

**BOROUGH OF BERNARDSVILLE
ORDINANCE NO. #2020-1841**

**AN ORDINANCE CONCERNING STREET EXCAVATIONS AND
SUPPLEMENTING AND AMENDING CHAPTER 14 OF THE BOROUGH
CODE ENTITLED "STREETS AND SIDEWALKS"**

STATEMENT OF PURPOSE: *To update the procedures for obtaining a road opening permit, to establish a five year moratorium on excavating streets after they are repaved, and to establish a fee schedule by repealing subsection 14-1.6 of the Borough Code entitled, "Excavations in Streets and Sidewalks; Permit Required" and replacing it with a new section 14-3 entitled "Street Openings and Excavations."*

WHEREAS, the procedures set forth in subsection 14-1.6 of the Borough Code entitled, "Excavations in Streets and Sidewalks; Permit Required" are outdated and inconsistent with current Borough practices; and

WHEREAS, the governing body wishes to formalize the moratorium on street openings for a period of five years after a street is repaved;

NOW, THEREFORE, BE IT ORDAINED by the Council of The Borough of Bernardsville, In the County of Somerset, State Of New Jersey, that Section 14 of the Borough Code entitled, "Streets and Sidewalks" is hereby supplemented and amended as follows:

Section 1. Subsection 14-1.6, entitled "Excavations in Streets and Sidewalks; Permit Required" is hereby repealed in its entirety.

~~§ 14 1.6. **Excavations in Streets and Sidewalks; Permit Required.**~~

~~No person shall tear up or excavate any street or sidewalk, nor use for building or construction or other extraordinary purposes any street or sidewalk maintained by the Borough for any purpose without first obtaining a written permit from the Borough Clerk. The permit shall state the location and purpose of the excavation, and that it is granted on condition that the person to whom it is issued shall designate the Borough as its agent to fill in the excavation and restore the road surface to the condition in which it was prior to such tearing up or excavation and on further condition that such person shall undertake and agree to pay to the Borough the reasonable cost of such fill and restoration,~~

~~depositing with the Borough Clerk the estimated cost as determined by the Road Supervisor prior to the issuance of the permit. In the event that such deposit shall exceed the reasonable cost of the work, the balance shall be returned to the licensee who shall agree if the reasonable cost of the work shall exceed the deposit, to pay to the Borough any excess in cost over the deposit, and whenever any permit shall issue to any person for the opening or excavation of any street, it shall be his duty to properly guard and light the same and to save harmless the Borough Council from prosecution by indictment or otherwise for negligence in connection with such excavation or the guarding thereof, and to save harmless the Borough from all liabilities or damages and costs by reason of such negligence.~~

Section 2. There is hereby created a new Section 14-3, entitled "Street Openings and Excavations", which reads as follows:

"14-3 STREET OPENINGS AND EXCAVATIONS.

14-3.1 Permit Required.

It shall be unlawful for any person to tunnel under or to make any opening or excavation in any street or other public place in the Borough, other than a County road over which the County of Somerset has exclusive jurisdiction, or State Highway 202, over which the State of New Jersey has exclusive jurisdiction without having obtained a permit as is herein required or without complying with the provisions of this section or in violation of or variance from the terms of any such permit. No permit shall be issued to open any Borough road for five (5) years after the road was paved, except pursuant to subsection 14-3.6 hereinbelow.

14-3.2 Applications.

a. Applications for such permits shall be made to the Borough Clerk and shall describe the location of the intended opening, excavation or tunnel, the size thereof, the purpose therefor and the person doing the actual excavation work and the name of the person for whom or which the work is being done and shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done.

b. Any person desiring a permit for the opening of a street or tunneling therein shall make application to the Borough Clerk setting forth the following information:

1. Name and address of applicant.

2. Name of the street where the opening is to be made and the street number, if any, of the abutting property.
3. Nature of the surface in which the opening is to be made.
4. Character and purpose of the work proposed.
5. Plan showing the exact location and dimension of all openings.
6. The name and address of the workmen or contractor who is to perform the work, if different from the applicant.
7. A statement that the applicant agrees to replace, at his own cost and expense, in accordance with Borough specifications and details, the opening to the same state and condition as it was at the time of the commencement of the work and further agrees to comply with all other regulations and laws relative to the work.
8. Such other information as the Borough Clerk may consider pertinent.

14-3.3 Fee.

The fee for a road opening permit shall be set by the Borough Council by resolution.

14-3.4 Indemnity Bond.

a. Before issuance of any such permit, the applicant or contractor proposing to do the actual excavating work shall file with the Borough Clerk a cash bond in the amount of one thousand five hundred (\$1,500) dollars. This cash bond shall serve as both a performance bond to guarantee completion of the work and also as a maintenance bond for a period of twelve (12) months to guarantee that the excavated area does not settle or otherwise deteriorate. If the responsible person does not complete the excavation and restore the surface in accordance with requirements of this section or if the responsible person does not restore the surface and make any necessary repairs resulting from the settling or any other deterioration within a reasonable time after receipt of notice of settling from the Borough, then the Borough may perform the necessary work itself and deduct the cost of such work from the posted bond. At the end of twelve (12) months the Director of Public Works shall inspect the area of the excavation to determine whether it has been restored in

compliance with the requirements of this section. The Public Works Manager shall then submit a written report to the Borough Council recommending that the bond be returned in whole or part or in the alternative that the Borough should perform additional repairs and charge the cost of those repairs against the bond. The Borough Council shall then act upon recommendation of the Public Works Manager and return any unused portion of the bond to the responsible person.

b. In addition, the applicant or the contractor proposing to do the actual excavating work shall file with the Borough Clerk a certificate of insurance showing that the applicant or the contractor proposing to do the actual excavating work has general liability insurance with combined policy limits of one million (\$1,000,000.00) dollars.

c. The provisions of paragraph a. of this subsection shall not apply to public utilities.

14-3.5 Manner of Excavating.

a. It shall be unlawful to make any such excavation, opening or tunnel in any way contrary to or at variance with the terms of the permit therefor. Proper bracing shall be maintained to prevent the collapse of adjoining ground, and, in excavations, the excavation shall not have anywhere below the surface any portion which extends beyond the opening at the surface.

b. No injury shall be done to any pipes, cables or conduits in the making of such openings, excavations or tunnels, and notice shall be given to the persons maintaining any such pipes, cables or conduits (or to the Borough Road Department or officer charged with the care thereof) which are or may be endangered or affected by the making of any such opening, excavation or tunnel before such pipes, cables or conduits shall be disturbed.

c. No unnecessary damage or injury shall be done to any tree or shrub or the roots thereof.

d. All openings, excavations or tunnels shall be guarded with adequate safety measures as may be necessary and with adequate warning devices. The safety measures and warning devices shall be placed in such a manner as to not unduly restrict traffic. Where the Police Department determines that such safety measures and warning devices are not adequate for the free movement of traffic during road construction and/or excavation, a Police Officer may be assigned to direct traffic in the area involved during working hours, and the cost thereof shall be charged by the Borough to the contractor or other person obtaining the permit. The provisions of this subsection shall not affect or relieve the contractor or any other person from any other obligations imposed by the contract or by operation of law.

e. All refuse and material shall be removed within forty-eight (48) hours.

f. All excavation shall be completely backfilled and compacted using bank run gravel, crushed stone or other approved material.

g. If tunneling operations are required, the tunnel shall be backfilled with rammed sand or sand and concrete mixed ten to one (10:1), respectively.

h. If blasting is required in the course of any excavation, it shall be done in strict compliance with all applicable state laws and regulations and municipal ordinances.

i. Under normal, nonemergency situations, street paving, whether new or improved, will carry a minimum no-cut period of five (5) years.

14-3.6. Moratorium

There shall be a five (5) year moratorium on the issuance of road opening permits for newly paved streets. Exceptions shall be granted for utility emergencies or road openings that impact the safety and welfare of property owners (e.g. electric service to new home). Any emergency work or undue hardship shall be approved by the Borough Council.

1. In the event that exception is granted during the moratorium period, the applicant shall be responsible for limiting the area of disturbance, saw cut all excavations and restore the trench to its original condition, including but not limited to the pavement, surface treatments and striping. Restoration of the top course of asphalt shall be done utilizing the infrared pavement method.

2. The Borough Public Works Manager or his/her designee may require a larger area of the roadway to be restored to avoid trench marks across the roadway. This will be done in a manner that creates a rectangular patch across the entire width of the roadway.

3. A nonrefundable exemption fee to be deposited in a dedicated account for road repairs shall be paid in accordance with the following schedule:

<u>Opening 0-1 year before expiration of moratorium</u>	<u>\$500.00</u>
<u>Opening 1-2 years before expiration of moratorium</u>	<u>\$1,000.00</u>
<u>Opening 2-3 years before expiration of moratorium</u>	<u>\$1,500.00</u>
<u>Opening 3-4 years before expiration of moratorium</u>	<u>\$2,000.00</u>
<u>Opening 4-5 years before expiration of moratorium</u>	<u>\$2,500.00"</u>

Section 3. Any or all other ordinances or parts thereof in conflict or inconsistent with

any of the terms hereof are hereby repealed to such extent as they are so in conflict or inconsistent.

Section 4. In case any article, section or provision of this ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect any other article, section or provision of this ordinance except insofar as the article, section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

Section 5. This ordinance shall become effective immediately upon final passage and publication as required by law.

ATTEST:

COUNCIL OF THE BOROUGH OF
BERNARDSVILLE IN THE COUNTY
OF SOMERSET

Anthony Suriano
Anthony Suriano, Borough Clerk

By: *Mary Jane Canose*
Mary Jane Canose, Mayor

Introduction: May 11, 2020
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