

Introduced: 04/12/2022
Public Hearing: 05/10/2022
Adopted: 05/10/2022

**TOWNSHIP OF TEWKSBURY
HUNTERDON COUNTY, NEW JERSEY
ORDINANCE NO. 06-2022**

**AN ORDINANCE OF THE TOWNSHIP OF TEWKSBURY, HUNTERDON
COUNTY, NEW JERSEY AMENDING TITLE 12, STREETS, SIDEWALKS
AND PUBLIC PLACES, CHAPTER 12.12, EXCAVATIONS, OF THE
TOWNSHIP CODE OF ORDINANCES**

WHEREAS, the Township of Tewksbury (the “Township”) regulates the opening and repair of Township streets; and

WHEREAS, the Township Committee finds and declares that it is in the best interests of the Township and its residents to discourage the opening of Township streets within five (5) years of any permanent pavement replacement thereon.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Tewksbury, Hunterdon County, New Jersey, as follows:

SECTION 1. Title 12, Streets, Sidewalks and Public Places, Chapter 12.12, Excavations, of the Township Code of Ordinances is hereby amended as follows:

12.12.010 - Permit required.

No person, persons, partnership, association, or corporation shall excavate, dig, test drill, tunnel, construct or reconstruct, or otherwise disturb any public street, road, highway, curb, sidewalk, bridge, culvert, utility structure or other public improvement or facility located within, over or under any public right-of-way, easement, or publicly owned property in the Township of Tewksbury, for the purpose of laying, changing, repairing, connecting, constructing or maintaining any water, gas, sewer pipe, or any electric, telephone, telegraph pipes or conduits, or for any other purpose whatsoever, without having first obtained a permit from the Township clerk, in accordance with the rules, procedures, and specifications hereinafter set forth, and without having first paid the required fees or cash deposit as required by this chapter, unless specifically exempted.

12.12.020 - Definitions.

The words, terms or phrases listed below shall, for the purpose of this chapter, be defined and interpreted as follows:

"Applicant" means any person, persons, partnership, association or corporation who makes application for a permit.

"Emergency" means any unforeseen and unexpected circumstance or occurrence, which causes a clear and immediate danger to persons or damage to property, and which requires immediate opening or repair of a road or street.

"Engineer" means the licensed professional engineer duly appointed as Township engineer, his authorized deputy, representative or inspector.

"Newly Paved Street" means the surface of any Township street or right-of-way under the control of the Township upon which a permanent pavement replacement has occurred within five years of the date of a permit application.

"Opening" means any excavation, removal, repair, construction, reconstruction, drilling or tunneling under and within the rights-of-way of roads or easements owned, regulated and within the responsibility of the Township and including excavation, drilling or cutting through pavement, curbs, gutters, drainage facilities, sidewalks, shoulders, embankments, utility lines or structures. Test holes and holes made by surveyors of small diameter, whether drilled, driven or cut, are to be considered openings, except that one application, one permit, and one fee will apply to a series or group of such test holes.

"Permittee" means any applicant, as defined above, who has been issued a permit and is obliged to fulfill all the terms and conditions of this chapter.

"Person" means any natural person or persons, owner, partnership, firm, association, utility, corporation or properly constituted authority, and shall include for purposes of this chapter the developer, applicant, agent, contractor, engineer, or other person representing such person.

Road. This is a general term and means a roadway, street, alley, highway, way, easement or right-of-way, improved or unimproved, over which there is a public right of passage.

"Township" means the Township of Tewksbury, Hunterdon County, New Jersey.

"Traveled way" means that portion of a road which when constructed is intended to accommodate vehicular passage or travel.

"Unimproved road" means any road whose traveled way is surfaced with cinders, dirt, gravel or stone without bituminous or cement binder.

12.12.030 - Emergencies.

In the event of an emergency, where repairs to existing facilities must be made immediately and the person charged with the responsibility for making the repairs would be unduly delayed, or the health, safety or convenience of the public might be adversely affected, in seeking a permit through hereinafter specified channels, then, in that event, the opening may be made to remove, correct or repair the condition causing the emergency without making prior application for a permit. As soon as the emergency condition has been corrected and the emergency no longer exists, the person having caused the opening to be made shall forthwith apply for a permit and comply with all the other provisions of this chapter. In emergency matters and in the absence of the Township Clerk, a permit may be issued the Superintendent of Public Works or the Township Engineer.

12.12.040 - Permit procedures.

- A. Application for permit must be made on standard forms provided by the clerk, must be filled out completely in the number of copies specified on the form, and filed with the clerk, along with the required permit fee and other exhibits that may be required, either under the terms of this chapter, or as outlined on the form.
- B. Drawings. The applicant shall file, along with the permit form, appropriate drawing, in triplicate which show the following details:
 - 1. Map. The location of the proposed opening relative to surrounding, roads streets or other key landmarks.
 - 2. Existing facilities such as pavement, curbing, sidewalk, drainage, utilities, in the working area.
 - 3. Details of proposed opening and work to be done.
- C. Insurance. The applicant shall file, along with the permit form, and as part of each application, a certificate of insurance, acceptable to the Township showing that the applicant is covered by public liability and workman's compensation insurance during the period required for the proposed improvement in the minimum amounts as currently recommended by the Township's insurance carrier.
- D. "Hold Harmless" Agreement. The applicant shall file, along with the permit form, an agreement in writing to hold and save the Township harmless from any loss, injury or damage whatsoever resulting from the course of construction, whether directly or indirectly, connected with the work or from any negligence or fault of the applicant, its

agents, servants, representatives or contractors in connection with the performance of the work.

- E. The applicant shall file, along with the permit form, an estimate of the cost of the opening work to be done, and an estimate of the starting and completion dates. All applications for permit along with the estimated cost of opening and closing, etc., shall be submitted to the clerk and may be subject to the review and approval of the Township engineer. In the event the estimated cost of the opening and closing as filed, is in the amount of one thousand dollars (\$1,000.00) or more, then the detailed items making up the estimated cost are to be submitted to the Tewksbury Township engineer and will be subject to his review and approval.

12.12.050 - Fees.

- A. Application fee. Prior to commencing construction, the applicant shall submit the permit application form to the Township Clerk, along with an application fee of twenty-five dollars (\$25.00) for each street opening.
- B. Cash deposit. In addition to the application fee, the applicant shall deposit with the Township Clerk an additional sum equal to ten percent (10.0%) of the estimated cost of the street opening and closing as filed under Section 12.12.040.E of this chapter. The moneys so deposited shall be held in escrow and used to pay the cost of engineering, inspection, legal services, unrepaired damages, or other legitimate costs to the Township ascribable to the project. Within two (2) months following the expiration of the eighteen (18) month maintenance period specific in Section 12.12.090.E of this chapter, all unexpended moneys remaining in escrow shall be returned to the applicant, except for an administrative fee in the amount of ten dollars (\$10.00), which shall be retained by the Township.
- C. Bond in lieu of cash deposit. In addition to the application fee, any application that proposes to conduct five (5) or more openings of Township streets in a calendar year may submit a bond in lieu of the required cash deposit. Each bond shall be accompanied by an administrative fee in the amount of ten dollars (\$10.00) per street opening applied for. All bonds submitted under this section shall be in an amount equal to ten percent (10.0%) of the total estimated cost of all street openings and closings covered under the permit as filed under Section 12.12.040.E of this chapter, and shall remain in effect for a term not shorter than eighteen (18) months following the last street opening or closing covered under the applicant's permit. If any street opening covered under the applicant's permit is not properly closed or completed in accordance with the standards of the Township within the time specified on the permit, the obligor and surety for the applicant's bond shall be liable thereon to the Township for the reasonable cost of the street closing not completed or

corrected and, upon authorization by the governing body, the Township attorney shall take the necessary steps to obtain such cost from the obligor and surety. Should the applicant fail to close or correct any street opening in accordance with Township standards, the Township may, in its sole discretion either prior to or after receipt of payment by the surety, complete such closing or correction.

12.12.060 - Terms of permit.

- A. The permit shall contain the following data:
 - 1. A listing of the supporting documents, plans, specifications, etc., that are the basis for the permit.
 - 2. A brief description of the location of the proposed opening and the work contemplated.
 - 3. A termination date.
 - 4. Total deposit fees paid.
- B. Renewal of permit. Upon request of the permittee an opening permit may be renewed for a period of time not to exceed the total time of the original permit.
- C. Opening permits issued under the provisions of this chapter are not transferrable.
- D. Expiration of permits. Permits issued under the provisions of this chapter will expire at midnight of the day indicated on said permit, or the day of expiration of any extension of said permit. Permits will also be revoked at any time it shall be found by the Township of Tewksbury that the permittee has failed to comply with the provisions of this chapter or the permit, and after twenty-four (24) hours' written notice has been given to the permittee without correction of said failure to comply. If after permit revocation it becomes necessary for the Township to either complete the work or to refill and repair the opening, the cost of such work by the Township will be deducted from any fees that may have been paid by the permittee. Reinstatement of revoked permits will occur only after favorable recommendation of the engineer or superintendent of roads and on majority affirmative vote of the Township Committee.
- E. Pavement cuts in newly paved streets. No permit shall be issued for any shoulder or pavement opening or excavation in a newly paved street. The Township Committee may, upon the adoption of a resolution containing a finding of exceptional circumstances, allow

for the issuance of a permit for shoulder or pavement opening in a newly paved street. The provisions of this Section shall not apply to emergencies as set forth in Section 12.12.030 of this Title.

12.12.070 - Commencement of work.

Except for emergencies, at least twenty-four (24) hours before the permittee plans to commence work under an opening permit, the permittee will advise the Township engineer or superintendent of roads or the road commission or such other officials of the Township as may be designated by the road commissioner, of the time and date when the work is to be started. In the event another utility is in the same roadway or right-of-way and may be affected by the proposed opening of construction it will be necessary for the permittee to notify such utility or utilities at least twenty-four (24) hours in advance of the proposed construction of the opening.

12.12.080 - Conduct of the opening work.

The work shall be done in an efficient and workmanlike manner and in accordance with the plans and specifications, using proper tools, machinery, materials and manpower to effect a quality and expeditious job. Failure to perform in a manner satisfactory to the engineer may result in revocation of the permit. Except under emergency conditions the opening work will be conducted between the hours of 7:00 a.m. and 7:00 p.m. except Sundays and holidays (New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day), when no opening work will be permitted.

- A. Supervision. The permittee will have a qualified supervisor at the site of the opening work during all working hours.
- B. Inspection. The permit for opening as granted shall be posted on the site of the work. In the event there is no convenient place for the posting the permit, the permit must be in possession of the supervisor, available to be seen on the site during all working hours. The engineer, the road superintendent, the road commissioner, or their authorized representatives shall be given access to the construction site during progress of the work in order to observe and inspect the work. All materials, including excavated materials, are subject to inspection and approval by the Township engineer or Township road supervisor. Where the planned opening will be made through, adjacent to or near an existing public utility facility, the permittee shall notify said utility company, whose representative shall be given access to the construction to observe and inspect that portion of the work involving said utility facility. Notification to said public utility company shall be done in accordance with Section 12.12.070.

- C. Removal of Existing Features. The existing pavement, blacktop or concrete, shall be cut in a straight line or lines, prior to any subsurface excavation, which shall be confined to the area between the cuts. If pavement, curbing, sidewalk, or other surface construction becomes damaged, ragged or zig-zagged when it comes time to repave or replace the facility, the edges shall be cut or recut in a straight line or lines to the satisfaction of the Township engineer, in general parallel with the lines of the excavated trenches and in a width sufficient to accommodate the entire excavation and to create a smooth finished appearance when the construction is complete. When cutting through reinforced concrete pavement, the saw cutting will be done in such a way as to permit the exposing of existing reinforcement, which is not to be cut, but is to be exposed, retained and allowed to project into the excavation at least eighteen (18) inches. These exposed bars will later be reformed to tie into the patched concrete.
- D. Protection of Unpaved Areas. On banks and slopes of improved or unimproved Township roads, or grass planted areas, the topsoil shall be saved and carefully replaced a four-inch depth after the opening has been refilled and resettled. The topsoil shall be raked and shall have rye grass seed, other acceptable grass seed or approved sod placed thereon. The permittee will be responsible for turf growth through two mowings. If insufficient topsoil is available from the excavation, then the permittee will bring new topsoil in and place same as required above.
- E. Backfilling. After the required work or construction has been completed in the open excavation, the backfilling shall be done, using excavated material, if acceptable to the engineer, or, if excavated material is unacceptable, using imported clean shale, bank run gravel, quarry blend stone or other acceptable material. In placing backfill, the permittee or his contractor shall use a mechanical or vibrating tamping device or machine placing fill in six-inch to ten (10) inch compacted lifts, as directed by the engineer.
- F. On unimproved (unpaved) roads and shoulders, the backfill shall be brought up to within seven inches (after compaction) of the existing surface grade. There shall then be placed five inches of two-and-one-half-inch crushed stone ballast, which shall be bound on top only with Grade B screenings, bank run gravel, quarry blend stone, or slag and thoroughly compacted. The remaining two inches shall be three-quarter-inch crushed stone quarry blended with sufficient fines to make a tight stable surface.
- G. On improvement (bituminous pavement) roads, the backfill shall be brought up to a level within eight inches to the top of the original pavement, wherein a proper base containing six inches of compacted Type 5 Class A material and topped with two inches compacted bituminous concrete. The material and workmanship for this construction shall be in accordance with the requirements specified in the current issue of the Standard

Specifications of the New Jersey Department of Transportation. The requirement of the six-inch base and two-inch top shall be considered the minimum for repaving over bituminous paved street openings.

- H. Shoulders. Where shoulders are unimproved, backfilling and surface repairs shall be as specified for unimproved roads, subsection F of this section. Where shoulders are of bituminous pavement, the provisions of subsection G of this section shall apply.
- I. Curbs, Gutters, Sidewalks, Driveways, Etc. Where the opening involves cutting through existing curbs, gutters, sidewalks, driveways, and any other surface structures, the permittee or his contractor shall rebuild or replace such surface structures as closely as possible duplicating the original as to dimensions, grade, appearance and materials. Curbs and gutters shall be reconstructed of State Highway Class B concrete; sidewalks, concrete aprons and other miscellaneous structures shall be reconstructed of State Highway Class C concrete or superior.
- J. Existing Pipes, Utilities, Subsurface Structures. Any existing subsurface pipes, utility, lines, drains, foundations, abutments, inlets or other structures that may be disturbed, damaged or removed during the necessary opening work by the permittee are to be replaced, reconstructed or repaired, under the direction of the engineer and the appropriate officials of the utility company whose facility may be involved. Such replacement, reconstruction or repair shall be made using materials, methods and standards of workmanship at least equal to those of the existing feature, or in the case of a public utility facility, to the standards imposed by said utility. Caution and care shall be exercised by the permittee not to disturb such existing structures or facilities exposed by the opening and found to be in or adjacent to the opening.
- K. Other Ordinances. If and when the Township may have adopted other ordinances detailing standards or specifications for the construction of any structures or facilities covered by subsections C through J of this Section, then such ordinance provisions shall govern the standards to be applied for openings or excavations under this chapter.
- L. Temporary Surfacing. Pending the actual repaving or reconstruction operations stated above, the permittee or his contractor shall provide a temporary pavement or surface over the compacted refilled opening, of such material as shall be directed by the engineer. The contractor shall maintain, refill and temporarily repave said surface from time to time as may be required by the engineer or road superintendent until a permanent pavement has been constructed, to provide a properly graded travelling surface. Where a bituminous concrete temporary pavement is indicated and warranted, as determined by the engineer

such temporary pavement shall be constructed two inches thick of Type SM bituminous concrete or equivalent material approved by the engineer.

- M. Tunneling. In cases where it becomes necessary to resort to tunnelling operations to accomplish the opening work in a most practical way, the backfill in such tunnel shall be rammed soil composed of a mixture by volume of one part cement to six parts of aggregate material such as sand or three-quarter-inch quarry blendstone. Tunnelling shall be permitted only with the approval of the engineer and when the need for tunnelling is indicated on the application for permit. Jacking or drilling is not considered to be tunnelling.
- N. Jacking and Drilling. Jacking and drilling will be permitted when the need is indicated on the application for permit and when other existing structures or utilities will not be disturbed or damaged thereby. In the event jacking or drilling is required, it will be necessary to present plans showing the details of this construction. These plans will need to be approved prior to construction by the utility engineer, if involved, and by the Township engineer.
- O. Blasting. No blasting shall be allowed, unless approved by the engineer. Blasting work shall be done only by an experienced and where required, license dynamiter, and only after all required safety precautions have been taken and other necessary permits, if any, obtained.
- P. Surplus Materials. The permittee or his contractor shall remove all surplus or unusable fill, debris and other materials from the job site at his own expense. The area shall be left cleaned up at the end of the work, to the satisfaction of the Township engineer or Township road superintendent. During construction, machinery, vehicles or tools of the contractor are not to be left over night, or during periods of inoperation, in the right-of-way of the road or street. Contractors shall make provisions to place or store said machinery, vehicles or tools in other places. Machinery, vehicles and tools of the contractor shall be promptly removed from the job site when the work has been completed.

12.12.090 - General conditions.

- A. Safety Precautions. The permittee and his contractor shall keep all openings, all excavated materials, and all other machinery, tools or other materials properly guarded and shall place and maintain barricades, temporary fencing, guards or other appropriate warning devices at all times during the progress of the work. Adequate flashing warning lights shall be operated at the opening site to warn the public from one hour before sunset till one hour after sunrise. The permittee and his contractor shall at all times comply with all state safety

regulations outlined in the Construction Safety Code of the Department of Labor and Industry, Bureau of Engineering and Safety, State of New Jersey, as the same may be amended from time to time.

- B. Cleanliness. If dust, dirt, air pollution, poor housekeeping or detrimental material are allowed to exist, occur or continue as a result of the work to the point where a public nuisance has occurred, in the opinion of the Township committee, the Township engineer or Township road superintendent, the engineer may stop the work until the situation complained of is eliminated. Streets or roads are to be kept broom-cleaned on a daily basis. if dust persists, streets or roads may be required to be hosed clean. The engineer may direct the permittee or his contractor to spread dust inhibiting chemicals.
- C. Maintenance of Traffic. At all times during the course of construction, at least one-half of the travelled way shall be kept open for public vehicular travel, unless the permittee or his contractor provides and marks, to the satisfaction of the Township chief of police, a suitable detour. The permittee shall, at all times, make provision for local residents to have access to their properties and shall maintain the roadway and adjacent areas free from needless obstruction. During all working hours that single line traffic is necessary, the permittee shall provide a flagman or flagmen as reasonably required. No length of street, or road, shoulder, or embankment shall be left open, even though guarded, at any one time in excess of two hundred (200) feet.
- D. Protection of Private Property. Prior to starting work on the opening, it shall be the responsibility of the permittee to advise in advance each nearby or adjacent property owner, whose property will be temporarily inconvenienced or disturbed, or whose access or use of his property or the road facilities, utilities, or other features will be affected by the opening work, either directly or indirectly, when the work will be done and as far as possible the effect it will have on the owner's free use of his property. The permittee will be solely responsible for any damage, inconvenience or disruption to nearby or adjacent properties, and will save the Township harmless for any neglect, real or alleged, that may arise from the conduct of the work. It will be the permittee's obligation and responsibility to arrange for any access permission needed. The permittee shall not store tools, machinery, materials, dirt or debris on private property, nor use water, electricity, telephone or other private facilities, without first obtaining permission from the property owner.
- E. Maintenance of Newly Reconstructed Surface Facilities. The permittee assumes the responsibility of refilling the excavation, as it may sink, consolidate, or break out, from time to time, whether the repair be temporary or permanent, and keeping the surface level and smoothly blended with the surrounding undisturbed pavement. After permanent repavement and approval by the Township the permittee shall be responsible for

maintaining the opening site for a period of eighteen (18) months refilling, compacting, repaving and repairing damage, restoring turf or shrubbery, all as directed by the engineer when necessary, and in the case of undue trench settlement may be required to reopen the trench or excavation to ascertain the cause of undue settlement and to remedy the fault, all as required by the engineer.

12.12.100 - Administration.

Acceptance. All openings made and restored under terms of this chapter and any permits issued shall be subject to acceptance in writing by the Township clerk or Township engineer. No remaining deposit money shall be returned until after said written acceptance has been obtained. This acceptance will not normally be effected until the expiration of the eighteen (18) month period specified in Section 12.12.090 of this Chapter.

12.12.110 - Exemptions.

- A. The provisions of this Chapter also shall not apply to work being done on openings in the Township by working forces of the Township.
- B. The provisions of this Chapter shall not apply to opening work involved within the rights-of-way of roads or easements owned, regulated and within the responsibility of the County of Hunterdon or the State of New Jersey, or their various departments, bureaus or agencies.
- C. The provisions of this chapter shall not apply to the installation, erection, replacement, or maintenance of wood utility pole for electric distribution, telephone or telegraph installations, nor to such other appurtenances such as stub poles, anchors, guys or ground lines, incidental to these poles, where such poles and appurtenances belong to any of the franchised public utility companies operating within the Township.

12.12.120 – Violation and Penalty.

Any person who shall violate any of the provisions of this Chapter shall upon conviction thereof be punished by a fine not exceeding two thousand dollars (\$2,000.00), by a term of imprisonment not exceeding 90 days, or by a period of community service not exceeding 90 days, or by any combination thereof.

SECTION 2. All actions of the Township taken prior to the date of adoption hereof contemplated by this Ordinance are hereby ratified and approved.

SECTION 3. If any section, paragraph, subsection, clause or provision of this Ordinance shall be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole or any remaining part thereof.

SECTION 4. All Ordinances or parts of Ordinances of the Township of Tewksbury heretofore adopted that are inconsistent with any of the terms and provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 5. This Ordinance shall take effect immediately upon its final passage, approval and publication as provided by law.

I HEREBY CERTIFY the above to be a true copy of an Ordinance introduced by the Township Committee of the Township of Tewksbury at a duly convened meeting held on April 12, 2022 and adopted on May 10, 2022.

Jennifer Ader
Township Clerk