

BOROUGH OF CRESSKILL

ORDINANCE NO. 20-03-1553

**ORDINANCE AMENDING CHAPTER 230 STREETS AND SIDEWALKS OF  
THE REVISED ORDINANCES OF THE BOROUGH OF CRESSKILL,  
SPECIFICALLY STREET OPENINGS**

WHEREAS, the Council of the Borough of Cresskill is of the opinion that Contractors and Utility Companies have been allowed to conduct their utility improvements without accountability, leaving the Borough responsible for the cost and repair of damaged roads; and

WHEREAS, the Council demands that Contractors and Utility Companies assume safety and full responsibility to the respective Roadway post construction;

BE IT ORDAINED, the Council does hereby amend and revises Chapter 230 of the Revised General Ordinances of the Borough in its entirety, specifically “Street Openings”, Subsection “Street Excavation” and Ordain the following:

BE IT ORDAINED, that if there are any conflicting provisions in Section 230-1 through 38, inclusive, it shall be conclusively presumed that this newly ordained Section 230A-1 through 19 inclusive shall control; and

§ 230A: STREET EXCAVATIONS

§ 230A-1: Definitions

As used in this article, the following terms shall have the meaning as indicated:

Applicant

A person who applies for a permit.

Permittee

A person who has been issued a permit.

Street

Any road, 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 state or county road or highway over which the Borough has acquired jurisdiction by agreement.

§ 230A-2: Permit Required

- A. No person shall make an excavation in, or tunnel under, any street or sidewalk without the issuance of a permit. All permits shall be issued by the Borough Clerk’s Office.
- B. Such permit shall remain in effect for thirty (30) days, provided that such time may be extended upon application made to the Department of Public Works and/or the Borough Engineer, with notice to the Borough Clerk, within the thirty-day period for an additional 30 days, upon good cause being demonstrated for the noncompletion of the work within the initial period.
- C. Case of emergency.

In the event of an emergency, work may commence immediately provided that:

- a. An application has been filed with the Borough Clerk with an estimate of fees required and with an estimated performance guarantee.

- b. The Procedure in Subsection C (i) supra may be implemented the next business day succeeding the commencement of the work, in the event the emergency takes place after the close of the business day, provided that a call is made to the Police Department citing the nature of the emergency;
- c. The permit, when issued, shall be retroactive to the date on which the work was begun.

§ 230A-3: Application for a Permit

All street opening permits shall be filed with the Borough Clerk on forms provided by such office and shall provide the following information, as applicable:

- (1) Name, address and telephone number of the applicant.
- (2) Names, addresses and telephone numbers of parties to be reached in the event of an emergency.
- (3) Street address of premises adjacent to proposed opening.
- (4) The Tax Map lot and block numbers of properties abutting and adjacent to the portion of the street to be opened.
- (5) Name, address and telephone number of property owner for whose benefit opening is to be performed.
- (6) Character and purpose of the proposed work.
- (7) Estimated time when work is to be commenced and completed.
- (8) Plans and specifications or other drawings on permit, showing the exact location and dimensions of all openings.
- (9) Name, address and telephone number of the person who is to perform the work.
- (10) An acknowledgement that the applicant agrees to replace, at his/her own cost and expense, the pavement, curb, gutter, lawn, sidewalk and all other disturbed areas in accordance with current Borough standards within ninety (90) days of any particular street opening subject to the following:
  - a. Within 24 hours of the street opening the area shall be restored by complete backfilling with a dense graded aggregate.
  - b. Pavement shall consist of the following:
    - i. Subgrade. Approval of existing material by Borough Engineer or application of new six-inch-thick course of dense graded aggregate (DGA).
    - ii. Base course. Bituminous concrete NJDOT Mix I-2, stabilized base, four inches thick.
    - iii. Intermediate course. Bituminous concrete NJDOT Mix I-3, binder, two inches thick.
    - iv. Surface course. Bituminous concrete NJDOT Mic I-5, surface, two inches thick. This may be changed to Mic I-4 on steeper grades with approval of the Borough Engineer.
    - v. In areas of anticipated truck or other heavy vehicle traveled, the Borough Engineer shall direct the installer to increase the thickness of the base course by two inches, said base course then to be constructed in two lifts.
    - vi. The surface course installation may be postponed with consent of the Department of Public Works and/or Borough Engineer for a reasonable time to permit trench settlement.
    - vii. The placement of the surface course may be delayed in the event of the winter season to a date not beyond April 15.

- viii. Metal plates may be placed if required by the Borough Engineer.
- (11) Certain underground conduits, pipes, etc., which may require a sand cushion adjacent to the structure for protective reasons, will be required if indicated in the application or at the discretion of the Borough Engineer.
  - (12) Edges of all excavation shall be cut in a straight line with a saw or an approved pavement cutter.
  - (13) The nature, location and purpose of the work.
  - (14) A statement that the permittee will comply with the Ordinance, regulations and laws relating to the proposed work.
  - (15) A permit shall be required for each and every road excavation.
  - (16) A permit shall not be transferred.
  - (17) Each permittee, as a condition to receiving their Municipal Permit, shall call 1-800-272-1000 to obtain a utility mark out at least 48 hours prior to commencement of excavation of any street and certify that (s)he has followed the mark-out procedure for determining the location of utilities and obstructions within the area of the proposed work, and submit a mark-out reference number, as provided by the Garden State Underground Plan Location Service.
  - (18) Sidewalk Standards
    - a. All broken or damaged sidewalks shall be replaced as follows:

Sidewalks shall be of concrete or other approved materials. Sidewalk width may vary from four feet wide in residential areas to thirteen (13) feet in business or commercial areas. Sidewalks shall be four inches thick excepting at points of vehicular crossing and at street corner handicap ramps where same shall be six inches with reinforcing steel in residential areas and eight inches with reinforcing steel where truck or other heavy vehicles are anticipated.

§ 230A-4: Protection of work.

- A. Each permittee shall keep each respective opening properly guarded with lights, devices and manpower as may be required. Barricades, signs and traffic control shall be in accordance with the Manual of Uniformed Traffic Control Devices. Work shall be performed in a manner and by a schedule to minimize traffic interference. No road shall be closed to traffic unless permission is granted through the office of the Chief of Police; provided, further, that no road shall be so closed on a daily basis for more than one day. In the event the Police Chief, or his/her designee deems it necessary, an off-duty police officer shall be employed by the applicant to direct traffic;
- B. The permittee shall submit an Insurance Certificate naming the Borough as an insured, with coverage in an amount not less than one million dollars (\$1,000,000.00) and shall hold harmless the Borough, its officers and agents from any loss, injury, claim, demand or damage resulting from any negligence or fault of the permittee, or the agents of the permittee, in connection with the performance of work covered by the permit. In the event the work has not been completed on or before the expiration date of the permit and the permittee has not requested an extension of time, the Building Department, if it deems it advisable, may take steps to backfill the trench and replace a permanent pavement over the opening for which the permit was issued and charge or deduct same against the permitted bond. If any extension of time beyond the date is required for the completion of the work, a new application must be filed.
- C. Except in the case of an emergency or special construction requirements, all road openings shall be closed within 24 hours by the permittee, or its delegated agent, and thereafter maintained in a safe condition for vehicular traffic until the permanent surface has been restored. In the case of an emergency, a substituted closing may be constructed as directed by the Department of Public Works and/or Borough Engineer.

- D. Any work for which a permit is issued shall be conducted so as not to interfere with any water main or sewer, or any connection from a water main or sewer to any building, unless prior permission for interference has been obtained from the Department of Public Works and/or Borough Engineer. All rock within five (5) feet of any water main, sewer or other pipe which may become damaged shall be removed without blasting. No excavation which may damage trees or shrubbery shall be made without the prior permission of the Borough Engineer.
- E. When closing the street, each permittee shall completely backfill the trench with approved material which is to be placed in layers not exceeding twelve (12) inches in thickness, moistened as required, and each layer tamped until thoroughly compacted.
- F. In the restoration of original pavement in an excavation, the following rules shall govern:
  - a. The foundation shall be restored to a width of twelve (12) inches wider than the width of the trench, except where deemed unnecessary in the reasonably exercised judgment of the Department of Public Works and/or Borough Engineer.
  - b. The surface pavement shall extend twelve (12) inches wider than the width of the foundation and six (6) inches longer than the length of the foundation.
  - c. The permittee must install the restored foundation as well as the restored surface of all opening.
- G. In cases where it is necessary to resort to tunneling operation to reach the point of connection with any main line, the backfill in the tunnel shall be of rammed cement concrete composed of a mixture of one part of cement and six parts of coarse aggregate material.
- H. The Department of Public Works and/or Borough Engineer shall require special condition in any special case, as may be required.
- I. The Borough Engineer shall receive a copy of the plan and, after evaluation, set an escrow deposit commensurate with the circumstances in the exercise of his/her reasonable judgment.
- J. The Borough Engineer may make any reasonable rules and regulations which (s)he considers necessary for the administration and enforcement of this Ordinance, but no regulation shall be inconsistent with, alter or amend any provisions of this Ordinance or impose any requirement which is in addition to those expressly imposed by this Ordinance.

§ 230A-5: Street Opening by Utility Companies

- A. Utility Companies, including those engaged in the installation of gas, water and electronic lines, shall report to the Department of Public Works and/or Borough Engineer, yearly, their intentions with regard to prospective work requiring future street openings in the community for the purpose of coordinating such activity with pavement projects anticipated by the Borough;
- B. Except in the case of emergency, the Borough shall have the right to schedule street openings with utility companies in a manner which will create the least disturbance to pavement courses, in furtherance of which purpose the Borough Engineer shall provide to the utilities a schedule of expected street construction and resurfacing,
- C. Any public utility corporation authorized by law to install or repair underground pipe lines or conduits in the Borough shall issue an indemnity to the Borough in an amount of not less than the Utility Company's Full Faith Financial Credit in lieu of cash indemnity. The bond shall automatically renew annually without further documentation.

The Bond shall be conditioned upon:

- i. Making of the excavations or repairs in accordance with the provisions of this Ordinance;

- ii. Complying with the conditions set forth herein.
- iii. Restoring the pavement of any disturbed street (curb to curb) or sidewalk, or under its authority, to the satisfaction of the Department of Public Works and/or Borough Engineer.
- iv. Safeguarding, protecting and indemnifying the Borough against any damages, expense or loss likely to be sustained or suffered by the Borough by reason of the making, refilling or resurfacing of any excavation or resulting from insufficient lighting and guarding of the excavation.

§ 230A-6: Large Excavations

For excavations in excess of fifteen (15) square yards, permits shall be issued subject to the following terms and conditions:

- a. Applicants other than public utilities shall first enter into a bond with the Borough with a reasonable surety acceptable to the Borough. The bond shall be in the amount of not less than Five Thousand (\$5,000.00) dollars.
- b. The applicant shall first submit plans and profiles in duplicate for the approval by the Borough Engineer. Any changes from the plans or profiles during the construction work shall be approved by the Department of Public Works and/or Borough Engineer.
- c. The Borough reserves the right to engage the services of its Engineer or Inspector or both to supervise the construction work. The cost of such supervisions shall be assumed by the permittee and become due and payable thirty (30) days after the receipt of a statement from the Borough. Final Construction Approvals shall not be issued until all supervision fees have been satisfied.
- d. All excavations on any street or sidewalk and any pavement or flagging taken up by the permittee for the purpose of repairing or installing any underground pipe line, conduit and the like shall be restored to as good condition as before the commencement of work, and shall be maintained in such condition for one year after completion of work. No street or sidewalk shall be encumbered with any material or equipment after the date of completion stated in the application.
- e. Any damage done to the pavement of any street or other property by the permittee as a result of the operation shall be repaired within the time designated by the Borough Engineer. Should the permittee fail to make repairs within the time designated, Borough shall proceed to make and, complete such repairs at the expense of the permittee. This Ordinance authorizes payment to the Borough from the Bond or Escrow as the case may be.

§ 230A-7: Financial Obligations: Large Excavation Only.

- A. All permittees, including, but not limited to, public utilities, their contractors or contractors of state or federal agencies, shall deposit a guarantee in the amount of Five Thousand (\$5000.00) Dollars with the Chief Financial Officer of the Borough in the form of an indemnity bond or bank draft acceptable to the Borough. The deposits required herein shall be held in an interest free account by the Borough. One year after final restoration of the work pending the approval of the Department of Public Works and/or Borough Engineer, the guarantee shall be returned to the permittee. However, should the Department of Public Works and/or Borough Engineer, upon final inspection, determine that the construction under this permit was unsatisfactory and/or otherwise in violation of the approved plans or conditions attached to the

permit and should the permittee, upon receipt of written notice of deficiencies fail to remedy the same in thirty (30) days, then the Department of Public Works and/or Borough Engineer shall initiate the process to deduct from the permittee's guarantee all expenses incurred by the Borough in performing the necessary repairs to remediate the same.

- B. The Department of Public Works and/or Borough Engineer shall have the right to request perform borings in the pavement, cut cores in the pavement or to perform other investigations as deemed necessary to confirm that the provisions of the road opening permit have been satisfied. The cost of such investigations shall be the permittee's responsibility
- C. The Borough Engineer may require an extended maintenance period in excess of one year and an additional maintenance guarantee depending upon the nature of the work involved. This additional obligation will be released upon completion of the work and acceptance of the work by the Department of Public Works and/or Borough Engineer.
- D. When a maintenance bond is posted, it shall be by a Surety Company licensed to do business in the State of New Jersey.
- E. The release of the guarantee shall be also conditioned upon the permittee restoring the surface and any damage to the street (curb to curb) and/or sidewalk abutting the work site and those streets which had sustained damage through the use of construction equipment and vehicles.
- F. For utility main construction other or additional conditions may be prescribed by the Borough Engineer. Plans for such projects must have the approval of the Borough Engineer before a permit may be issued.

§ 230A-8: Liability for Excavation.

The permittee shall be under a duty to properly guard the excavation by the erection of suitable barriers by day and flashing lights or flares by night. The Contractor or Utility Company shall be strictly liable for any neglect to safeguard the traveling public.

§ 230A-9: Scheduling of Work.

Where the excavation is to extend the full width of the road, only one-half of it shall be made at one time and shall be backfilled before the other half is excavated, so as not to interfere with traffic. The excavation and backfilling shall be made within the time specified in the permit.

§ 230A-10: Fees.

- A. Each applicant for a permit, before its issuance, shall pay to the Borough Clerk a fee as set forth by Council Resolution.
- B. The permittee shall deposit with the Borough Clerk such escrow fees as are reasonably anticipated to be required to reimburse the Borough for the cost of plan review and inspections, as may be required by the Department of Public Works and/or Borough Engineer. In the event the project extends beyond the anticipated completion time, the Borough Engineer may deem that additional escrows be deposited to cover Borough expenses.

§ 230A-11: Replacement of pavement by Borough.

Whenever, in the opinion of the Borough Engineer, the nature of any street improvement through which an excavation has been made is such that it will be for the best interest of the Borough, bringing the filling to grade with such fill to make the street safe and fit for

public travel. In that event, any escrow or bond moneys deposited upon application for the permit shall be utilized to meet the expense of such repavements.

§ 230A-12: Default by permittee.

Should the pavement not be replaced within thirty (30) days in the manner and condition to correspond with the remainder of the pavement on the street, the person holding the permit shall be in violation of this article. In that event, the Borough, under the direction of the Department of Public Works and the Borough Engineer, direct the repair that portion(s) of the street, all expenses shall be deducted from the permit fee, Bond or Escrow, on deposit with the Borough. Should there be a deficit after making this deduction, the Borough may institute suit of recovery against the permit holder in a Court of proper Jurisdiction.

§ 230A-13: Violations and Penalties.

Any person who shall violate, permit, allow or suffer to be violated any provision of this article shall be subject to a fine of not more than One Thousand (\$1,000.00) Dollars for each violation, and the imposition of the payment of the required fees, as provided for by Council Resolution. For the purpose of this article, each day that a violation remains in effect shall be considered a separate violation.

§ 230A-14: Required Notification

- A. Once a year the Borough Engineer shall notify public utility providers and municipalities of planned work on Borough roads. Any work to be done on these roads will have to be done before paving is started. Such notice shall state that no road opening permit shall be issued for openings, cuts or excavations in such Borough road for a period of ten (10) years after the date of paving. The notice shall also notify such permittee that applications for road opening permits, for work to be done prior to such paving shall be submitted promptly in order that the work covered by the permit may be complete before paving.
- B. During such ten-year period, no permit shall be issued to open, cut or excavate in such Borough Road unless, in the judgment of the Borough Engineer, an emergency exists which makes it absolutely essential that the road opening permit be issued.
- C. The Borough Clerk is authorized to demand a cash escrow or equivalent in the amount not exceeding the cost to repair the open area of roadway to its pre-construction condition, or call the Full Faith and Cash Bond to assure that any road opening on roadways paved within the past ten (10) years is restored satisfactorily. The restoration shall include milling and repaving of the area so as to blend uniformly with the adjacent roadway as per the conditions stated in the permit, including restoration of pavement markings, signage and all other appurtenances.

§ 230A-15: Manner of Material Storage.

There shall at all times be a passage way of at least three quarters of the width of the street between the material stored and the opposite curb. Sidewalks shall be kept unencumbered of any material for a width of not less than four feet. Where the sidewalk is removed for excavating or other purposes, that part of the sidewalk shall be made passable by laying planks, metal plates, or other suitable material.

§ 230A-16: Sewer Connections.

No permit issued pursuant to this chapter shall grant or be deemed to grant the permittee the right to make connection with any sewer. For such purpose, a separate permit shall be issued by the Department of Public Works and/or Borough Engineer.

§ 230A-17: Supervision.

The Department of Public Works, with the assistance of the Borough Engineer, shall ascertain whether the permits required by this section have been issued, supervise all excavations and backfilling, and report all violations of this section to Borough Administrator. The Department of Public Works and/or Police Department shall be authorized to direct the issuance of a summons for any violations arising out of Ordinance.

§ 230A-18: Police Department.

The Police Department shall enforce the regulations covering erection of suitable barriers, warning signs and lights or flares and all other provisions of this sections, so as to safeguard the traveling public. The Police Department, with the assistance of the Department of Public Works and/or Borough Engineer, shall prosecute all violations of this Ordinance.

SEVERABILITY. If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this ordinance shall be judged invalid in whole or in part or as applied to any particular circumstance or individual by a court of competent jurisdiction, such order of judgment shall not effect or invalidate the remainder of any article, section, subsection, paragraph, subdivision, or clause of this ordinance.

REPEALER. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistencies only.

EFFECTIVE DATE. This ordinance shall take effect immediately upon final passage and publication as required by law.