

# ARTICLE I STREET OPENINGS AND EXCAVATIONS

## 130-1 DEFINITIONS.

As used in this Article, the following terms shall have the meanings indicated:

**Applicant** shall mean the party in interest for or by whom the excavation is made, such as the water company for water pipes, sewer company for sewer pipes, and the gas company for gas pipes.

## 130-2 PERMIT REQUIRED; FEE; REGULATIONS FOR USE.

- a. *Permit Required.* No person shall tear up, excavate, open or perform work of any other nature on any street under the control of the Borough without first having obtained and being in possession of a valid permit to do such work issued by the Office of the Municipal Clerk.
- b. *Fee.* Fees must be paid when the application for a permit is made in the amounts as hereinafter set forth. A non-refundable fee of four hundred (\$400.00) dollars shall be charged for each permit and paid to the Borough prior to the issuance of the permit for all excavations less than or equal to fifty (50) square feet. If said area to be opened, excavated, disturbed or damaged exceeds fifty (50) square feet, the additional area shall be classified as excess footage and an additional fee shall be charged and payable by the applicant for all footage in excess of fifty (50) square feet at a rate of two dollars and fifty (\$2.50) cents per square foot. In addition, the applicant shall be charged a non-refundable fee for necessary Borough administration and inspection services relating to restoration of the road opening in the amount of one thousand (\$1,00.00) dollars for the first fifty (50) square feet and two dollars and fifty (\$2.50) cents per square foot for each additional square foot above fifty (50) square feet.
- c. *Expiration.* Any permit issued pursuant to this section shall become null and void unless work is commenced pursuant to the permit within ten (10) days of issuance of the permit and unless the applicant has sought and received a written extension from the office of the Municipal Clerk for commencement of the work.
- d. *Recently Resurfaced or Repaved Streets.* Unless otherwise required by an emergency, the Municipal Clerk shall not issue a permit for the opening or excavation of any street under the control of the Borough where such street has been resurfaced or replaced within five (5) years prior to the date of application for the permit. Any such emergency must be so certified by the Commissioner of Public Works, Parks and Public Property.
- e. *Other Necessary Permits or Licenses.* In addition to obtaining a permit from the Borough as outlined above, the applicant must likewise, where required by law, obtain all necessary permits or licenses from the public utilities whose lines, property or equipment may be affected by the opening, excavation or construction.

f. *Notice of Commencement of Work.* Subsequent to acquiring the necessary permits, the applicant must give forty-eight (48) hours notice to the office of the Borough Engineer and Borough Clerk before commencement of any street opening, excavation or construction.

### **130-3 APPLICATION FOR PERMIT; SUBMISSION OF PLANS OR DRAWINGS.**

All applicants for a street opening, excavation or construction shall prepare and file with the Construction Official an application obtained from the Construction Code Official. The application shall be accompanied by a plan or drawing describing the portion of the street to be opened or excavated, indicating the dimensions of the opening, the purpose for the opening and the expected duration of the opening or excavation. The application fees, permit fees, inspection fees, and performance bond amounts required through the application shall apply to each application requested under this Chapter 130, Section 3.

### **130-4 ADJUSTMENT OF FEES.**

The Board of Commissioners or the Borough Engineer may order the measurement of any section and then demand, by registered mail or direct service, an increased deposit to be made by the applicant if the original permit is for a lesser area than that actually opened.

### **130-5 TRAFFIC CONTROL; NOTIFICATION OF PUBLIC WORKS SUPERVISOR; MAINTENANCE OF SAFE WORKING CONDITIONS.**

a. During the period of time that the street is under construction, excavated or opened, it shall remain, wherever safely reasonable, open to traffic, and the applicant shall assist the Borough in providing for continuous vehicular access. In the event that detouring is necessary, it shall be coordinated with and approved by the Public Works Supervisor.

b. While under construction or excavation, the applicant shall be responsible for providing barricades or other safety devices or warnings, as reasonably required by the Borough Engineer, so as to inform motorists, bicyclists, and pedestrians of any construction or excavation. The applicant shall also promptly notify the Public Works Supervisor of any excavation or construction site and provide the Public Works Supervisor with the name, address and phone number where the applicant or his representative may be reached.

c. The contractor shall be responsible for maintaining safe working conditions at the site of construction or excavation. The provisions of the Construction Safety Code, as promulgated by the Commissioner of Labor and Industry under the authority of the Construction Safety Act, P. L. 1962, c. 45, (N.J.S.A. 34:5-166), shall be adhered to. Excavated materials shall be placed three (3) feet back from the edge of the trench. Where conditions do not allow for the sloping of the trench sides, the contractor shall brace and support the trench in accordance with recognized practice.

### **130-6 SPECIFICATIONS FOR WORK AND MATERIALS.**

a. The applicant shall be responsible for the immediate refilling of any excavation or construction site and the restoring of any street in accordance with the following specifications.

b. In general, the excavation, refilling and restoration of any street shall be in accordance with the New Jersey Department of Transportation, Standard Specifications for Road and Bridge Construction, as amended, hereinafter called NJDOT Standard Specifications, except as further modified herein:

1. Location of Existing Utilities. Prior to any excavation, the contractor shall bear the responsibility of locating and marking, either by paint on the pavement or placement of stakes in the ground, the location of all water services, gas services, gas mains, water mains, sewer mains, telephone and electric raceways or conduits and drains within the area to be excavated. In addition, the contractor must comply with P.L. 1994, c. 118, known as the Underground Facility Protection Act. (N.J.S.A. 48:2-73)

2. Pavement Cutting. Pavement shall be cut with pneumatic hammers or mechanical pavement cutters, saws or other methods approved by the Borough Engineer.

3. Trench Excavation.

(a) In general, the preferred method of installing any underground utility shall be through the use of tunneling or hydraulic jacking, whereby disturbance to the roadway pavement is minimized. Where this is not feasible, the trench in which any utilities and/or appurtenances are to be constructed shall be excavated by open cut from the surface, except where otherwise stated in writing and, in all cases, in such a manner and to such a depth and width as will give suitable room for bracing, supporting, pumping and draining.

(b) The maximum trench width at the top of the pipe shall be two (2) feet plus the outside diameter of the pipe. The contractor may, where it will not interfere with the work or adjacent structures or property, and only after receiving approval from the Borough Engineer, slope the sides of the excavation beyond the width specified above. The sides of the trench may only be sloped from a point starting two (2) feet above the top of the pipe.

4. Depth of Utility. In general, the depth at which the utility is installed shall be in accordance with the requirements of the applicable utility company or code, but in no case shall it be less than eighteen (18) inches below the finished surface of the roadway.

5. Length of Trench to be Opened.

(a) No more trench shall be excavated than can be properly backfilled within the same day. In addition, if the trench area is going to be open to traffic, the trench shall be paved by using the methodology hereinafter specified for street restoration, by using a temporary riding surface such as coal patch or steel plates or by some combination of the above.

(b) The length of trench to be opened or the area of the surface to be disturbed or unrestored at any one time shall be limited by the Borough Engineer with regard to expeditious

construction and to the convenience and comfort of the persons residing in the neighborhood or frequenting the streets in question. New trenching will not be permitted when earlier trenches need backfilling or labor is needed to restore the surface of the streets to a safe and proper condition.

6. Acceptance of Utility Company. Prior to final restoration of the roadway, the applicable utility company shall certify that the installation has been completed in accordance with their requirements, including but not limited to floodproofing, joint sealing and corrosion protection, where applicable. A copy of this acceptance is to be provided to the Cape May Point Construction Official.

7. Backfilling Trenches.

(a) The trench or other excavation shall be carefully backfilled with such excavated material. No rock or frozen earth shall be put in the trench until the backfill has reached at least two (2) feet above the top of the utility. Backfill to a height of two (2) feet above the top of the utility pipe shall be made with earth which shall be free from stones or rock fragments of a size larger than one (1) inch in diameter. Below this level, the backfill shall be placed in layers not more than six (6) inches thick and shall be compacted with approved flat-faced tampers. All backfill more than two (2) feet above the top of pipes shall be compacted as follows:

(1) By approved vibratory soil compactors, if the backfill material is predominantly sand or sand and gravel but contains more than twelve percent (12%) by weight of the material that will pass the two-hundred-mesh sieve.

(2) By approved vibratory compactors or puddling if the materials are predominantly sand or sand and gravel and contain not more than twelve percent (12%), by weight of material that will pass the two-hundred-mesh sieve.

(3) By approved flat-faced mechanical tampers if the backfill material is not predominantly sand or sand and gravel.

(4) Backfill around inlets, manholes and other subsurface structures shall be compacted by flat-faced mechanical tampers.

(b) In paragraph b,7(1) and (2) above, approved flat-faced mechanical tampers may be substituted for the vibratory soil compactors where the shoring and bracing of the trenches or other special conditions make the use of vibrating compactors impractical. Where mechanical tampers or vibrating soil compactors are used in accordance with the foregoing provisions, the backfill shall be placed and compacted in layers not more than six (6) inches thick, loose measurements. Where trenches are puddled in accordance with the foregoing provisions, the backfill shall be placed in successive lifts, not more than four (4) feet thick, and each lift shall be thoroughly puddled before the next lift is placed. The application of water shall be continuous until all puddling of each lift is evidenced by a constant head without further addition of water. If more than a six-inch depth of trench remains unfilled after the final puddling, the remaining backfill shall be tamped or vibrated as specified in subsection b,7(1) and (2) above. The surface

of the trench backfill shall be rounded to allow for compression and shall be finally compacted by a three-wheel ten-ton roller and have a load of not less than three hundred thirty (330) pounds per inch of width of rear wheels. Rock in pieces weighing more than fifty (50) pounds shall not be put in the trench. All sheeting shall be withdrawn unless ordered left in place by the Borough Engineer. As the trench is refilled, the sheeting and timbering shall be removed in such a manner as to avoid the caving of the trench. The vacancy left by the sheeting shall be carefully refilled by ramming or as otherwise directed. All materials excavated, if suitable, shall be used for backfilling trenches or other excavations or deposited in embankment. None shall be wasted without permission of the Borough Engineer. Surplus and waste materials shall be removed from the site. Broken pavement, large rocks and all objectionable material are to be kept segregated from the clean surplus material and trucked to a separate disposal site from that of the clean material. When a bulldozer or payloader is used in backfilling a trench, the contractor shall station a man at the side of the trench to carefully inspect and supervise the backfilling operation.

(c) The method of backfilling and compaction shall be established at the discretion of the Borough Engineer, depending upon the quality of the backfill material encountered at the site, and is not necessarily limited to the above described methods. Any changes required by the Borough Engineer will not be more stringent than those methods outlined herein.

8. Care of Existing Structures. Care shall be taken not to move, without the consent of the Borough Engineer, any sewers, drains, culverts, poles, water or gas pipes, etc., or structures near them that may be encountered during the construction. They shall be securely hung, braced and supported in place by the contractor at his own expense. All utility poles adjacent to the excavation shall be protected and braced during construction. Whenever it is necessary to interfere with the structures, the contractor shall maintain services at his own expense and repair all damages. He shall leave them in as good condition as he found them.

9. Dewatering. The contractor shall furnish sufficient pumping equipment and shall provide at his own expense satisfactory drainage whenever needed in the trench and other excavation during the progress of the work. All water pumped and bailed from the trench or other excavation shall be conveyed in a proper manner to a suitable point of discharge. The flow in all sewers, drains and watercourses encountered on the work, in gutters along the side of or across the work, shall be entirely provided, both temporarily and permanently, as required, by the contractor and at his expense.

10. Street Restoration.

(a) The trench restoration in the street (except in county roads) will consist of a six-inch gravel base course, two-inch bituminous stabilized base course, Mix 1-2 and a FABC 1 Type Surface Course, Mix 1-5, two-inches thick. The gravel base course and bituminous stabilized base course shall be applied immediately upon completion of the purpose for the opening.

(b) The six-inch gravel base course shall be Soil Aggregate Type 2, Class A or B, conforming to the requirements specified respectively thereof in Division 8, Section 8, of the NJDOT Standard Specifications.

(c) The materials for the bituminous stabilized base course shall conform to Division 3, Section 2A, Article 2, of the NJDOT Standard Specifications.

(d) The final surface course shall not be placed for at least thirty (30) days after initial completion and placement of the stabilized base course. The final surface course shall be completed no more than sixty (60) days after initial compaction and placement of the stabilized base course. During the interim period between placement of the bituminous stabilized base course and the final surface course, the pavement shall be brought up to finished grade by the placement of temporary cold-patch material, which shall be completely removed prior to final paving. Alternately, the contractor may place additional stabilized base course material to bring the pavement to finished grade and then remove said additional material by pavement milling prior to final surfacing. In no case shall the total pavement thickness be less than the minimums specified above.

(e) The method of construction of the six-inch gravel base course, the two-inch bituminous stabilized base course, Mix 1-2, and the two-inch FABC-1 Surface Course, Mix 1-5, shall conform to the requirements of Division 3 of the NJDOT Standard Specifications.

(f) All work is to be inspected by the Borough Engineer. The contractor shall notify the Borough Engineer forty-eight (48) hours in advance of performing any work under street restoration.

### **130-7 BONDING REQUIREMENTS.**

a. Every application shall be accompanied by a performance bond in the minimum amount of fifty thousand (\$50,000.00) dollars or such greater amount as may be deemed necessary by the Borough Engineer to be sufficient to satisfy the purpose set forth in paragraph c. below.

b. A public utility or construction company, in lieu of giving a separate bond for each project, may annually, once in January of each year, post a bond in an amount sufficient to encompass the estimated work performed by the company during the ensuing calendar year. In the event that construction, excavation or road openings exceed the posted bond amount, additional bonds and/or cash security will be required.

c. The purpose of depositing the performance bond is to guarantee to the Borough that any construction, excavation or road opening will be performed and completed in an acceptable fashion consistent with the provisions of this Article. In the event that the Borough Engineer determines that the excavation, construction or restoration and refilling has not been performed consistent with the requirements of this Article, he shall be entitled, after reasonable notice to the applicant, to correct such deficiencies, to take the performance bond, surety bond or cash posted by the applicant and utilize them to correct any deficiencies, and have the area restored to its proper condition.

### **130-8 RESURFACING AND MAINTENANCE REQUIRED.**

The applicant shall fill in and resurface any excavated section and shall maintain the same in a condition similar to the surrounding surface area for a minimum period of one (1) year. During this one-year period the performance bond shall remain in full force and effect. Upon certification of the Borough Engineer, by inspection made thereof, to the Board of Commissioners, the bond shall be cancelled by motion of the Board of Commissioners. If such inspection does not show the surface to have been substantially returned and maintained in its original condition and level, the Borough shall use the bond proceeds on notice of intent to do so by ten (10) days' registered mail or direct service notice from the Borough Engineer. The Borough may use the same for the proper leveling and surfacing of the section, returning any balance of the deposit or charging the applicant for any excess required to place the section in proper condition. If, during the ten-day period, the applicant corrects the condition and notifies the Borough Engineer, in writing, then the notice shall be conditioned as a new application subject to reinspection and maintenance for one (1) year from date of correction notice.

### **130-9 INSURANCE REQUIREMENTS; INDEMNIFICATION AND HOLD HARMLESS CLAUSE.**

a. Every application for construction, excavation or opening of a street under the control of the Borough shall be accompanied by a certificate of insurance demonstrating that the applicant possesses personal injury liability insurance in the amount of five hundred thousand (\$500,000.00) dollars and property damage liability insurance in the amount of five hundred thousand (\$500,000.00) dollars. The insurance shall be maintained by the applicant during the period of construction or excavation and shall name the Borough of Cape May Point as an additional insured.

b. The applicant shall also agree, in writing, 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 negligence of the applicant or his agents, servants and employees during the course of any construction, excavation, restoration or refilling of any road or street under the control of the Borough. The agreement shall require the applicant, in the event that a claim is made against the Borough, its agents, services and 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.

### **130-10 HOURS OF WORK; EMERGENCIES.**

a. No opening shall be made during the months of July and August. Work shall be performed between the hours of 7:00 a.m. and 7:00 p.m. In emergent situations, with a determination of an emergency being in the sole discretion of the Public Works Supervisor, these requirements may be waived under those terms and conditions to be set by the Public Works Supervisor.

b. When any work is done on a weekend by a contractor, the inspection shall be done by the Borough Engineer and must be paid for by the applicant at those rates to be set by the Borough.

c. *Emergency Permit.* In the event of an emergency, a permit may be issued by any member of the Borough Commission, as well as the Borough Construction Code Official, and the deposit made on the next business day.

### **130-11 RESPONSIBILITY OF PUBLIC UTILITIES.**

A public utility shall not directly or indirectly charge to or claim indemnity from any other party, such as its customers, for the application, deposit and proper repair and maintenance of any excavated area.

### **130-12 APPEALS.**

Any person injured by an official action under this Article may file an appeal with the Board of Commissioners within ten (10) days from the date of the rendering, service or mailing of the appealed ruling. Any notice may be by ordinary mail to the address set forth in the application unless otherwise ordered hereunder. An appeal shall specify the grounds for the same and the relief sought, and all records of the Borough Engineer shall be deposited with the Board of Commissioners not less than ten (10) days nor more than twenty (20) days from the date of filing the appeal. Ten (10) days' notice shall be given by the Borough to all parties in interest of the date of the hearing of the appeal.

### **130-13 MAJORITY VOTE.**

The vote of the majority of the Board of Commissioners shall control its action under this Article.

### **130-14 VIOLATIONS AND PENALTIES.**

- a. Any person violating any provision of this Article shall be subject to the general penalty established in Chapter 1, Section 1-5 of this Code.
- b. Any person violating the provisions of this Article shall not obtain a permit under this Article for a three-year period.