



BOROUGH OF HIGHLANDS  
COUNTY OF MONMOUTH

## ORDINANCE 19-04

### AN ORDINANCE AMENDING CHAPTER 8-2 OF BOROUGH CODE CONCERNING EXCAVATIONS IN THE PUBLIC STREETS

**WHEREAS**, the governing body of the Borough of Highlands has determined that it is in the best interest of the residents to update permitting requirements for persons seeking to make an excavation in the Borough's streets.

**NOW, THEREFORE, BE IT ORDAINED** by the governing body of the Borough of Highlands as follows:

#### SECTION I.

The following Sections of Chapter 8, Section 2 entitled "Excavations in the Public Streets" of the Borough Code shall be amended as follows: (All additions are shown in **bold italics with underlines**. The deletions are shown as ~~**strikeovers in bold italics.**~~)

#### 8.2 EXCAVATIONS IN THE PUBLIC STREETS.

##### 8-2.1 Definitions.

As used in this section words shall have the following meanings:

a. *Street* shall mean 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.

b. *Director* shall mean the director of the department of public works of the borough.

##### 8-2.2 Permit Required.

a. No person shall make an excavation in or tunnel under any street without first obtaining a permit from the director.

b. 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. The permit, when issued, shall be retroactive to the date on which the work has begun.

c. The department of public works may issue permits to other public bodies without fee.

### **8-2.3 Denial of Permit; Appeal.**

a. The director is authorized to refuse the issuance of any permit, if such refusal is in the interest of public safety, public convenience or public health. In the event that any permit is refused by the director, an appeal may be taken to the council. The council, after hearing the applicant and the director and other evidence as may be produced, may either direct the issuance of the permit or sustain the refusal of the director.

b. *Additional Requirements for Excavations on Paved Streets Less than Seven Years Old.*

1. No permit shall be issued by the director which would allow an excavation or opening of a paved or improved street surface less than seven years old unless the applicant can clearly demonstrate that public health or safety requires that the proposed work be permitted or unless an emergency condition exists.

2. If by special permission of the director a permit is issued to open any paved or improved street surface less than seven years old, an additional fee shall be charged for the opening, except that the additional fee shall be waived in the event the work is of an emergency nature. The additional fee shall be equal to the sum of one thousand (\$1,000.00) dollars plus total cost of repair as set forth by the Borough Engineer.

3. Appeals from this section may be had in the same manner as those set forth in subsection 8-2.3a. above.

### **8-2.4 Applications for Permits.**

Applications for a permit shall be made to the department of public works **for each individual opening. Applications and** shall contain the following information:

- a. Name and address of the applicant.
- b. 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. Nature of the surface in which the opening is to be made.
- e. Character and purpose of the work proposed.
- f. Time when the work is to be commenced and completed.
- g. Each application shall be accompanied by a set of plans in quadruplicate showing the exact location and dimensions of **all openings the opening.**

h. The name and address of the workman or contractor who is to perform the work.

i. A statement that the applicant agrees to replace at his own cost and expense, the street, curb, gutter and sidewalk in the same state and condition in all things as they were at the time of the commencement of the work within 48 hours of the commencement of same.

#### **8-2.5 Issuance of Permit.**

Permits shall be issued under the authority of the director and in accordance with the provisions of this section and the regulations which the director may establish. The director shall determine the initial time limit during which the permit shall be valid.

**Separate permits are required for each individual opening.**

#### **8-2.6 Contents of Permit; Filing.**

Each permit shall state the identity and address of the applicant, the name of the street and the location where the excavation or tunnel is to be made, the dimensions of the opening and the period during which the permit shall be valid. The original of each permit shall remain on file with the department of public works.

#### **8-2.7 Fees.**

Fees must be paid when the application is made. The applicant shall be charged a fee of ~~fifty (\$50.00)~~ **one hundred ninety (\$190.00)** dollars for each permit.

In addition to the fee prescribed by this subsection the application shall be accompanied by a deposit to secure the obligation to restore the surface of the street as required by this section. The amount of this deposit shall be as follows:

a. For ~~an excavation~~ **excavations not** exceeding **20 16** square feet, ~~five hundred (\$500.00)~~ **one thousand (\$1,000.00)** dollars.

b. Unpaved street, two hundred (\$200.00) dollars.

c. For ~~larger~~ excavations **in excess of 16 square feet**, such amount as the borough engineer shall determine as reasonable for the cost of restoration, including the setting of a bond amount and imposing of any other conditions the engineer deems reasonable involving the restoration work to be done. A separate review fee shall be charged by the engineer as a result of this evaluation not to exceed ~~fifty (\$50.00)~~ **two hundred (\$200.00)** dollars.

d. In the event that the applicant does not restore the property to its original condition immediately after the completion of the work, final restoration to be completed within 30 days, the borough may restore the property and deduct the reasonable cost from the deposit, any balance to be returned to applicant.

#### **8-2.8 Bonds.**

No permit shall be issued for excavations over 100 square feet until the applicant has filed a bond in an amount determined to be sufficient by the director. The director may waive the requirements of this subsection in the case of public utilities upon the presentation of satisfactory proof that it is capable of meeting any claims against it up to the amount of the bond which would otherwise be required. The bond shall be executed by the applicant as principal and a surety company licensed to do business in the State of New Jersey as surety and shall be conditioned as follows:

a. 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.

b. To indemnify the borough for any expense incurred in enforcing any of the provisions of this section.

c. To indemnify any person who shall sustain personal injuries or damage to his property as a result of any act or omission of the applicant, his agents, employees or subcontractors done in the course of any work under the permit.

d. The bond shall also be conditioned upon the applicant's restoring surface and foundation of the street for which the permit is granted in a manner acceptable to the department of public works.

One bond may be accepted to cover a number of excavations by the same applicant. Bonds shall remain in force for a period to be determined by the department of public works.

#### **8-2.9 Insurance.**

No permit shall be issued until the applicant has furnished the department of public works with satisfactory proof that he is insured against injury to persons and damage to property caused by any act or omission of the applicant, his agents, employees or subcontractors done in the course of the work to be performed under the permit. The insurance shall cover all hazards likely to arise in connection with the work, including but not limited to collapse and explosion, and shall also insure against liability arising from completed operations. The limits of the policy of insurance shall be ~~one hundred thousand (\$100,000.00) dollars for injury to any one person, three hundred thousand (\$300,000.00) dollars for injuries to more than one person in the same accident in the amount of one million (\$1,000,000) dollars combined single limit for personal injury liability~~, and ~~an aggregate of one hundred thousand (\$100,000.00) in the amount of five hundred thousand (\$500,000)~~ dollars for property damage for a single incident. The director may waive the requirements of this subsection in the case of public utilities upon the presentation of satisfactory proof that it is capable of meeting claims against it up to the amount of the limits of the insurance policy which would otherwise be required.

#### **8-2.10 Rules and Regulations; Backfilling.**

All permits issued under this section shall be subject to the following rules and regulations:

a. All excavations shall be kept properly barricaded at all times and during the hours of darkness shall be provided with proper warning lights. This regulation shall not excuse the permittee from taking any other precaution reasonably necessary for the protection of persons or property.

b. 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 chief of police. The police department shall be informed of all street closings at least 24 hours in advance, except where the work is of an emergency nature when notice shall be given to the police department when work commences.

c. The director may, upon application by the permittee, extend the time limit during which the permit shall be valid.

d. All refuse and material must be removed within 48 hours.

e. All excavations shall be completely backfilled by the permittee, and shall be compacted by tamping or other suitable means in a manner prescribed by the department of public works. Where the department of public works determines that the excavated material is unsuitable for backfill, the permittee shall backfill the excavation with sand, soft coal, cinders or other suitable material which shall be placed in layers not exceeding six inches in depth and thoroughly compacted in the manner prescribed by the department. Upon completion of the work, the permittee shall remove any excess material and leave the premises in a clean condition. If the department determines that any backfilled excavation has settled or caved in, it shall so notify the permittee, who shall promptly continue backfilling until the department determines that settlement is complete.

f. 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 to be done in the course of any excavation, it shall be done in strict compliance with all applicable state laws and regulations.

h. If the work is not completed within the time specified in the permit or any extension granted by the department of public works, or is not performed in accordance with the regulations set forth in this subsection and any other regulations that may be established by the department of public works, then the department may complete the work itself and restore the surface of the street. The cost of completing the work and restoring the street shall be charged to the permittee and may be deducted from his deposit or recovered by an action in any court of competent jurisdiction.

#### **8-2.11 Rules and Regulations for Restoration of Surface.**

In all cases the permittee shall restore the surface of the street in accordance with the following rules, regulations and requirements:

- a. No permittee shall commence the restoration of any street foundation or surface until the department of public works has determined that settlement of the subsurface is complete and the area properly prepared for restoration.
- b. The street surface shall be restored so as to extend six inches beyond the excavation on all sides.
- c. The street surface shall be restored to the satisfaction of the director.

#### **8-2.12 Permit Conditions and Regulations.**

- a. *Transferability.* Every permit shall apply only to the person to whom it is issued and shall not be transferable.
- b. *Commencement of Work.* Work under a permit shall commence within 45 days from the date of issuance of the permit. If work is not commenced within that time, the permit shall automatically terminate, unless extended in writing by the director. **The permittee shall notify the director at least 24 hours in advance of the anticipated commencement of work under a permit.**
- c. *Possession of Permit.* A copy of the permit together with a copy of the plan endorsed with the approval of the director must be kept in possession of the person actually performing the work and shall be exhibited on demand to any duly authorized employee of the department of public works or to any police officer of the borough.
- d. *Revocation of Permit.* The director may revoke a permit for any of the following reasons:
  - 1. Violation of any provision of this section or any other applicable rules, regulations, law or ordinance.
  - 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 declared by any provision of the revision to constitute a nuisance.

The procedure for revoking a permit shall be the same as that set forth in this revision for the revocation of licenses, except that the initial hearing shall be before the director with a right of appeal to the council; and the director may provide in his decision that the revocation shall not become effective if the permittee corrects the violation within a specified period of time.

- e. *Modification of Permit Conditions.* In a special case the 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 section shall not apply or shall be altered.

#### **8-2.13 Power To Make Additional Rules and Regulations.**

The director may make any rules and regulations which he considers necessary for the administration and enforcement of this section, but no regulation shall be

inconsistent with, alter or amend any provision of this section, or impose any requirement which is in addition to those expressly or by implication imposed by this section. No regulations shall be effective unless they shall be approved by resolution of the council. Copies of all current regulations shall be furnished each permittee at the time of the issuance of the permit.

#### **8-2.14 Notice to Property Owners.**

Not less than 90 days prior to the commencement of paving or repaving of a public street in the Borough of Highlands, the governing body shall notify all abutting property owners by certified mail, return receipt requested, or by personal service, of the proposed date for the commencement of the paving of the roadway.

#### **8-2.15 Contents of Notice.**

The notice to the abutting property owners shall advise each property owner that permits for excavation in the public street shall not be granted for a period of three years from the date of the proposed commencement of the paving as specified in the notice, except by a special permit issued by the governing body in the event of an emergency.

#### **8-2.16 Fee for Emergency Permits.**

The fee for an emergency permit shall be equal to 200 percent of the amount required for the fee for a regular permit as provided in this section.

**SECTION II. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance, which shall otherwise remain in full force and effect.

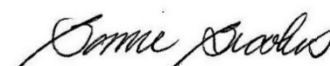
**SECTION III. REPEALER.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

**SECTION IV. EFFECTIVE DATE.** This Ordinance shall take effect immediately after final passage.

**Motion** to Introduce Ordinance 19-04:

	INTROUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
BRASWELL			X			
BROULLON		X	X			
MAZZOLA			X			
RYAN			X			
O'NEIL	X		X			

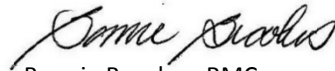
I, Bonnie Brookes, Municipal Clerk of the Borough of Highlands, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Governing Body, at its Council Meeting, held February 6, 2019. WITNESS my hand this 7<sup>th</sup> day of February 2019.

  
Bonnie Brookes, RMC  
Municipal Clerk

**Motion to Adopt Ordinance 19-04:**

	INTROUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
BRASWELL			X			
BROULLON			X			
MAZZOLA			X			
RYAN		X	X			
O'NEIL	X		X			

I, Bonnie Brookes, Municipal Clerk of the Borough of Highlands, in the County of Monmouth, State of New Jersey, hereby certify this to be a true copy of the action of the Governing Body, at its Council Meeting, held March 20 , 2019. WITNESS my hand this 22<sup>nd</sup> day of March 2019.

  
Bonnie Brookes, RMC  
Municipal Clerk

Mayor:   
Richard W. O'Neil

Clerk:   
Bonnie Brookes, RMC