerk at least three days prior to the public meeting. The notice must:
 - (a) Identify the property by street address and block and lot;
 - (b) State the reason for the hardship;
 - (c) State the type of size of the utility opening;
 - (d) Advise the adjoining property owners that if they have any objections, they must advise the Borough Clerk, in writing, as to their objections to proposed street opening at least three days in advance of the public meeting;

- (e) State the date and time of the public meeting; and
 - (f) Be approved by the Borough Clerk prior to mailing.
- (5) The Board of Commissioners shall consider the request at a public meeting and review all objections received in writing. Approval or denial of the request shall be through formal adoption of a resolution.
 - (6) A request based solely on economic savings shall not be considered and will be automatically denied.
 - (7) An additional fee of \$500 will be assessed for all street openings applications located within the asphalt pavement.

E. Roadway restoration.

- (1) In the event that an emergency or hardship requires the opening of a roadway that has been resurfaced by the Borough during the previous five years, a full width, infrared restoration will be required. The restoration will consist of six-inch dense graded aggregate base course, and a six-inch hot mix asphalt base course, Mix I-2, brought to existing grade, within the excavated area. A full width, curb-to-curb milling two inches in depth to extend 20 feet beyond the limit of excavations will be performed after proper settlement in the trench area. The allowable time for the settlement shall be 45 days unless otherwise directed by the Borough Engineer. The final surface course shall be a two-inch hot mix asphalt surface course, Mix I-5. See detail at end of chapter.
- (2) Infrared restoration for repair of asphalt streets that are less than five years old and have been opened for utility work shall be utilized after the one-hundred-twenty- to one-hundred-eighty-day settlement period has elapsed.
 - (a) The following methods of construction shall apply:
 - [1] After completion of permanent restoration, the permittee shall provide infrared restoration.
 - [2] The area shall be swept clean of dirt, loose aggregate, or standing water.
 - [3] A chalk line shall be drawn 12 inches back from the seam of the original opening to use as a guide for raking.
 - [4] The infrared chamber shall be lowered over the repair, being sure to allow at least 12 to 18 inches of heated area beyond the perimeter of the original opening.
 - [5] To insure the proper heating time, the contractor shall check the surface temperature of the asphalt at seven minutes and every minute thereafter using an infrared thermometer so as not to allow the surface temperature to exceed 350° F. This is required since the ambient temperature, the color of the pavement, the size of the aggregate, and the moisture content influence the heating time.
 - [6] After the appropriate heating time (typically eight to 10 minutes), the asphalt surface will be softened to a depth of two to 2 1/2 inches.
 - [7] The infrared chamber shall be then removed from the heated area.
 - [8] The back side of a steel rake shall be used to neatly square off the repair, cutting 12 inches back from the original excavation along the chalk line.

- [9] The area inside the repair shall be deeply scarified, taking special care to eliminate the original seam between the repair and the road.
 - [10] Approximately 1/2 to one inch of existing three-fourths-inch stones shall be raked out and removed from the patch.
 - [11] Maltenes rejuvenator shall be applied to the repair and surrounding heated asphalt surface. Emulsified maltenes recycling agent (rejuvenator) shall be applied in a ratio of 1:1 with water. This solution shall be well dispersed with a commercial-grade sprayer at a rate of eight ounces per square yard of heated area. This application area shall include both the area under repair as well as the area heated but left undisturbed around the perimeter of the repair. The application shall take place after the area has been scarified and just prior to the addition of new asphalt. The rejuvenator replaces the light oil component of asphalt, which has oxidized out over time.
 - [12] Hot mix asphalt I-5 (1/4 to 3/8 aggregate) shall be added to the area to bring it up to proper grade and luted smooth.
- (3) Trench restoration may be permitted under special circumstances and at the option of the Borough and Borough Engineer for openings having a minimum impact on the longevity and serviceability of the street in question. See detail at end of chapter.

§ 67-6 Performance and maintenance surety.

Before any permit is issued for any work in a public street, certain performance and maintenance sureties are to be posted with the Borough Clerk.

A. Performance Surety.

- (1) The performance surety shall be in the form of either a corporate guaranty bond or a surety guaranty bond issued by a company authorized to do business in the State of New Jersey, in a form satisfactory to the Borough and in the penal sum of 100% of the full amount of the total estimated construction costs. A certified check drawn in favor of the Borough of Wildwood Crest for the same amount (100% of the total estimated construction costs) may be substituted for the performance surety. The estimated costs of the proposed work shall be based upon current market values, and said amount shall be prepared by the applicant and approved by the Borough Engineer.
- (2) In lieu of the above-mentioned performance surety, public utility companies or authorities may post an annual performance surety for \$20,000 or for an increased amount determined by the Borough Engineer. The form of surety shall be approved by the Borough Solicitor.

B. Maintenance surety.

- (1) In addition to the posting of a performance surety, and as a condition to the release of same, the Borough may, at their discretion, require the applicant to post a maintenance surety in the form of either a surety or guaranty bond issued by a company authorized to do business in the State of New Jersey, in a form satisfactory to the Borough Solicitor and in the penal sum of 15% of the performance surety. A certified check, drawn in favor of the Borough of Wildwood Crest, for the same percentage (15% of the performance surety) may be substituted for the maintenance surety.
- (2) Public utility companies or authorities posting and continually maintaining a performance surety in accordance with this section will not be required to post a separate maintenance surety.

- C. The applicant shall be responsible for all maintenance and repairs required at the site for a period of one year following completion of construction.

§ 67-7 Insurance requirements; indemnification and hold harmless clause.

- A. Insurance. All applicants and their agents and employees are required to be covered by a policy or policies of liability insurance. Said insurance shall provide coverage for general liability, including products and completed operations liability insurance in the amount of at least \$1,000,000 combined single limit/three \$3,000,000 aggregate, per occurrence. A certificate of insurance that confirms the aforementioned coverage shall be submitted to the Engineer whenever a performance surety is posted. The insurance shall be maintained by the applicant during the period of the permitted work, including restoration, and shall name the Borough of Wildwood Crest, its officers, employees and agents, and the Borough's Engineering firm, as an additional insured, and must include completed operations coverage.
- B. Responsibility and liability of the Borough. The Borough shall not be responsible for any injury or damage to persons or property resulting from the negligence of the applicant or his servants, agents or employees in making, grading or filling any excavation permitted under the terms of this section. By accepting this permit the applicant agrees to indemnify and hold harmless the Borough, its agents, servants, and employees, from any damage or liability sustained by any person or property arising out of the activities of the applicant or its agents, servants, and employees in conjunction with the work authorized by said street opening permit. Nor shall the Borough 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 work. Furthermore, by accepting this permit the applicant agrees, in the event that a claim is made against the Borough, its agents, servants, or employees arising out of the applicant's construction activities, to provide the Borough with a legal defense and to pay any and all attorney's fees or costs incurred by the Borough in connection with any claims, suit or litigation.

§ 67-8 Clearance for fire equipment.

The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within 15 feet of fire hydrants. Passageways leading to fire escapes or fire-fighting equipment shall be kept free of debris, construction materials or other obstructions.

§ 67-9 Protection of traffic.

- A. The permittee shall erect and maintain suitable barriers to confine the earth from trenches or other excavations so as to encroach upon highways as little as possible.
- B. The permittee shall construct and maintain adequate and safe crossings over excavations and across highways under improvement to vehicular and pedestrian traffic at all street intersections.
 - [1] Vehicular crossings shall be constructed and maintained of planks, timbers and blocking of adequate size to accommodate vehicular traffic safely. Decking shall be not less than four inches thick and shall be securely fastened together with heavy wire and staples.
 - [2] Pedestrian crossings shall consist of planking three inches thick, 12 inches wide and of adequate length, together with necessary blocking. The walk shall be not less than three feet in width and shall be provided with a railing, as required by the Borough Engineer.
- C. Traffic control plans and devices shall conform to the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD).

§ 67-10 Responsibility and liability of the Borough.

- A. The Borough shall not be responsible for any injury or damage to persons or property resulting from the negligence of the applicant or his servants, agents or employees in making, grading or filling any excavation permitted under the terms of this article.

- B. This chapter shall not be construed as imposing upon the Borough or any official or employee any liability or responsibility for damages to any person injured in the performance of any excavation work for which an excavation permit is issued hereunder; nor shall the Borough 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 work.

§ 67-11 Violations and penalties.

Any person, firm or corporation, or utility violating any of the provisions of this chapter shall, upon conviction thereof in a court of competent jurisdiction, be subject to a fine not exceeding \$2,000 or to imprisonment in the Cape May County Jail for a period not exceeding 90 days, or both. Penalties for violating the emergency road opening provisions are contained above in § 67-5(C) of this chapter. Each day or portion thereof during which a violation continues shall constitute a separate violation.

§ 67-12 Exemptions.

Street openings and excavations performed by the Borough of Wildwood Crest are exempt from the provisions of this chapter; all utility companies, public or private, are subject to and required to comply with the provisions of this chapter. However, a waiver of permit fees under this chapter may be granted at the discretion of governing body by resolution, in which event, such waiver shall not exempt the utility company from complying with the other provisions of this chapter.

§ 67-13 Construction Details.

See Appendix I, entitled Street Opening Ordinance Construction Details, on file with the Borough Construction Office, which is incorporated herein as if set forth at length.

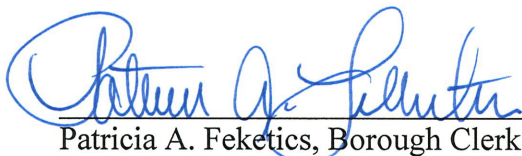
Section 2. The remainder of all other sections and subsections of the aforementioned ordinance not specifically amended by this Ordinance shall remain in full force and effect.

Section 3. All other ordinances in conflict with or inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.


Section 4. If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of this ordinance, but shall be confined in its effect to the provision directly involved in the controversy in which such judgment shall have been rendered.

Section 5. This ordinance shall become effective twenty (20) days after final passage and advertisement thereof as required by law.

Dated: April 9, 2024


Patricia A. Feketics, Borough Clerk


Don Cabrera, Mayor


Joseph Franco, Jr. Commissioner


Joseph Schiff, Commissioner

Introduced: March 27, 2024
Adopted: April 9, 2024