

ORDINANCE 17-15

AN ORDINANCE OF THE BOROUGH OF SEASIDE HEIGHTS, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING THE BOROUGH CODE OF THE BOROUGH OF SEASIDE HEIGHTS, SO AS TO AMEND CHAPTER 203, ENTITLED "STREETS AND SIDEWALKS"

BE IT ORDAINED by the Mayor and Borough Council of the Borough of Seaside Heights, County of Ocean, and State of New Jersey, as follows:

SECTION 1. The Borough Code of the Borough of Seaside Heights is hereby amended and supplemented so as to amend Chapter 203 entitled "Streets and sidewalks," so as to create Article III which shall be entitled "Street Excavations," and which shall read as follows:

§ 203-12 Permit Required.

No person, business or corporation shall dig up, break, tunnel, undermine, disturb, or in any manner excavate any Borough street, road, right-of-way, sidewalk, curbing, or public easement, or make or cause to be made any excavation in or under the aforementioned areas for any purpose or place, or deposit, or leave in any of the aforementioned areas any earth or other excavated material obstructing or intending to interfere with the free use of same unless such person shall first have obtained an excavation permit therefor from the Code Enforcement Officer as hereinafter provided. Openings may be made without the necessity of filing a written application and obtaining an excavation permit only in emergencies, such as a broken or frozen water main, gas leak, or other happening which would endanger public life, health and safety; provided, however, that notice thereof shall be immediately given verbally to the Municipal Engineer, Superintendent of Public Works or Police Department, and written application in accordance with this chapter shall be made within 48 hours.

§ 203-13 Application for Permit

No excavation permit under this chapter shall be issued until the person, business or corporation seeking such permit shall have first done the following:

A. Made a written application for the issuance of such permit submitted to the Code Enforcement Officer, signed by the person making the application or by a duly authorized agent, and containing the following information:

(1) Name, address and telephone number of the person for whom the work is to be performed.

- (2) Name, address and telephone number of the person performing the work.
- (3) Location of the work area, including a map or sketch.
- (4) An outline or plan describing the work to be performed.
- (5) Number of square yards of surface to be opened.
- (6) Cubic content of material to be excavated.
- (7) Type of surface to be removed or disturbed.
- (8) Cubic content of material to be burrowed.
- (9) Date and time of commencement and estimated date of completion with an agreement by the applicant to refill or resurface the opening or excavation so that the street surface shall be restored to the same condition, or better, in which it was before.
- (10) The types of proposed traffic control devices and procedures to be utilized for the project, which devices and procedures shall be in conformity with the guidelines set forth in the Manual of Uniform Traffic Control Devices, current edition, hereinafter called the "Manual."
- (11) The names and telephone numbers of at least two persons responsible on a twenty-four-hour call basis to handle emergency repairs for the contractor.

B. Permit fee. A permit fee shall be charged for the issuance of an excavation permit which shall be in addition to all other fees for permits or charges relative to any proposed construction work. The following schedule of nonrefundable fees is established to be paid to the Borough in conjunction with the issuance, supervision and inspection of excavation work.

Opening not greater than 50 square feet: \$75.

Opening up to 100 square feet: \$100.

Opening up to 200 square feet: \$125.

Opening up to 400 square feet: \$175.

Opening over 400 square feet: \$250 plus \$0.50 per square foot in excess of 400 square feet.

In no case shall a permit be issued until the fees, the guarantees required by Subsection C below, and proof of insurance required by Subsection D below have been received by the Borough.

C. In the case of openings more than 16 square feet and four feet deep, the applicant must furnish to the Borough a cash or surety bond to guarantee that the opening or trench made by the permittee will be closed properly. Upon completion of the work in a satisfactory manner, the bond or cash surety will be released in return for a maintenance bond or cash guarantee that the road, street, or highway over the same will remain in good condition for at least one year after the closing by the permittee. The minimum amount of each maintenance bond shall be 25% of the amount of the cash or surety bond, but shall not be less than \$500. A utility company may, in lieu of giving a separate maintenance bond on each project, annually, once in January of each year, give the Borough such a bond for \$5,000; provided that when the total linear footage of openings or trenches made by such utility company reaches 5,000 feet, such utility company may give either an additional bond or deposit cash security in an amount equivalent to \$1 per foot of length of additional openings or trenches it desires to make in that calendar year.

D. Deliver to the Borough satisfactory proof of insurance in the minimum amount of \$1,000,000 per person, and \$3,000,000 per occurrence, insuring the permittee and the Borough against liability for injury or loss sustained by any person or persons as a result of the acts of commission or omission of the permittee, or any servants, agents or employees of the permittee.

§ 203-14 Conditions of permit

- A. In the case of all openings larger than 16 square feet and four feet deep, the application shall be forwarded to the Municipal Engineer for review as to whether or not a permit should be issued. If it is recommended by the Municipal Engineer that a permit be issued, the Code Enforcement Officer will issue same and forward the money tendered with the application and permit fee to the Chief Financial Officer for deposit. If the permit is denied, then the Code Enforcement Officer shall retain the application fee and notify the applicant in writing no later than five days after the action of the Municipal Engineer regarding the application.
- B. In addition, every opening and all excavations, backfilling or grading shall be done by the person to whom any permit is issued. Such person shall give at least 72 hours' written notice to the Municipal engineer prior to the commencement of any work.
- C. All work shall be performed and completed in such a manner as to cause a minimum of interference with travel on the street affected. No street shall be closed to traffic unless the closing is approved by the Chief of Police. Street and/or traffic lanes approved for closure to traffic must be closed and then reopened at the times specified in the application, with no deviations permitted. The Police Department shall be informed in writing of all street closings at least 24 hours in advance, except where the work is of an emergency nature, in which case notice shall be given to the Police Department when work commences.
- D. Construction work will be permitted only during the hours and times specified on the application and in accordance with municipal ordinances which regulate the times of construction work. The Municipal Engineer or Public Works Superintendent must approve emergency situations or work required beyond the permitted time.

§ 203-15 Notice of street paving by Borough

When the Borough shall improve or pave any street, the Code Enforcement Officer shall first give notice by certified and regular mail to all persons owning property abutting on the street about to be paved or improved, and to all public utilities and authorities operating in the Borough, and all such persons, utilities, and authorities shall make all connections as well as any repairs thereto which would necessitate excavation or disbursement of the street, within 90 days from the provision of such notice. The time shall be extended if permission is requested in writing and approved by the Municipal Engineer.

§ 203-16 Permits not to be issued on streets improved within five years.

No permit shall be issued by the Code Enforcement Officer to any person which would allow an excavation or opening in a street surface which was paved or improved less than five years prior to the date of the application, unless the applicant can clearly demonstrate that public health or safety requires that the proposed work be permitted or unless an emergency condition exists or the applicant can demonstrate through documentation a significant personal hardship, including but not limited to a medical hardship. In such cases, the applicant shall make the request for a waiver of the permit moratorium in writing to the attention of the Borough Council, which may approve such waiver by resolution.

§ 203-17 Construction operations

- A.** Whenever an opening is made in a paved road, the surface pavement shall be cut with a pavement cutter no wider than one foot outside of the proposed excavation. Where paved sidewalks and gutters or curbing are to be crossed, they shall in no case be removed, but the work shall be done by tunneling beneath them. The work shall be so conducted as to not interfere with the water, sewer, or gas mains or any connections with any building or structure until permission of the proper authorities shall have been obtained. All rock within five feet of any water, sewer, or gas main or other pipe, which may be damaged thereby, shall be removed without blasting. No excavation that will damage trees or shrubbery shall be made without the approval of the Municipal Engineer.
- B.** Where 25% or more of the existing pavement surface has been destroyed or disturbed, final paving shall consist of a one and one-half (1 ½) inch overlay of the entire width of the pavement surface with Bituminous Concrete Type FABC (Mix I-5).
- C.** All pavement openings for which any permit is granted shall be replaced by the permittee by a temporary pavement of a bituminous concrete Type A immediately after filling. Permanent pavement is to be restored by the permittee no less than 30 days nor more than 60 days after opening is made, unless this time is extended by the Municipal Engineer, depending on the road and weather conditions.
- D.** In the event of a snow or ice storm, the permittee will be required to take whatever steps the Chief of Police and Superintendent of Public Works deem necessary to secure the traveled way for snow removal operations. At the first sign of precipitation, all work on the shoulders and traveled way shall stop and they shall be cleared of all dirt, etc., and then backfilled so as not to interfere with Borough snow operations until the weather permits resumption of work.
- E.** The permittee shall maintain the trench and regrade the subgrade as required until final paving is installed. In case the work has not been completed before the day of expiration as shown in the permit and the permittee has not requested an extension of time, the Superintendent of Public Works may, if he or she deems it advisable and necessary, take steps to backfill the trench and replace a permanent pavement over the opening for which the permit has been issued, and if any extension of time beyond said date is needed for the completion of work, a new application must be filed if required by either the Municipal Engineer or the Superintendent of Public Works.

- F.** The restoration of the opening or trench shall be maintained for one year after completion.
- G.** In the event that the proposed excavation or opening is to extend across the entire width of a public street, no more than 1/2 of the traveled road surface shall be opened at any one time and such half shall be backfilled before the other half is opened. No excavation within and/or immediately adjacent to roadways available to traffic shall remain open after the hour of 5:00 p.m., nor over any weekend or holiday, unless special permission has been granted by the Municipal Engineer.
- H.** The excavation and all piles of excavated material, or any stored material to be used in the work to be performed, shall be carefully marked with barriers complete with appropriate warning devices that shall conform to the Manual. The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions shall be maintained at all times so as to minimize inconvenience to the public and to the occupants of the adjoining property, and to assure the passage of emergency vehicles including first aid, fire and police.
- I.** During the hours of actual operation, construction, excavation or other work at the site, the permittee shall maintain and have in attendance at least one flag person who shall be responsible for the flow of traffic to assure safe passage of vehicles in both directions and to avoid traffic hazards during the use of heavy equipment. When traffic conditions permit, the Chief of Police (or his or her duly authorized representative) may, by written approval, permit the closing of municipally-owned streets to all traffic for a period of time prescribed by the Chief if, in the Chief's opinion, it is necessary. Such written approval shall require that the permittee give notification to various agencies, first aid and fire companies, and to the general public. In such cases, such written approval shall not be valid until such notice is given. Warning signs shall be placed far enough in advance of the street, and cones or other approved devices shall be placed to channel traffic, in accordance with the instructions of the Chief of Police of the Borough.
- J.** The permittee shall maintain safe crossings for two lanes of traffic at all intersections where possible, and safe crossings for pedestrians at intervals not more than 300 feet.
- K.** No work may commence before markout by the appropriate agencies. Right-of-way or property monuments and/or markers, traffic control devices and other public entity maintained devices in the right-of-way shall not be removed or disturbed unless permission to do so is first obtained in writing by the Municipal Engineer.
- L.** No person shall divert or pump surface or other waters onto or across Borough roads or do any act upon property abutting Borough roads resulting in the flow or spill of water from the property across the Borough roads. No dewatering equipment, well, points, or piping shall occupy the traveled portions of roadways unless specifically approved and adequately protected to the satisfaction of the Municipal Engineer.
- M.** Effluent from dewatering systems shall be discharged in such a manner that erodible soils are not adversely affected. All silt and sediments being carried in the dewatering effluent must be intercepted prior to effluent discharge into any drainage system through use of a sedimentation basin designed to allow retention of discharge for sufficient time to render such waters free of suspended silt and sediments. The use of screening devices in lieu of a sedimentation basin must receive specific approval and be employed only for minor flows.

N. The permittee shall not interfere with any existing utility without the written consent of the utility owner. If it becomes necessary to relocate an existing utility, this shall be done by the owner. No utility owned by the Borough or any authority shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving a privately owned utility shall be similarly borne by the permittee unless the permittee makes other arrangements with the person or persons owning the utility. The permittee shall support and protect by methods approved by the Municipal Engineer, all pipes, conduits, poles, wires and other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along and across the work. The permittee shall secure approval of method of support and protection from the owner of the utility in case any of the pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement of devices are to be considered as part of a substructure, the permittee shall promptly notify the owner thereof. All damaged utilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this subsection that the permittee shall assume all liability for damage to utilities and any resulting damage to or injury to anyone because of such utility damage and such assumption of liability of a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The Borough shall not be made a party to any action because of this section.

§ 203-18 Placement of excavated materials and backfilling

- A. All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the Municipal Engineer shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage sites. However, if material requires disposal, the permittee shall dispose of all excavated materials at an approved location for this purpose. In its application, the permittee shall also describe in detail the location where any and all excavated materials shall be disposed of and provide written documentation that the proposed location for disposal is an approved location for this purpose. If said location is a landfill, the permittee shall provide proof that said landfill is registered and licensed to accept such material.
- B. All material excavated shall be laid compactly along the side of the trench and kept trimmed so as to cause as little inconvenience as reasonably possible to vehicular and pedestrian traffic, or as specified by the Superintendent of Public Works or the Municipal Engineer. Whenever necessary, in order to expedite the flow of traffic or to abate the dirt or dust nuisance, toe boards or bins may be required by the Municipal

Engineer to prevent the spreading of dirt into traffic lanes. Further, no person shall place any material on or along any Borough road, gutter, or shoulder resulting in any stoppage of drainage along the road or roads.

- C. Any and all material excavated and stored or piled at or near any intersection, driveway or other access roads or alleys shall be so stored and piled as to provide an adequate line of site for those persons entering and exiting the intersection streets, alleys or driveways, which line of sight shall provide a minimum of 150 feet visibility.
- D. The permittee shall completely backfill the excavation and replace as great a portion as possible of the material excavated, compacting it by flushing, tamping or other suitable means, and supply additional material where there is a deficiency. Whenever the Municipal Engineer shall deem the material unsatisfactory for backfill, the permittee shall backfill the trench with sand, or other acceptable material compressed as required, and shall remove all excess material from the premises. If tamping alone is employed, the material shall be placed in layers not exceeding six inches in thickness, moistened as directed, and each layer adequately tamped until thoroughly compacted.
- E. Where excavations are made in tunnels beneath concrete pavement or beneath a pavement having a concrete base, the tunnel shall be backfilled with concrete composed of one part of cement, two parts of sand, and five parts of broken stone or washed gravel, or another approved material, tamped into place so that the cavity is completely filled.
- F. As the excavation work progresses, all streets shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All cleanup operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the Superintendent of Public Works. From time to time, as may be ordered by the Superintendent of Public Works, and in any event immediately after completion of the work, the permittee shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the work, and upon failure to do so within 24 hours after having been notified to do so by the Superintendent of Public Works, the work may be done by the Superintendent of Public Works and the cost thereof charged to the permittee. The permittee shall also be liable for the cost thereof under the surety provided hereunder.
- G. After the backfilling of the opening or trench has been completed as above specified, the restoration of the pavement shall be governed by the following applicable rules:
 - (1) In the case of an opening or trench in the earth shoulder, the permittee shall restore the top four inches of the trench or opening with material capable of supporting the growth of grass and shall fertilize and seed the surface with grass seed.
 - (2) In the case of a gravel pavement, the permittee shall fill in the top eight inches of the excavated trench or opening with compacted soil aggregate Type I-2.
 - (3) In the case of a penetration macadam road that consists of broken stone of various sizes, the permittee may salvage the broken stone and replace it in the top of the trench similar to the original pavement and cover it with two inches of hot-mixed bituminous concrete.
 - (4) In the case of a gravel-based bituminous concrete road, the permittee shall restore the surface with six inches of compacted soil aggregate Type I-2, covered with

- four inches of bituminous stabilized base stone mix and two inches of bituminous concrete surface course, Type FABC-1, Mix No. I-5.
- (5) In the case of a bituminous-treated gravel road, the permittee shall restore the surface with six inches of compacted soil aggregate Type I-2, covered with four inches of bituminous stabilized base stone mix and two inches of bituminous concrete surface course, Type FABC-1, Mix No. I-5.
 - (6) In the case of portland cement concrete surfaces, steel mesh reinforcement or deformed steel rod reinforcement (rebar) shall be provided in the spacing gauge or diameter and placement as set forth by the New Jersey Department of Transportation Specifications, 1983 Edition, or as amended. All concrete thickness, classifications and compressive strength shall be in conformance with the current New Jersey Department of Transportation standards. Admixtures or curing compounds shall be added only upon approval of the Municipal Engineer.
 - (7) In the case of any special condition, the permittee shall restore the trench or opening as directed by the Municipal Engineer. If the Borough is required to restore the pavement, the final charges, based on the schedule of costs, shall be billed to the permittee upon the completion of the work by the Borough.

§ 203-19 Permit regulations

- A.** The applicant in accepting a permit under this article shall be deemed to have agreed to be liable for, and to indemnify and save harmless the Borough from and against, any and all loss or costs or damages incurred by reason of any damage to any property, injury to any person or any loss of life resulting from its negligence or the negligence of its agents, employees, or subcontractors in undertaking or performing the work covered by the permit, or in failing to properly guard or maintain the opening or excavated material, equipment, or materials to be incorporated in the work.
- B.** No permit will be approved for openings scheduled during the period from December 15 to March 1, except in cases of emergency or when deemed necessary by the Municipal Engineer.
- C.** Construction equipment shall not be positioned or stored on any street after working hours unless approved by the Superintendent of Public Works.
- D.** When a contractor is obligated to supply uniformed police officers on the job site as a condition of its permit, all arrangements shall be made through the Traffic Division of the Seaside Heights Police Department, who may assign the officers 48 hours in advance of the commencement of work on the project in accordance with the provisions of municipal ordinances regulating off-duty services of municipal police officers.
- E.** Flagmen, when utilized in construction work areas, shall be equipped with the following:
 - (1) Orange reflectorized vests.
 - (2) Red flag, measuring 24 inches by 24 inches. For night conditions, lights shall be

used in lieu of the flag.

- (3) Sign paddles consisting of STOP/SLOW messages, as per the Manual on Uniform Traffic Control Devices, current edition. When used at night, the STOP and SLOW faces shall be reflectorized. All traffic control devices utilized on any road construction within the Borough of Seaside Heights shall conform to the Manual.

§ 203-20 Revocation of permit

The Borough may, at any time, revoke or annul any permit, or extension endorsed thereon for cause, or for performing work not in accordance with the permit granted, or for failure or neglect to pursue the work in accordance with such permit, or for any conditions which might prove to be dangerous or injurious to any person or interests of the Borough. Every person receiving a permit, or any extension thereof, shall accept the same subject to the foregoing provisions and conditions, without any liability or responsibility attaching to the Borough for any loss or damage that might result by reason of such revocation.

§ 203-21 Borough exempt from permit requirement

Nothing contained in this article shall be construed as requiring the issuance of a permit for the performance of any opening or excavation by the Borough, its employees, or contractors for Borough projects, including without limitation road improvement projects.

§ 203-22 Violations and penalties

Any person violating or failing to comply with any of the provisions of this article shall, upon conviction thereof, be punishable by a fine of not less than \$500 nor more than \$1,250, by imprisonment for a term not to exceed 90 days, or by community service of not more than 90 days, or any combination of fine, imprisonment and community service as determined by the Municipal Court Judge. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violation may be punished as provided above for each separate offense. The violation of any provision of this article shall be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. Nothing in this article shall be understood or construed by any permittee or other person to absolve any permittee or its employees, agents or contractors of any responsibility for any damage done to any person or property in opening or digging a trench in any public road, street, or highway.

§ 203-23 Borough held harmless

The permittee shall indemnify and save harmless the Borough, its officers, agents and employees from any loss, injury or damage resulting from any negligence or fault of the

permittee, its agents, servants or employees or contractors in connection with the performance of any of the work covered by the permit. The terms and provisions of this article shall be deemed a covenant by such permittee to so indemnify and save harmless the Borough of Seaside Heights of curb being repaired.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 4. This ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Borough Council on first reading at a meeting of the Borough Council of the Borough of Seaside Heights held on the 3rd day of May, 2017, and will be considered for second reading and final passage at a regular meeting of the Borough Council to be held on the 17th day of May, 2017 at 5:00 p.m., at the Council Chambers in the Borough Hall Complex located on Sherman Avenue and the Boulevard in Seaside Heights, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

DIANE B. STABLEY, RMC
Borough Clerk, Borough of Seaside Heights