

ORDINANCE NO. 2025-1535

**BOROUGH OF TINTON FALLS
COUNTY OF MONMOUTH**

**ORDINANCE AMENDING SECTION 15-1 OF THE BOROUGH CODE
ENTITLED “EXCAVATION OF STREETS, CURBS AND SIDEWALKS”**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of Tinton Falls in the County of Monmouth, State of New Jersey that:

SECTION 1. Section 15-1 of the Borough Code of Tinton Falls, entitled “Excavation of Streets, Curbs and Sidewalks,” shall be amended in the manner indicated below (~~striketroughs~~ to be deleted; underlined portion to be added), and shall read as follows:

§ 15-1. EXCAVATION OF STREETS, CURBS AND SIDEWALKS.

§ 15-1.1. Permit Required; Exceptions.

- a. It shall be unlawful for any person, corporation, or other legal entity to dig up or excavate any street, avenue, alley, lane, highway, road, sidewalk, curb, pavement or any part thereof, within the Borough Right of Way for any purpose whatever, unless and until a written application as hereinafter provided is first submitted to and a permit is granted by the ~~Administrator~~ Borough Engineer.

§ 15-1.2. Application for Permit; Issuance; Fee.

- a. Any written application for a street excavation shall be ~~made in quadruplicate~~, completed and signed by the applicant, and shall delineate and accurately describe the section or sections to be dug up or excavated and the purpose, nature, scope, area and extent of the work, the length of time the work will require, suitable drawings depicting the proposed work, the name of the person, firm or corporation who will perform the work and the time when the restoration hereinafter provided will be completed.
- b. The applicant shall list on the application the name, address and emergency telephone numbers of at least two persons responsible to be called at all times in case emergency problems or situations arise at the construction or maintenance site. A copy of this information will be provided to the Police Department (via the ~~Administrator's~~ Engineer's Office) prior to the commencement of any work at the site. If for any reason, no person is available at the emergency telephone numbers or a person fails to cooperate with a request from the Police Department or Department of Public Works to correct a hazardous situation, the Borough shall have the authority to correct any hazardous condition or situation at the work site. In such event, the applicant shall be responsible to reimburse the Borough for all expenses incurred for such correction.
- c. Upon receipt of such application, the ~~Administrator~~ Borough Engineer will forward a copy ~~each~~ to the Director of the Department of Public Works ~~and the Borough Engineer~~. If no objections to the issuance of such ~~street~~ road opening permit ~~shall~~ have been received within five days, the ~~Administrator~~ Borough Engineer shall issue such ~~street~~ road opening permit provided, however, that the applicant shall have first delivered to the ~~Administrator~~ Borough

Engineer the appropriate fees and guarantees set forth herein.

- d. In the event the ~~Administrator~~ **Borough Engineer** receives objections from the ~~Borough Engineer or the Director of the Department of Public Works~~ with respect to the issuance of a ~~street~~ **road** opening permit within the five-day period aforesaid, then and in that event no permit shall be issued by the ~~Administrator~~ **Borough Engineer** until such time or upon such conditions as the ~~Administrator~~ **Borough Engineer** may impose.
- e. Fees. The **Permit Fee** fees shall be as follows: ~~A fee of \$38 shall be paid by applicant for the first 100 square feet or less to be excavated. There shall be an additional \$10 for each 100 square feet or portion thereof above the initial 100 square feet.~~
1. **For general excavations and disturbances - \$200 for the first 100 square feet of area disturbed, plus \$25 additional for each 100 square feet, or fraction thereof, of area disturbed.**
 2. **For utility infrastructure installations, repairs, upgrades, or replacements - \$200, plus \$0.50 per linear foot of utility main installed, repaired, upgraded, or replaced. For the purposes of the fee calculation, lineal footage of directional drilling, micro-tunneling, Jack and Bore, moling or other trenchless installation shall be included.**

~~These fees shall apply to each application submitted and are not refundable. \$10 of the fee will be placed in an escrow account for payment to a GPS/GIS entry and management entity. \$3 of the fee will be placed in an escrow account to be utilized for a computerized document management system.~~

~~There shall also be an inspection fee of \$100. The inspection fee will be waived in the case of repair of existing sidewalk. The calculation of the fees may be determined by the Department of Public Works or the Borough Engineer.~~

- f. In case of emergency, an emergency permit may be issued by the Police Department of the Borough, after which an application for a permit, as hereinbefore required, shall be made to the ~~Director of Public Works, or his designated representative~~ **Borough Engineer**, within two business days after the work has been commenced.

§ 15-1.3. Cash Repair Deposit and Inspection Fee.

- a. In addition to the ~~application and inspection~~ **permit** fee as set forth in subsection 15-1.2e, the application for a permit to perform work under this section shall be accompanied by a repair deposit. Such repair deposit shall take the form of cash or check, payable to the Borough of Tinton Falls, and shall be received by the ~~Administrator~~ **Borough Engineer** prior to the issuance of any permit. Any repair deposit made hereunder shall serve as security for the repair of the road surface and/or off-road ground surface disturbed to a condition comparable to that present prior to the excavation in the event the permittee fails to make the necessary repairs or to complete the proper refilling of the opening and/or the excavation work performed in accordance with the permit.

The amount of **repair deposit to** be collected in addition to the permit **fee** ~~and inspection fees~~ shall be:

1. ~~Areas where there is no permanent hard surface:~~

- (a) ~~Repair Deposit — \$5 per square foot to be excavated, provided that the minimum deposit shall be \$250.~~

~~2. Areas where the surface or treatment to be excavated is brick, asphalt, bituminous concrete, wood block or other permanent surface or treatment:~~

~~(a) Repair Deposit — \$10 per square foot, provided that the minimum deposit shall be \$250. Calculation of all fees may be determined by the Department of Public Works or the Borough Engineer.~~

1. Disturbance Area:

(a) Less than 100 square feet: \$1,000

(b) 100 square feet, but less than 500 square feet: \$2,000

(c) 500 square feet or more: \$2,000 plus \$5 per square foot for each square foot in excess of 500

- b. The repair deposit shall be held by the Borough for a period of one year and shall be utilized if necessary for the repair, resurfacing, restoration or paving of the area excavated, pursuant to the permit. Should such work not be necessary during the one-year period, the deposit shall be returned to the applicant. Final inspection of the excavation site may be performed by the Department of Public Works or the Borough Engineer. In lieu of the deposit by cash or certified check, the applicant may deposit a surety bond of equal amount and approved as to form by the Director of Law. Where several permits are desired throughout the year, a blanket bond in a sum to be fixed by the ~~Administrator~~ **Borough Engineer** based on the estimated number of permits to be issued, may be given in lieu of a separate bond or deposit for each separate ~~deposit~~ **permit**, the bond shall be renewed annually. No such permit shall be or become effective unless and until the deposit herein required is made. Any permit issued may be on such other reasonable terms and conditions as the Borough may require in the public interest.
- c. Any such deposit shall be retained by the Borough ~~of~~ **for** a period of one year from the date of the completion by the applicant of the work of restoring to at least its original condition and appearance any section or sections so excavated with the stabilized base course **and surface course** level and shall be made flush with the existing pavement, and shall be, until that time, security for any restoration herein provided as well as security for any other damage or loss the Borough may incur or become subject to by reason of such excavation or any work connected therewith.
- d. In the event any restoration herein provided is not completed with the time and upon the terms and conditions set forth in the application or the permit, or in the event such restoration is done otherwise than in good and workmanlike and approved manner and in accordance with standard practice, or in the event the Borough incurs or is or will become subject to any damage or other loss by reason of the work or excavation, then the deposit may be used and applied by the Borough to the Borough's work of restoration or to any such damage or loss and if the deposit is insufficient to answer therefore, then the applicant shall be and become liable to the Borough for any excess of the cost thereof over the deposit, and in the event the deposit is entirely sufficient therefore and there is any surplus, the Borough shall repay to the applicant any such surplus or balance remaining of the deposit.
- e. No deposit herein provided shall be returned unless and until the Director of Public Works, Borough Engineer, or suitable designee shall have first inspected the work and restoration thereof and has determined that the same has been performed in compliance with this chapter, evidence of such determination to be in the form of a certification signed by the Department

of Public Works or Borough Engineer, a copy of which shall remain on file with the ~~Administrator~~ **Borough Engineer**.

§ 15-1.4. Backfill and Restoration of Surface.

It shall be the duty of the applicant to restore the street surface in the following manner and to maintain all proper safeguards relating to the opening or excavation to protect the public from damage or injury resulting from same.

- a) All trench openings shall be neatly saw cut, unless specifically allowed, in writing by the Public Works Department **or Borough Engineer** for unusual circumstances.
- b) ~~The type of material used for backfilling shall be as specified by the Borough Engineer to ensure the restoration of a street or road to its prior condition. For the purpose of establishing specifications for the restoration, the specifications promulgated by the Department of Transportation of the State of New Jersey shall serve as a guideline for street restoration.~~ **The trench must be of suitable width to obtain proper mechanical compaction. All backfill is to be done with quarry process stone Type I-5 or DGA, or other suitable material if approved by the Borough Engineer, for the full depth of the trench. First lift of fill, twelve inches above pipe, shall be compacted using a Jumping Jack or Vibratory Tamper. Successive lifts (no greater than twelve inches) shall be compacted by mechanical means such as tamping, vibrating or rolling. A vibrating plate tamper is not acceptable. Following compaction, the permittee shall install no less than six inches of dense graded aggregate followed by eight inches of bituminous stabilized base course to the top of the trench (installed in two lifts). If the distance from the edge of the excavation work area to the existing curb or roadway edge is less than two feet, the permittee shall be required to excavate to the curb and evenly install six inches of dense graded aggregate followed by eight inches of bituminous stabilized base course in the entire area.**
- c) Tack coat should be applied to the edges of the street opening just prior to placement of the bituminous **base course and** surface course. Placement of the tack coat shall be in accordance with the latest revision of the State of New Jersey Standard Specifications for Road and Bridge Construction.
- d) It shall be the duty of each person, corporation, partnership, firm and their contractor or agents to notify the Borough ~~Administrator~~ **Engineer** prior to the backfilling of the opening or excavation, and of the date such work will be done, so that the Borough Engineer or agent of the Borough may, in his discretion, inspect all aspects of the street restoration, etc., and to file a written report to be used in the determination of the return of the repair deposit. **The Borough Engineer, Department of Public Works, and Police Department Traffic Safety Officer must be notified a minimum of 48 hours in advance of any excavation.**
- e) The partially restored pavement (stabilized base course level with the existing pavement as ~~described in subsection 15-1.3e~~) shall be allowed to settle for no less than 90 days and no more than 180 days. ~~Upon the completion of the settling period, the opened or excavated area shall be milled and repaved with NJDOT Mix I-5 utilizing an infrared restoration process.~~ If at any time during the settlement period, the trench becomes unacceptable as determined by the Director of Public Works **or Borough Engineer**, the permittee shall be notified of the condition requiring repair, and such repair shall be performed within 24 hours of such notification by the Director of Public Works **or Borough Engineer**. If the repair is not made in the time specified, the Borough may make the repair and any cost thereof will be charged against the permittee's cash repair deposit and/or maintenance bond. At the end of the period

of time of settlement required by the Department of Public Works **or Borough Engineer**, an inspection shall be performed by the Department.

- f) **Applicant must install and maintain temporary line striping and pavement markings throughout the settlement period.**
- g) **Upon the completion of the settling period, the opened or excavated area shall be milled and repaved with no less than two inches of NJDOT Mix I-5 or 9.5M64 surface course utilizing an infrared restoration process along all joints. The base pavement shall be swept, and tack coat should be applied to the milled surface and edges of the street opening just prior to placement of the bituminous surface course. Placement of the tack coat shall be in accordance with the latest revision of the State of New Jersey Standard Specifications for Road and Bridge Construction.**
- h) **All excavations, unless regulated under Subsection 15-1.4.i below or otherwise permitted by the Borough, shall require milling and restoration of the excavation work area extending from the curb or edge of pavement to the center line of the road or a minimum of one foot beyond the outer edges of the excavation, whichever is greater.**
- i) **In the case of utility work undertaken by a public or private utility or developer, which work involves placing of new or replacing or repairing existing utility infrastructure, including but not limited to gas lines, water lines, electrical lines, communication and data lines, and sewer lines, where the area to be excavated (including horizontal directional drilling, moling, jack and bore, or tunneling) is greater than 50 linear feet, upon completion or within a reasonable amount of time as determined by the Borough Engineer, the permittee shall mill and repave the entire pavement surface from edge to edge or curb to curb for the full length of the excavation, in accordance with the restoration requirements herein. When the limits of restoration include an intersection with pedestrian sidewalks, barrier free accessible curb ramps shall be installed in accordance with the requirements contained herein.**
- j) **Excavations along the center line of the street for more than 50 linear feet shall require full-width milling of the street surface.**
- k) **The Borough Engineer has the discretion to extend, modify, or revise milling limits to accommodate existing pavement and drainage conditions.**
- l) **Excavated or disturbed concrete sidewalks shall be replaced with a minimum of 4 inches of crushed stone and four inches of 4,500 psi concrete. Concrete driveways or aprons shall be replaced with a minimum of 4 inches of crushed stone and six inches of 4,500 psi concrete with 6x6 welded wire mesh reinforcement.**
- m) **All disturbed areas outside of pavement or concrete shall be replaced with a minimum of 4 inches of borrow topsoil, a residential grass seed mix, fertilizer, and straw.**
- n) The permittee shall be required to replace any facilities including but not limited to curb, pavement, sidewalk, line striping, etc. that are affected by the excavation and restoration work.
- o) **Unless otherwise specified herein, all restoration of pavement, drainage facilities, curbs, sidewalks, driveway aprons, accessible curb ramps, and any other street improvement shall conform to the NJDOT Standard Specifications, NJDOT Standard Details for Road and Bridge Construction, and the United States Access Board Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way.**

- p) **No Borough road shall be closed to traffic without prior written consent of the Police Department. In the event that a road is closed, uniformed police may be required to act as traffic directors. Maintenance and protection of pedestrian and traffic control is the responsibility of the applicant and must conform to NJDOT and MUTCD standards along with the requirements of the local municipality. All costs of providing uniformed police shall be the responsibility of the permittee or the owners. In the event that a detour is deemed necessary by the permittee, application shall be made to the Police Department, who shall determine the necessity for such detour and the route to be followed. In emergency situations, notification by phone to the Police Department shall be done prior to the start of work.**

§ 15-1.5. Opening of Newly Paved Streets Restricted.

No permit shall be issued which would allow an opening or excavation of a paved or improved street surface less than five years old unless the applicant clearly demonstrates to the Borough Engineer that public health or safety requires the proposed work to be permitted or unless an emergency condition exists. If a permit is issued pursuant hereto to open any repaved street less than five years old, an enhanced restoration may be required for said opening permit at the discretion of the Borough Engineer. Enhanced restoration may include half width to full width milling and repaving to minimize the deleterious effects of the pavement disturbance.

§ 15-1.6. Removal and Protection of Utilities.

The permittee shall first obtain the appropriate utility markouts as required by law. The permittee shall not interfere with any existing utility without the written consent of the utility company or person owning the utility. If it becomes necessary to remove an existing utility, this shall be done by its owner. No utility owned by the Borough shall be moved to accommodate the permittee unless the cost of such work is borne by the permittee. The cost of moving privately owned utilities shall be similarly borne by the permittee unless it makes other arrangements with the owner of the utility. The permittee shall support and protect, by timbers or otherwise, all pipes, conduits, poles, wires or 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 or across the work, in accordance with applicable statutory provisions. In case any pipes, conduits, poles, wires or apparatus should be damaged, they shall be repaired by the agency or owner and the expense of such repairs shall be borne by permittee, and his or its bond shall be liable therefore. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility, and its bond shall be liable therefore. The permittee shall inform itself as to the existence and location of all underground utilities and protect the same against damage.

§ 15-1.7. Conditions: Guarding of Excavations.

No excavation shall remain open overnight, and any excavation shall be properly secured and marked with appropriate devices at all times **in accordance with the Manual on Uniform Traffic Control Devices.**

§ 15-1.8. Temporary Patching.

The permittee may be required to place a temporary surface over openings made in paved traffic lanes if the road must be reopened before the normal completion of work. The fill below the bottom of the existing pavement shall be tamped into place, properly graded and topped with a minimum of four inches of **hot mix** bituminous patch material which is suitable to maintain the opening in

good condition until permanent restoration can be made, but in no case shall temporary patch be used for more than seven days. **Cold patch is not a permitted patch material, temporary or permanent.**

§ 15-1.9. Care of Excavated Material.

All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner so 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, such as might be the case in a narrow street, the Borough shall have the authority to require that the permittee haul the excavated material to a storage site and then return it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and to make all necessary arrangements for all required storage and disposal sites.

§ 15-1.10. Damage to Existing Improvements.

All damage done to existing improvements during the progress of the excavation work shall be repaired by the permittee. Materials for such repairs shall conform to the requirements of any applicable code or ordinance. If, upon being ordered, the permittee fails to furnish the necessary labor and materials for such repairs, the Department of Public Works shall require the labor and materials to be furnished and the cost shall be charged against the permittee, and the permittee shall also be liable on his or its bond therefor.

§ 15-1.11. Cleanup.

As the excavation work progresses, all streets and private properties 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 Department of Public Works **or Borough Engineer**. From time to time as may be ordered by the Department of Public Works **or Borough Engineer**, and in any event, immediately after completion of the work, the permittee shall at his or 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 Borough, the work may be done by the Borough and the cost thereof charged to the permittee, and the permittee shall also be liable for the cost thereof under the surety bond provided hereunder.

§ 15-1.12. Liability of Borough.

This section shall not be construed as imposing upon the Borough or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an opening or excavation permit is issued hereunder; nor shall the Borough or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any opening or excavation work.

§ 15-1.13. Penalties.

The penalties for violation of this section shall be proscribed as set forth in Chapter 1-5 (General Penalties) in the Tinton Falls Revised General Ordinances.

SECTION 2. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are, to the extent of such inconsistency, hereby repealed.

SECTION 3. Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

SECTION 4. This Ordinance shall take effect upon final passage, adoption and publication in the manner prescribed by law.

Introduced:

Adopted:

DR. LAWRENCE DOBRIN
COUNCIL PRESIDENT

RISA CLAY
MAYOR

ATTEST:

MICHELLE HUTCHINSON
BOROUGH CLERK

APPROVED AS TO FORM:

KEVIN N. STARKEY, ESQ.
DIRECTOR OF LAW