

ORDINANCE 2021-23

BOROUGH OF DUNELLEN

AN ORDINANCE AMENDING AND SUPPLEMENTING “THE CODE OF THE BOROUGH OF DUNELLEN, NEW JERSEY,” REGARDING STREET PAVING

The following ordinance was Introduced for first reading at a meeting of the Governing Body of the Borough of Dunellen, in the County of Middlesex, State of New Jersey, on September 8, 2021. It is now being further considered for final passage, after public hearing thereon, at a meeting of said governing body being held in the Municipal Building, 355 North Avenue, Dunellen, New Jersey, in said County, on September 20, 2021 at 7:00 p.m. During the week prior to and up to and including the date of such meeting copies of the full ordinance have been available at no cost and during regular business hours, at the Clerk’s office for members of the general public who have requested the same.

WHEREAS, the Mayor and Borough Council of the Borough of Dunellen (the “Borough”) is charged with establishing and maintaining safe passage and safe conditions within the Borough; and

WHEREAS, work has been undertaken throughout the Borough that has left numerous streets with only partial trench repairs or uneven and/or inconsistent repaving of varying quality; and

WHEREAS, this situation has left numerous streets in an unsightly and unsafe condition; and

WHEREAS, the Mayor and Borough Council have therefore determined that an ordinance further delineating the responsibilities of individuals and/or utilities who seek to excavate the streets and roadways of the Borough is in the best interests of the health, safety, and welfare of the residents of the Borough.

NOW, THEREFORE, BE IT RESOLVED:

Chapter 256, “Streets and Sidewalks,” Article Three, Restoration of Surfaces, of the Borough Code shall be and is hereby amended, in part, as follows:

Sec. 256-9. Permit Required.

It shall be unlawful to excavate, dig in, tunnel or open any public street in the Borough of Dunellen for any purpose without a permit being first secured from the Borough Construction Officer, and then only upon compliance with the provisions of this article. "Street" for the purpose of this article shall mean any road, thoroughfare, highway, public way, public alley, easement or other right-of-way accepted or maintained by the Borough as a public street, as well as any other State or county road or highway over which the Borough has acquired jurisdiction by agreement.

- a. A tunnel or excavation may be commenced without a permit where an emergency has arisen which makes it necessary to start work immediately, provided that the application for permit is made simultaneously with the commencement of the work or as soon thereafter as is practical, but within 24 hours of commencement of the work at the latest. The permit, when issued, shall be retroactive to the date on which the work was begun.

Sec. 256-10. Application procedures.

Any person, firm, or corporation desiring a permit for the opening of a street or tunneling therein shall make application to said Borough Construction Officer setting forth the following information:

- (a) The name and address of the applicant.
- (b) The name of the street where the opening is to be made and the street number, if any, of the abutting property.
- (c) The Borough Tax Map, block and lot number of the property for the benefit of which the opening is to be made.
- (d) The nature of the surface in which the opening is to be made.
- (e) The character and purpose of the work proposed.
- (f) The time when the work is to be commenced and completed.
- (g) The plan showing the exact location and dimension of all openings.
- (h) The name and address of the workmen or the contractor who is to perform the work, if different from the applicant.
- (i) 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 they were at the time of the commencement of the work, and further agrees to comply with all other applicable ordinances, regulations and laws relative to the work.
- (j) Agrees to indemnify and hold harmless the Borough from all loss, damage, claim or expense, including expenses incurred in the defense of any litigation arising out of injury to any person or property resulting from any work done by the applicant under the permit.
- (k) Such other information as the Borough Construction Officer or Engineer may consider pertinent.
- (l) The registration number from the underground locations services "New Jersey One Call" indicating that they have been properly notified and will locate underground facilities in the area of the proposed opening or tunneling operation.
- (m) Proof of insurance coverage as required by this article.

Sec. 256-11. Authority to grant or refuse permit.

The Borough Construction Officer is hereby authorized to refuse the issuance of any permit if such refusal is in the interest of public safety, public convenience or public health. If a permit is refused by the Construction Officer, an appeal may be taken to the Borough Council. The Borough Council, after hearing the applicant and the Construction Officer (or his/her designate such as the Borough Engineer) and such evidence as may be produced, may either direct the issuance of such permit or sustain the refusal of the Construction Officer.

Sec. 256-12. Requirements for Issuance of Permits.

All permits issued under this Article shall require the applicant to comply with the following:

(a) All excavations shall be kept properly barricaded at all times and, during the hours of darkness, shall be provided with the proper warning lights. The applicant shall provide such signs, controls, barricades, warning lights, and personnel necessary for safe operation and compliance with applicable federal and state laws at its own cost and expense.

(b) All excavations or tunneling shall be sheeted, shored, or braced in accordance with applicable safety codes and Occupational Safety and Health Administration (“OSHA”) standards.

(c) All work shall be done 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 Chiefs of the Police Department. The Police Department shall be notified of all street closings at least 24 hours in advance, except where the work is of an emergent nature, when notice shall be given to the Police Department at the time work commences.

(d) All refuse and material shall be removed within forty-eight hours in accordance with applicable federal and state laws.

(e) All excavations shall be completely backfilled with a Controlled Low Strength Material (CLSM), more commonly referred to as flowable fill, to a level ten inches below the adjacent roadway surface. A temporary patch and trench protection must immediately be installed until such time that the CLSM has adequately cured and the asphalt pavement can be applied. The final restoration shall consist of 8 inches of Hot Mix Asphalt Base Course and 2 inches of Hot Mix Asphalt Surface Course. When filled, the opening shall be flush with the existing contour of the road. Permanent patches must have all edges sealed. CLSM shall have a twenty-eight-day minimum compressive strength of 120 psi, and the applicant shall submit a mix design to the Construction Officer for approval prior to use. Under certain circumstances, with the permission of the Dunellen Construction Officer or Borough Engineer, Dense Graded Aggregate Backfill may be substituted for CLSM.

(f) In the event of cold weather that prevents the use of flowable fill, the applicant shall fill and tamp the opening with clean fill and install cold patch or other temporary patch material.

Within a period of not more than six months, the applicant shall remove the temporary fill, install flowable fill, and replace the temporary patch with permanent pavement. Under certain circumstances, with the permission of the Dunellen Construction Officer or borough Engineer, Dense Graded Aggregate Backfill may be substituted for CLSM. In the event only that the permanent asphalt material is unavailable, flowable fill shall be at a finished level ten inches below the existing contour of the road and followed by ten inches of cold patch or other temporary patch material and the installation of trench protection. Within a period of not more than six months, the applicant shall remove the temporary patch and shall install the asphalt restoration consisting of 8 inches of Hot Mix Asphalt Base course and 2 inches of Hot Mix thoroughly tamped and rolled to create a permanent patch. If tunneling operations are required, the tunnel shall be backfilled with rammed concrete composed of one-part cement to ten-parts sand.

(g) If blasting is required in the course of any excavation, it shall be done in strict compliance with all applicable federal and state laws and regulations.

(h) Restoration of any street foundation or surface shall not commence until the Borough Construction Officer or his/her designated representative has determined that settlement of the subsurface is complete and the area properly prepared for restoration.

(i) Except as described in subsection (j) below, and except for residential property owners in which the sole work being performed is repair or replacement of an existing utility line, the street surface shall be restored (milling and repaving) for the full width of the roadway (curb-to-curb) for a distance of one hundred (100) feet around the area of the opening. The Borough Construction Officer shall specify the distance on either side of the opening based on the proximity to other roadways or utility concerns and may limit the cumulative distance from one hundred (100) feet based only on these limited factors. For example, if there is an excavation on a small cul-de-sac of less than one hundred (100) feet in length within the Borough, or if such a distance will unreasonably interfere with an existing utility, the Borough Construction Officer may use his/her discretion in requiring the overall distance of the restoration. All sidewalks, when being restored or replaced as part of the operations hereunder, must also be restored pursuant to the Borough Construction Officer's standards. All curbside stormwater drains must be replaced, at the applicant's expense, if necessary and as directed by the Construction Officer or Borough Engineer to ensure compliance with current state and federal law.

(j) In the case of utility work undertaken by a public or private utility, which work involves placing new or replacing/repairing existing utility infrastructure, including, but not limited to, gas lines, water lines, electrical lines, and sewer lines, the applicant shall restore (milling and repaving) the entire street surface from edge-to-edge, or curb-to-curb, for the full length of the excavation or a minimum of one hundred (100) feet as described herein. as described herein. In all such instances, the applicant shall install ramps that are compliant with the Americans with Disabilities Act of 1990 ("ADA"), and as directed by the Borough Construction Officer or Borough Engineer, at every street intersection that is restored, in whole or in part, pursuant to this subsection.

(k) All street patch repairs and/or trench restoration described in subsection (i) and (j) hereto must use the infrared paving method pursuant to the most recent standards promulgated by the Borough Construction Officer or Borough Engineer so as to blend uniformly with the adjacent

existing roadway. All backfilling and patching operations of any such excavation project must be supervised by the Borough Construction Officer or Borough Engineer or his/her designated representative to ensure compliance with the Borough's standards.

(l) The street surface shall be restored to the satisfaction of the Borough Construction Officer or Borough Engineer that it has been restored to its original condition.

(m) All materials and work shall be in accordance with Borough regulations, specifications, and details in the office of the Borough Construction Officer.

Sec. 256-13. Other Conditions Applicable to Permits.

The following conditions and regulations shall apply to all permits issued under this Article:

(a) *Transferability.* All permits shall apply only to the applicant to whom it is issued and for the purposes described in the application and shall not be transferable.

(b) *Commencement of Work.* Work under a permit shall commence within 30 days from the date of issuance of the permit, which shall be valid for thirty days therefrom. If work is not commenced within that time, the permit shall automatically terminate, unless extended in writing by the Borough Construction Officer. The Borough Construction Officer shall be notified at least twenty-four (24) hours prior to the work commencing, except where the work is of an emergent nature, when notice shall be given to the Borough Construction Officer no later than at the time work commences.

(c) *Possession of Permit.* The applicant shall keep a copy of the permit and same shall be exhibited on demand to any duly authorized employee or police officer of the Borough at the location where the work is occurring.

(d) *Revocation of Permit.* The Borough Construction Officer may revoke a permit for any of the following:

(1) Violation of any provisions of this Article or any other applicable rules, regulations, laws, or ordinances.

(2) Violation of any condition of the permit issued.

(3) Carrying on work under the permit in a manner which endangers life or property, or which creates any condition which is unhealthy, unsanitary, or a nuisance, in the sole discretion of the Borough Construction Officer.

(e) *Modification of Permit Conditions.* In a special case, the Borough Council may, by resolution, impose special conditions to which the issuance of the permit may be subject, or may decide that any provision of this Article shall not be applicable or may be modified.

(f) *Rules and Regulations.* The Borough Construction Officer may make and implement any and all rules and regulations that he/she considers necessary for the administration and

enforcement of this Article, but no regulation shall be inconsistent with, alter, or amend the intent of any provision of this Article, or impose any requirement that is in addition to those expressly or by implication imposed by this Article. Copies of all current regulations shall be furnished to each permittee at the time of the issuance of the permit.

(g) *Five-Year Road Opening Moratorium*

- A. Prior to the start of any paving or repaving work on any street of the Borough of Dunellen, the Borough Construction Officer or the Borough Engineer shall notify each utility company of said work so any excavations may be completed before paving is started. Such notice shall provide that no excavation permit shall be issued for openings, cuts, or excavations in said street for a period of five years from the date of such paving. The notice shall also provide that applications for excavation permits for work to be done prior to such paving or repaving shall be submitted promptly so that any work may be completed not later than 90 days from the date of such notification.
- B. During such five-year period, no permit shall be issued to open, cut, or excavate in such a Borough street unless, in the judgment of the Borough Construction Officer or Borough Engineer, an emergency exists that makes it absolutely essential that the permit be issued. In the event that an emergency exists which shall require a road opening within such five-year period, the permit fees in accordance with Section 256-14 shall apply. Additionally, the Borough Construction Officer shall ensure that any street opening on any street paved within five years is restored satisfactorily, which restoration must include pavement restoration (milling and repaving) for the full-width of the roadway to a distance of approximately 100 feet around the area of the opening.
- C. The distances in either direction of the opening will be determined by the Borough Construction Officer or Borough Engineer based on proximity to other roadways or utility concerns.

(h) *Proof of Insurance.* Any contractor hired to perform a street excavation in the Borough shall provide proof that it is licensed and bonded with the State of New Jersey.

Sec. 256-14. Permit Application Fees.

(a) Prior to issuance of any permit pursuant to this Article, the applicant shall file an application for said permit at least 48 hours prior to the requested time of issuance and shall pay for said permit in accordance with the following schedule:

(1) Permit Fee:

- a. Excavation up to 25 square feet: \$100.00.
- b. Excavation between 25 and 50 square feet: \$150.00.

- c. Excavation larger than 50 square feet: \$150.00 plus \$1.00 per square foot in excess of 50 square feet. For example, if an application is made for an excavation of 75 square feet, the permit fee would be \$175.00.
- d. Excavations made within five years of previous paving (in addition to the fees described above):
 - 1. Within the preceding year: \$1,000.00.
 - 2. Within the preceding two (2) to three (3) years: \$750.00.
 - 3. Within the preceding four (4) to five (5) years: \$500.00.

(2) Cash Bond: The Borough Construction Officer is authorized to demand a bond in an amount not less than \$1,000.00 to assure that any road opening on roadways is restored satisfactorily. The amount of this cash bond shall be based on the estimated restoration cost to be determined by the Borough Construction Officer.

(3) Escrow: An inspection escrow may be required at the discretion of the Borough Construction Officer in an amount to be determined by the Construction Officer.

(b) All permit fees are nonrefundable, and said permit, once issued, is valid for a period of 60 days.

(c) The fee and cash bond will be waived for work done by Middlesex County, provided Middlesex County files an application prior to any work being done.

(d) Public utilities will be allowed to establish an escrow account with the Borough of Dunellen for the required cash bonds. A maximum of \$25,000.00 shall be deposited in this account, unless a single project requires the posting of a larger amount as determined by the Borough Construction Officer or Borough Engineer.

(e) The Borough shall have the authority and right to use the escrow funds or cash bond to restore or maintain the work covered by the permit if the applicant fails to do so within 24 hours of notification by the Borough.

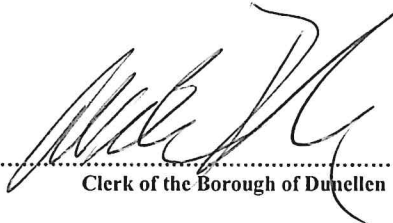
SEC. 265-15. Penalties.

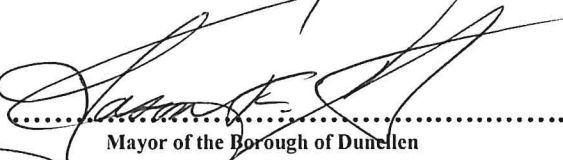
Any person or entity who violates any section of this ordinance regarding the obtaining of a permit and attendant fees shall be subject to a fine of \$2,000.00 per day.

SEC. 265-16. All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

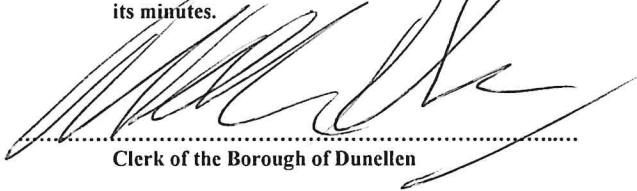
SEC. 265-17. If any section, provision, or part of provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance, or any part thereof, other than the part so held unenforceable or invalid.

SEC. 265-18. This Ordinance shall take effect after passage and publication in the manner provided by law.


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Clerk of the Borough of Dunellen

Approved 9/29/2021

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Mayor of the Borough of Dunellen

I certify the foregoing to be a true and correct abstract of a resolution regularly passed at a meeting of the Common Council of the Borough of Dunellen, held

..... 9/29/2021
and in that respect a true and correct copy of its minutes.

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Clerk of the Borough of Dunellen