

ORDINANCE

ORDINANCE AMENDING AND REPLACING SECTION 11-1 OF CHAPTER XI, "STREETS AND SIDEWALKS" OF THE CODE OF LITTLE SILVER, COUNTY OF MONMOUTH, AND STATE OF NEW JERSEY

WHEREAS, the Mayor and Borough Council have determined the sections of the code of Little Silver as they relate to Excavations and Openings in Streets and Sidewalks require updating after the passage of time; and

WHEREAS, the power of the Mayor and Borough Council to regulate streets is set forth in N.J.S.A 40:67-1 et seq.; and

WHEREAS, the Mayor and Borough Council want to ensure repaving of public streets is done in a way that encourages uniformity in repair of public streets and prevents piecemeal repair.

NOW THEREFORE BE IT ORDAINED by the Mayor and Borough Council of the Borough of Little Silver, County of Monmouth, and State of New Jersey, as follows:

11-1 Excavations and Openings

11-1.1 Permit Required. It shall be unlawful for any person to dig up or excavate any street, avenue, alley, land, highway, road, sidewalk, curb, pavement or other public place, or any part thereof within the Borough right-of-way for the purpose of laying down rails, pipes, mains, conduits, or for any other purpose, until a written application is made for a permit to and a permit is granted by the Borough clerk with the authority and under the direction of the Borough Council.

11-1.2 Application for Permit; Contents of Application

- a. Any person seeking to disturb, dig up or excavate any street, avenue, alley, land, highway, road, sidewalk, curb, pavement or other public place of any Borough street, right-of-way or easement area for any purpose shall make application for that purpose to the Borough clerk for each such opening upon forms to be provided for that purpose.
- b. The application form shall contain:
 - 1) Name(s) and address(es) of the applicant;
 - 2) The owner of the property for whom the work is to be performed;
 - 3) Location of the work area;
 - 4) An outline or plan describing the work to be performed;
 - 5) Size and purpose of the opening to be made, and maximum size of such opening;
 - 6) Date or dates when the work is to be performed;

- 7) Such other reasonable information as may be required by the Borough Council of the Borough.
- c. The application shall be accompanied by an agreement by the applicant that, subject to the satisfaction of the borough clerk, excavated, dug up or disturbed areas shall be restored such that:
 - 1) Where the area of disturbance or excavation is less than either 2 feet in width or 30 feet in length or where the affected area fronts only one parcel of property, the applicant shall refill or resurface the area of disturbance or excavation so that the street surface shall be restored to the same condition or better in which it was before the proposed work, all pavement repairs shall be done with an infrared pavement patch; or
 - 2) Where the area of disturbance or excavation is 30 feet or greater in total length, or where the affected area fronts more than one parcel of property, the applicant shall mill 2" of pavement over the entire width of the street, from curb to curb, and a distance of 100 feet both sides of the disturbance or excavation, and repave the area with a new layer of 2" thick I-5 surface course for asphalt surface. The applicant must retain the services of an experienced and qualified paving company approved by the Borough.
 - d. Any permit issued may be on such other reasonable terms and conditions as the Borough may require in the public interest.

11-1.3 Fees Due Prior to Issuance of Permit; Deposits

- a. No Permit shall become effective until an applicant shall have deposited with the borough clerk, by cash or certified check,
 - 1) A sum equal to five (\$5.00) dollars per square foot to be excavated where there is no hard surface; or
 - 2) A sum equal to ten (\$10.00) dollars per square foot where the surface or treatment to be excavated is brick, asphalt, bituminous concrete, wood, block or other permanent surface or treatment
 - 3) For all disturbances that fall under section 11-1.2.c.2 above, the applicant shall be required to post a performance bond in the amount calculated by the Borough Engineer to cover the cost of the improvement. The bond shall be returned to the applicant under completion of the work to the satisfaction of the Borough Engineer.
 - 4) For all disturbances that fall under section 11-1.2.c.2 above, the applicant shall be required to post an escrow fee of \$500.00 with the Borough Clerk to cover the performance bond calculation and inspection of the pavement restoration.
- b. In lieu of a deposit by cash or certified check, the applicant may deposit a bond of an amount approved by the Mayor and Borough Council.

- c. Where several permits are desired throughout the year, a blanket bond in a sum to be fixed by the Borough Council, based on the estimated number of permits to be issued, may be given in lieu of a separate bond or deposit for each separate permit, the bond to be renewed annually.
- d. The deposit shall be retained by the Borough until the restoration work is approved by the Borough Engineer, and 30 days have elapsed from the date of completion by the applicant of the work of restoring any section so excavated, subject to the agreement in the permit application described in Provision 11-1.2(c).
- e. The deposit shall also be security for any other damage or other loss the Borough may incur or become subject to by reason of the excavation or any work connected therewith.
- f. The deposit may be used and applied by the Borough to the Borough's work of restoration or to any such damage or loss:
 - 1) In the event restoration is not completed within the time and on the terms and conditions set forth in the application or permit; or
 - 2) In the event such restoration is not completed in a workmanlike and approved manner and in accordance with standard practice; or
 - 3) In the event the Borough incurs or becomes subject to any damage or other loss by reason of the work or excavation.
- g. If the deposit is insufficient to cover the damage or loss arising from applicant's failure of restoration, the applicant shall become liable to the Borough for any excess cost over the deposit. In the event the deposit is entirely sufficient and there is a surplus, the borough shall repay to the applicant any balance remaining.

11-1.4 Openings Marked and Guarded. No excavation shall remain open for more than 48 hours, and any excavation shall be properly secured with fence, reflective cones, reflective barrels and the appropriate construction signage or other proper warnings required by the Borough traffic safety officer.-The Borough, in issuing such permit and after the same is issued and during the progress of the work, may relax or modify the requirements of this section or impose other requirements and conditions if it deems in the public interest to do so.

11-1.5 Notice of Openings in Repaved Streets

- a. When the Borough intends to repave any street, written notice of the proposed repaving shall be given by the borough administrator to all persons owning property abutting the street to be repaved and to all public utilities and authorities operating in the borough.

- b. Such notice shall be sent by certified mail to the address of the property owners as shown on the official tax records of the borough and to the utilities or authorities at their principal place of business.
- c. The notice shall advise the property owners of the nature of the proposed work and notify them that they have 15 days from the date of mailing to notify the borough if they intend to open or excavate the street within the next five years.
- d. Following such notice, no permit to open or excavate a repaved street shall be issued by the borough clerk within five years of such repaving to any person receiving notice under this section unless the applicant can clearly demonstrate to the satisfaction of the borough engineer that the public health or safety requires that the proposed work be permitted, or unless an emergency exists.
- e. If a permit is issued pursuant hereto to open any repaved street less than five years old, the applicant must restore the disturbed area in accordance with section 11-1.3.a.3 & 4 above. A penalty charge may be made for the opening unless the work is of an emergent nature. The penalty charge shall then be on a sliding scale and shall be equal to two percent of the cost of restoring the opening for each unelapsed month or fraction thereof of the five-year restricted period.