

**BOROUGH OF PENNINGTON
ORDINANCE #2011-14**

**AN ORDINANCE REPLACING CHAPTER 177, STREETS AND SIDEWALKS,
ARTICLE II, OPENINGS AND EXCAVATIONS AND AMENDING CHAPTER 98, FEES,
ARTICLE X, STREETS AND SIDEWALKS**

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF PENNINGTON that Chapter 177, Streets and Sidewalks, Article II, Openings and Excavations be replaced and superseded as follows:

Section 177-5. Permit Required.

- a. No person shall make an excavation in or tunnel under any street without first obtaining a permit from the Superintendent of Public Works. With the approval of the Superintendent of Public Works, public utilities may apply for a blanket permit valid for one year to cover all street openings within that time period. Public utilities receiving such blanket permits shall notify the Superintendent of Public Works of each proposed street opening at least twenty-four (24) hours prior to any work being started except in case of emergencies, in which case notice must be given within twenty-four (24) hours after work has been initiated.
- 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 practicable but in no event later than forty-eight (48) hours after commencement of the work. When issued, the permit shall be retroactive to the date on which the work was begun.
- c. If any permit is refused by the Superintendent of Public Works, an appeal may be taken to the Borough Council. After hearing the applicant and the Superintendent and any other evidence as may be produced, the Borough Council may either direct the issuance of such permit or sustain the refusal of the Superintendent of Public Works.

Section 177-6. Application Information.

a. Applications for a permit shall be made to the Superintendent of Public Works and contain the following information:

1. The name and address of the applicant.
2. The name of the street where the opening is to be made and the street number, if any, of the abutting property.
3. The purpose of the work proposed.
4. The time when the work is to be commenced and completed.
5. The name and address of the workman or contractor who is to perform the work.
6. A statement that the applicant agrees to replace, at applicant's own cost and expense, the street, curb, gutter and sidewalk and all other improvements (including, but not limited to, trees, grass and other plantings) damaged by his work in the manner and within the time schedule stipulated by the Superintendent.

b. Each application shall be accompanied by a set of plans in quadruplicate showing the exact location and dimensions of all openings.

c. Applications for permits shall require payment of fees in accordance with the applicable schedule in Chapter 98 of this Code.

Section 177-7. Issuance of Permit.

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

Section 177-8. Bond or Deposit Required; Waiver.

a. No permit shall be issued until the applicant has filed a bond or made a cash deposit in an amount determined to be sufficient by the Superintendent to cover the cost of the restoration. The Superintendent may waive the requirements of this subsection in the case of public utilities upon the presentation of satisfactory proof that the utility is capable of meeting any claims against it up to the amount of the bond or deposit 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.

b. The bond or deposit shall also be conditioned upon the applicant's restoring the surface and foundation of the street for which the permit is granted in a manner acceptable to the Superintendent of Public Works.

c. One (1) bond or deposit 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 Superintendent.

Section 177-9. Insurance Requirements.

No permit shall be issued until the applicant has furnished the Superintendent with satisfactory proof that applicant is insured against injury to persons and damage to property caused by any act or omission of the applicant or 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 insurance shall be in the occurrence form and the limits of the policy shall be at least \$1,000,000 combined single limit, naming the Borough as an additional insured, subject to modification by regulation promulgated by the Superintendent of Public Works in consultation with the Borough's insurance carrier in response to market conditions. The Superintendent may waive the requirements of this subsection in the case of public utilities upon the presentation of satisfactory proof that the utility is capable of meeting claims against it up to the amount of the limits of the insurance policy which would otherwise be required.

Section 177-10. Conduct of Work.

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. The 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 Director of Public Safety. The Police Department shall be informed of all street closings at least twenty-four (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. If for any reason the Police Department is required for safety purposes, the applicant will incur the cost of such services.

c. The permittee shall have personnel on the job site who have personal knowledge of the location of valves controlling the water system in the area of their work and have proper wrenches on the job site to operate the valves in the case of emergency.

d. All gutters and drainage ways shall be kept open by temporary pipes, pumping or other appropriate means to avoid flooding or blocking of surface water. Trained workers shall be assigned to assure uninterrupted and adequate plumbing.

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

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

g. 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 Superintendent. Where the Superintendent determines that the excavated material is unsuitable for backfill, the permittee shall backfill the excavation with quarry blend stone or other suitable material, which shall be placed in layers not exceeding six (6) inches in depth and thoroughly compacted in the manner prescribed by the Superintendent. Upon completion of the work, the permittee shall remove any excess material and leave the premises in a clean condition. If the Superintendent determines that any backfilled excavation has settled or caved in, he shall so notify the permittee, who shall promptly continue backfilling until the Superintendent determines that settlement is complete.

h. If tunneling operations are required, the tunnel shall be backfilled with rammed concrete composed of one (1) part cement to ten (10) parts sand.

i. 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.

j. If the work is not completed within the time specified in the permit or any extension granted by the Superintendent or is not performed in accordance with the regulations set forth in this section and any other regulations that may be established by the Superintendent of Public Works, then the Superintendent may complete the work himself or herself 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 the permittee's deposit or recovered by an action in any court of competent jurisdiction.

k. The provisions of this ordinance and the rules and regulations promulgated pursuant to this ordinance shall be binding on the permittee and have the same effect as if fully set forth in the permit.

l. The penalty for violations of this article shall be a fine not exceeding \$1,000, imprisonment for a term not exceeding 90 days or a period of community service not exceeding 90 days, or any combination thereof.

Section 177-11. 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 Superintendent has determined that settlement of the subsurface is complete and the area is properly prepared for restoration.
- b. The street surface shall be restored so as to extend six (6) inches beyond the excavation on all sides.
- c. The street surface and foundation shall be restored to the satisfaction of the Superintendent of Public Works.

Section 177-13. Permit Conditions.

- a. Transferability. A permit shall apply only to the person or entity to whom it is issued and shall not be transferable.
- b. Commencement of Work. Work under a permit shall commence within forty-five (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 Superintendent.
- c. Possession of Permit. A copy of the permit, together with a copy of the plan, endorsed with the approval of the Superintendent, shall be kept in possession of the person actually performing the work and shall be exhibited on demand to any duly authorized representative of the Superintendent or to any police officer of the Borough.
- d. Revocation of Permit.

1. The Superintendent may revoke a permit for any of the following reasons:

- (a) Violation of any provision of this section or any other applicable rules, regulations, law or ordinance.
- (b) Violation of any condition of the permit issued.
- (c) 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 this Code to constitute a nuisance.

2. The procedure for revoking a permit shall be the same as for the revocation of licenses, except that the initial hearing shall be before the Superintendent with a right of appeal to the Borough Council, and the Superintendent may provide in his decision that the revocation shall not become effective if the permittee corrects the violation within a specified period of time.

Section 177-14. Excavations in Newly Paved Streets.

No excavation shall be allowed or permit issued when a street has been paved within the previous five years unless:

- 1. The applicant or public utility can clearly demonstrate to the Superintendent of Public Works that an emergency condition exists which makes it essential that the excavation take place; or
- 2. The excavation is necessary to provide utilities to a newly constructed house or building; or
- 3. In the judgment of the Borough Council, the applicant can clearly demonstrate that the public health or safety requires that the proposed work be permitted.

BE IT FURTHER ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF PENNINGTON that Chapter 98, Fees, Article X, Streets and Sidewalks be amended by the deletion of present sections 98-37 and 98-38 and the following substituted therefor:

Section 98-37. Street Opening Permits.

Fees pursuant to Chapter 177, Streets and Sidewalks, Article II, Openings and Excavations, shall be as follows: One hundred (\$100.00) dollars for each permit or five hundred (\$500) dollars for a blanket permit issued to a public utility valid for one year.

Section 98-38. Reserved.

This ordinance shall be effective upon adoption and publication as provided by law.

Introduced: October 3, 2011

Advertised: October 13, 2011

Public Hearing: November 7, 2011

Adoption: November 7, 2011

Final Publication: November 17, 2011

ATTEST:

APPROVED:

Elizabeth Sterling, Borough Clerk

Anthony Persichilli, Mayor