

**AN ORDINANCE TO AMEND CHAPTER 76 OF THE CODE OF THE TOWNSHIP
OF PLAINSBORO TO CLARIFY PROCEDURE FOR OBTAINING RIGHT-OF-
WAY OPENING PERMITS**

WHEREAS, the Township Committee of the Township of Plainsboro desires to amend Chapter 76 of the Township Code to clarify the procedure for obtaining right-of-way opening permits; and

WHEREAS, the Township Committee seeks to make these amendments to ensure that Township residents are aware of the steps to be taken to obtain a right-of-way opening permit, to ensure an efficient process, and to ensure the public's safety.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Plainsboro, County of Middlesex, State of New Jersey that Chapter 76 of the Code of the Township of Plainsboro shall be amended as follows:

SECTION I

Chapter 76 of the Code of the Township of Plainsboro shall be amended as follows:

Chapter 76: Right-of-Way Opening

§ 76-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPLICATION FEE

Required payment to the Township when initially submitting a Right-of Way-Opening Application to partially defray administrative costs associated with processing the application.

ENGINEER

The Township Engineer of the Township of Plainsboro.

IMPROVED ROAD

Any road surfaced with a pavement such as asphalt, concrete, bituminous concrete, brick or similar pavement and any road having a concrete base.

RIGHT-OF-WAY (ROW) OPENING

Any excavation of, access to, or improvement within the public ROW of Plainsboro Township, whether temporary or permanent.

STREET

Any road, highway, public way, public alley, easement or other ROW accepted or maintained by the Township of Plainsboro as a public street, as well as any state or county road or highway over which the ownership has acquired jurisdiction by agreement.

UNIMPROVED ROAD

Any cinder, dirt or gravel road without oil treatment and all other roads under the jurisdiction of the Township of Plainsboro.

INSPECTION ESCROW

Escrow established to cover costs associated with inspection services provided by the Township Engineer to verify compliance with Township standards.

PERFORMANCE GUARANTY

Cash, letter of credit, or other form of payment acceptable to the Township, which payment to be held in escrow, is intended to assure satisfactory completion of all work in accordance with the approved ROW Opening Permit.

§ 76-2. Permit required.

- A. No person shall create a permanent or temporary driveway or roadway access to, an excavation in, or tunnel under any township street or ROW without first obtaining a ROW opening permit from the Township Department of Planning and Zoning.
- 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 was begun.
- C. The Township Department of Planning and Zoning may issue permits to other public bodies without fee.

§ 76-3. Applications.

Applications for a permit shall be made to the Township Department of Planning and Zoning and shall contain the following information:

- A. The name and address of the applicant, contractor and owner.
- 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 Township of Plainsboro Tax Map block and lot number of the abutting 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. 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 duplicate showing the exact location and dimensions of all openings.

§ 76-4. Issuance of permit; time limit.

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

§ 76-5. 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 Township Department of Planning and Zoning.

§ 76-6. Fees.

[Amended 11-8-1982 by Ord. No. 0-82-9; 8-8-2001 by Ord. No. 0-01-12; 12-10-2008 by Ord. No. 0-08-21; 8-10-2016 by Ord. No. 16-11]

- A. An application fee must be paid when the application is made. A residential applicant shall be charged an application fee of \$15 for each permit for any disturbance within the ROW. A utility company or other commercial entity shall be charged an application fee of \$200 for each ROW opening or disturbance of the surface of any Township street or ROW for the purpose and benefit of the utility company's infrastructure system or for work being done by a commercial entity on behalf of a utility company (including their subcontractors), a non-utility company, or a homeowner. In addition to the application fee, the applicant shall post an inspection escrow as follows:
1. Opening of an improved or unimproved road, opening within the ROW, the inspection escrow shall be based on actual inspection costs incurred by the Township based on a fee schedule to be established annually by the Township. An applicant shall post a minimum inspection escrow for each ROW opening permit and shall be required to sign the statement to the effect that all reasonable costs by the Township associated with the inspection of a ROW opening related to the permit shall be paid upon billing and proof of expenditure of the costs to the Township. In all cases, the minimum ROW opening inspection escrow shall be \$150 for all homeowners, and \$500 for all utility companies (including their subcontractors) and commercial entities, including those doing work for homeowners.
 2. A public utility or other company may be required to deposit with the Township an annual amount of \$1,000 up to \$10,000 to cover the cost of ROW opening inspection fees. The money deposited shall be held in escrow. The utility/company shall receive a quarterly or monthly statement showing the balance in its ROW opening inspection fee account and shall replenish the fund if it is below \$500. The entire amount shall belong to the utility/company and shall be refunded by the Township upon request, at the end of the year or upon completion of the work referenced in any open permit application(s).
- B. Where the excavation is to be made in a heavily traveled street or where, for any other reason, it is necessary for the Township to station a police officer near the excavation to direct traffic, the applicant shall also be charged amounts sufficient to compensate the Township for the expenditure of stationing the police officer at the excavation, including overtime costs, if any. These costs will be billed directly by the Township to be paid on presentation of the bill and shall not be considered part of the escrow account established in Subsection A above.

§ 76-7. (Reserved)

§ 76-8. Performance guaranty.

- A. No permit shall be issued until the applicant has filed a performance guaranty in surety, cash, cashier's check or certified check in the amount determined to be sufficient by the Township Engineer, based on the total restoration costs calculated at the time of the application review. The guaranty or other instrument shall be executed by the applicant as principal, and, where applicable, a surety company licensed to do business in the State of New Jersey as surety and shall be conditioned as follows:
1. To indemnify and hold harmless the Township of Plainsboro, its Engineer and all officers and employees of the Township 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.
 2. To indemnify the Township of Plainsboro its Engineer and all officers and employees of the Township for any expense incurred in enforcing any of the provisions of this chapter.
 3. 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.
 4. To guaranty the applicant's restoring surface and foundation of the street for which the permit is granted and in keeping the site clean and free of debris and construction materials.
 5. The minimum performance guaranty shall be \$500, which covers a minimum opening of 30 square feet.
- B. One guaranty may be accepted to cover a number of excavations by the same applicant. Guaranties shall remain in force for a period to be determined by the Township Engineer.

§ 76-9. Insurance.

No permit shall be issued until the applicant has furnished the Township Engineer with satisfactory proof that they are insured against injury to persons and damage to property caused by an act or omission of the applicant, their 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 at least \$300,000 for injury to any one person, \$500,000 for injuries to more than one person in the same accident, and an aggregate of \$100,000 for property damage for a single incident. The Engineer may waive the requirements of this section 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.

§ 76-10. Excavations and openings.

All permits issued under this chapter 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 and shall not be deemed as authorization to leave a street open when ordered to do otherwise by the Township Engineer.

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 Department of Public Safety shall be informed of all street closings at least 48 hours in advance.

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

D. No work shall be done in such a manner as to interfere with any water main or sewer line or any connection with either of the same from any building unless that is the purpose of the excavation or permission has been obtained in advance from the Township Engineer. No work shall be carried on in such a manner as to result in damage or destruction of any property of the Township of Plainsboro unless this is necessary for completion of the work and permission has been obtained in advance from the Township Engineer.

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 Township Engineer. Where the Township Engineer determines that the excavated material is unsuitable for backfill, the permittee shall backfill the excavation with sand, 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 Engineer. Upon completion of the work, the permittee shall remove any excess material and leave the premises in a clean condition. If the Engineer determines that any backfilled excavation has settled or caved in, ~~he~~ they shall notify the permittee, who shall promptly continue backfilling until the Engineer 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 10 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 local and state laws and regulations.

H. If the work is not completed within the time specified in the permit or any extension granted by the Township Engineer or is not performed in accordance with the regulations set forth in this section and any other regulations that may be established by the Township Engineer, then the Township 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 recovered without limit by an action in any court of competent jurisdiction.

§ 76-11. 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 Township Engineer has determined that settlement of the subsurface is complete and the area properly prepared for restoration.

B. Temporary restoration shall consist of a minimum of six inches of bituminous stabilized base compacted and brought to grade and shall be maintained by the permittee to grade.

C. The street surface shall be permanently restored so as to extend six inches beyond the excavation on all sides. The permanent restoration shall consist of a minimum of eight inches of bituminous stabilized base course and two inches of FABC-I surface course applied with appropriate tack coat to adjacent pavement surface.

§ 76-12. Conditions of permit.

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 seven 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 Township Engineer.

C. Possession of permit. A copy of the permit, together with a copy of the plan endorsed with the approval of the Township Engineer, 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 Township or to any police officer of the Township of Plainsboro.

D. Revocation of permit. The Township Engineer may revoke a permit for any of the following reasons:

1. Violation of any provision of this chapter 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 which creates any condition which is unhealthy, unsanitary or declared by any provision of this chapter to constitute a nuisance.

E. Modification of permit conditions. In a special case the Township Committee may by resolution impose special conditions to which the issuance of the permit may be subject or may decide that any provision of this chapter shall not apply or shall be altered.

§ 76-13. Barricades and signs.

The permit holder shall conform to the requirements in the current Manual on Uniform Traffic Control Devices, Part VI, when required by the Township to provide barricades and/or signs.

§ 76-14. Traffic safety precautions.

Prior to the issuance of a ROW opening permit, the applicant shall contact the Plainsboro Police Department for instructions on the traffic safety precautions to be taken.

SECTION II: Repealer, Severability, Applicability, Effective Date

- (a) All ordinances or parts thereof which are inconsistent with the provisions of this Ordinance are, to the extent of such inconsistency, hereby repealed.
- (b) In the event any section, clause, sentence, phrase or provision of this Ordinance is declared unconstitutional, unenforceable, or invalid by a court of competent jurisdiction, such a decision shall not affect the remaining portions of this Ordinance, and the Ordinance shall be interpreted consistent with its original intent to the fullest extent permissible by law.
- (c) This Ordinance shall become effective immediately upon adoption and publication in the manner prescribed by law.

Introduced at a Meeting of the Township Committee of the Township of Plainsboro on August 10, 2022 and published on August 12, 2022. Adopted at a Meeting held on September 14, 2022 and published on September 20, 2022.