

**THE TOWNSHIP OF EWING
COUNTY OF MERCER, NEW JERSEY**

ORDINANCE NO. 16-04

1st Reading 1-26-16

Date to Mayor 2-10-16

2nd Reading &
Public Hearing 2-9-16

Date Returned _____

Date Adopted:
2-9-16

Date Resubmitted to Council _____

Approved as to Form of Legality

Effective Date:
2-29-16

Township Attorney

AN ORDINANCE AMENDING THE REVISED GENERAL MUNICIPAL ORDINANCES OF THE TOWNSHIP OF EWING, IN THE COUNTY OF MERCER, TO PROVIDE FOR A STREET OPENING MORATORIUM AND TO OTHERWISE REGULATE AND RESTRICT STREET OPENINGS IN THE TOWNSHIP

First Reading

MEMBER	AYE	NAY	ABS	NV	RES	SEC
Baxter				X		
Keyes-Maloney				X		
Steward	X					X
Wollert	X				X	
Schroth	X					

Second Reading

MEMBER	AYE	NAY	ABS	NV	RES	SEC
Baxter	X					
Keyes-Maloney	X					X
Steward	X				X	
Wollert	X					
Schroth	X					

By _____ Date _____ Accepted _____ Rejected _____
Mayor

Reconsidered
By Council _____ Override Vote YEA _____ NAY _____

President of the Council

Municipal Clerk

TOWNSHIP OF EWING
ORDINANCE NO. **16-04**

AN ORDINANCE AMENDING THE REVISED GENERAL MUNICIPAL ORDINANCES OF THE TOWNSHIP OF EWING, IN THE COUNTY OF MERCER, TO PROVIDE FOR A STREET OPENING MORATORIUM AND TO OTHERWISE REGULATE AND RESTRICT STREET OPENINGS IN THE TOWNSHIP

WHEREAS, the Township of Ewing (the “Township”) and other government entities expend significant public funds on the pavement and maintenance of public streets in the Township; and

WHEREAS, the Township has had continued issues with utility companies and contractors performing street openings on newly paved roads in the Township; and

WHEREAS, the Township desires to maximize the public investment in street paving and provide for the orderly regulation of street openings; and

WHEREAS, the Township is authorized by N.J.S.A. 40:67-1 to prescribe the time, manner in which and terms upon which persons shall exercise any privilege granted to them in the use of any street, highway, alley, or public place, or in digging up the same for laying down rails, pipes, conduits, or for any other purpose whatever.

BE IT ORDAINED by the Township Council of the Township of Ewing that the Revised General Municipal Ordinances of the Township of Ewing be amended to provide for a five-year moratorium on the opening of newly paved streets, as follows:

Section 1: Section 325-8, entitled “Excavation permit required” of the Revised General Municipal Ordinances of the Township of Ewing is hereby amended as follows:

No person shall cut, dig, drill or make any hole, trench or other excavation in or under any road, street, alley, highway or other public way, under the jurisdiction of the Township of Ewing, without first having obtained a permit from the Superintendent of Roads pursuant to Chapter 4, Administration of Government, § 4-37D. In no event shall any street opening occur within five (5) years of any street having been surfaced, except in the event of an emergency as provided for hereinbelow. Any person maintaining pipes, lines or underground conduits in or under the surface of any street by virtue of any law, ordinance or franchise may proceed with an excavation or opening without a permit when emergency circumstances demand the work be done immediately and where the permit could not reasonably and practically have been obtained beforehand. Such person, however, shall thereafter apply for a permit on the first regular business day on which the Township is open for business, and said permit shall be retroactive to the date when the work was begun.

Section 2: Section 325-11, entitled “Issuance of permit” of the Revised General Municipal Ordinances of the Township of Ewing is hereby amended as follows:

A. Upon the filing of a valid application, together with the permit fee required by this article, the Superintendent of Roads shall issue a permit. The permit shall state the identity and address of the applicant, the name of the street and location where the opening is to be made, the dimensions of the opening and the period during which the permit shall be valid.

B. Effectiveness of permit. No permit issued pursuant to this article shall be effective until the applicant shall provide proof of compliance with the One Call Damage Prevention System (N.J.S.A. 48:2-73 et seq.), as amended from time to time.

C. Notification of adjoining property owners and tenants. In the event that the permittee

is required pursuant to Section 325-16 to complete final pavement restoration for the full width of the road or to the centerline of the road, the permittee must notify the owners or tenants of the adjoining properties of the five (5) year moratorium imposed by the section following the permittee's restoration of the road. Such notice shall be in a form prescribed by the Township. Additionally, if in the opinion of the Superintendent of Roads, the work to be undertaken by the permittee is such that it will affect the use of properties abutting or adjoining the project, he shall require the permittee to notify the owners or tenants of such properties. In the case of either notice under this section, the permittee shall be required to provide to the Superintendent of Roads a certification that said permittee has notified the abutting and adjoining property owners and/or tenants, together with a list of those persons notified.

D. Notification of Police and Fire Public Safety Departments. The permittee shall notify, in writing, the Township Police and Fire Departments of his intention to excavate a street within the Township. Such notification shall state the nature of the work to be done and the location of such project. He shall also notify the Police and Fire Public Safety Departments when any openings or excavations have been closed, permitting traffic to flow thereon. The permittee shall, in all cases, be responsible for and required to have traffic directors to maintain traffic with regard to safety and flow.

E. A certificate of insurance shall be required of the applicant prior to the commencement of work as permitted by this article. Said certificate shall indicate that the applicant is insured against claims for damages for personal injury as well as against claims for property damage which may arise out of or from the performance of the work, whether such performance is done by himself, his subcontractor or anyone directly or indirectly employed by him. Such insurance shall include protection against liability arising from completed operations. Such insurance shall provide complete third-party coverage for the Township of Ewing and shall at all times be in an amount not less than \$1,000,000 for each person, bodily injury; and \$1,000,000 for each accident, bodily injury; and for property damages, in an amount not less than \$1,000,000. Failure of the applicant to file such certificate shall be grounds for denying a permit; provided, however, that Township departments, franchised public utilities and other governmental agencies may be relieved of the obligation of submitting such a certificate if they do the work contemplated under the permit with their own personnel or with a contractor insured as required. However, such waiver shall not release any such organization from any and all liability under any of the obligations provided herein.

F. Each applicant upon the receipt of a permit shall provide the Township with a surety bond to guarantee the faithful performance of the work authorized by said permit and the proper maintenance of said excavation for a period of not less than two years after the closure and completion of said work. The amount of the bond shall be determined by the Superintendent of Roads. However, in no event shall the bond furnished be in an amount less than \$1,000. If the applicant contemplates requesting more than one permit per year as said permits may be required by this article, the Superintendent of Roads may request the applicant to furnish a single bond as required herein in such amount as the Superintendent of Roads may deem necessary. Said bond must be written by a reputable surety company licensed to do business in the State of New Jersey and must be in a form as approved by the Township Attorney of the Township of Ewing. The bond shall be non-cancelable.

Section 3: Section 325-16, entitled "Restoration of street surface" of the Revised General Municipal Ordinances of the Township of Ewing is hereby amended as follows:

In all cases where permits are issued hereunder wherein the permittee is to restore the surface of the street, the following rules, regulations and requirements shall apply:

A. No permittee shall commence the restoration of any street foundation or surface until the Superintendent of Roads deems that settlement of the subsurface is complete and the area properly prepared for restoration.

B. All foundations shall be restored to a width of 12 inches wider than the width of the excavation, to a length of six inches longer than the length of the excavation.

C. The street surface shall be restored to a width of at least 12 inches wider than the width of the restored foundation and to a length of six inches longer than the length of the restored foundation.

D. When any foundation is restored by the use of cement concrete, the same shall consist of a mixture by volume of one part of portland cement, three parts of sand and five parts of gravel or stone.

E. All foundations and surfaces of Class A and Class B improved roads shall be restored with the same type of material and to the same depths as existed prior to the making of the excavation.

F. The foundation and surface of Class C improved roads or unimproved roads shall be made with such materials and in such manner as shall be directed in each particular case by the Superintendent of Roads.

G. In the event that any work performed by or for a permittee shall be, in the opinion of the Superintendent of Roads, unsatisfactory and the same shall not be corrected in accordance with his instructions within the time fixed by him or in the event that the work for which the permit was granted is not completed within the time fixed by the Superintendent of Roads, the Township may proceed to correct such unsatisfactory work or complete any such work not completed and charge the cost thereof, plus 15%, to the permittee or his surety.

H. Upon completion of all work accomplished under the provisions of the permit, the permittee shall notify the Superintendent of Roads, in writing, on a form prescribed by him. A certificate of final inspection shall be issued by the Engineer to the permittee no sooner than two years after the permanent restoration of the opening or excavation has been made, provided that the work authorized by the permit has been performed according to Township specifications. Prior to the issuance of a certificate, the Superintendent of Roads shall make a final inspection of the restoration to determine whether Township specifications have been adhered to. Inspection fees shall be imposed as set forth in Chapter 172, Fees.

I. If any settlement in a restored area occurs within a period of two years from date of completion of the permanent restoration, it shall in general be as conclusive evidence of defective backfilling. Any expense which may be incurred by the Township in correcting such settlement shall be paid by the permittee or recovered from his bond, plus 15%.

In all cases where the five (5) year moratorium set forth in Section 325-8 applies and permits are issued hereunder wherein the permittee is to restore the surface of the street, the following rules, regulations and requirements shall apply, in addition to A through I above:

J. If it is necessary to open a street that has been paved within the last five years of the permit application as defined under § 325-8, the permittee shall be required to either (1) complete final pavement restoration for the full width of the road to a distance of approximately 100 feet around the area of the openings or (2) with the approval of the Superintendent of Roads, utilize an infrared patch.

K. The distances in either direction of the opening will be determined by the Township Superintendent of Roads based on the proximity to other roadways or utility concerns. In most cases, unless an infrared patch is used, final pavement restoration will encompass 50 feet in both directions of the opening for a full width of the existing road. The Township Superintendent of Roads may allow resurfacing to the center line of the road only if the opening is completed within one lane and does not involve disturbance across the center line.

L. Temporary and final pavement restoration shall be completed in accordance with Township standards, and milling will entail the full length and width that must be repaved.

M. The restoration of the pavement shall be done no less than 60 days after the opening and no more than 120 days after the opening. This will allow for any settlement in the trench to take place before the final pavement is placed. Exceptions to this time frame may be allowed by the Township Superintendent of Roads dependent upon the time of year, which can affect the availability of paving materials.

Section 4: Section 172-22, entitled “Streets and sidewalks” of the Revised General Municipal Ordinances of the Township of Ewing is hereby amended as follows:

For sidewalk, curb and gutter permits, the fees shall be:

- A. Permit for repair of existing sidewalk, curb or gutter: \$15.
- B. Permit for construction of new sidewalk, curb or gutter: \$15.
- C. Permit for construction of sidewalk opening: \$15.

For street opening permits, the fees shall be:

- A. Permit for opening of street: \$75.
- B. Inspection fee at time of completion of restoration and prior to issuance of two year certificate of final inspection: \$2.50 / square foot for street openings not previously paved within five (5) years; \$1.00 / square foot for mill overlay areas required for streets paved within the past five (5) years [or \$75.00 per square foot of infrared patch area].

Section 5: New Section 325-23, entitled “Township Notice of Improvement” of the Revised General Municipal Ordinances of the Township of Ewing is hereby created:

Section 325-23 Township Notice of Improvement

When the Township shall improve or pave any street, the Superintendent of Roads shall give notice to all persons owning property abutting on the street about to be paved or improved and to all public utility companies operating in the Township, and all such persons and utility companies shall do all work which would necessitate excavation of the street within 30 days from the giving of such notice. The time may be extended if permission has been requested, in writing, and has been approved by the Superintendent of Roads.

Section 6 If any section, paragraph, subparagraph, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the specific section, paragraph, subparagraph, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

Section 7 Whole Ordinances or parts of Ordinances inconsistent with provisions of this Ordinance are hereby repealed.

Section 8 This Ordinance shall take effect after final passage and publication according to law.

STATEMENT

This Ordinance amends the Revised General Municipal Ordinances of the Township of Ewing to provide for provide for a moratorium on the opening of streets after such streets have been paved, and further to regulate and restrict street openings in the Township.