

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
ORDINANCE**

**ORDINANCE NO. 008-2020**

**RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE  
CHAPTER XIII (STREETS, SIDEWALKS AND SANITATION) OF THE  
CODE OF UPPER TOWNSHIP TO AMEND SECTION 13.1 STREET EXCAVATIONS**

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**WHEREAS**, the Township Committee finds it necessary to ensure maintenance and repair of Township Streets;

**BE IT ORDAINED** by the Township Committee, in the Township of Upper, County of Cape May and State of New Jersey, as follows:

**SECTION 1.** Chapter 13-1 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be replaced in its entirety the following:

**13-1 STREET EXCAVATIONS.**

**13-1.1 Definitions.**

As used in this section:

*Applicant* shall mean the party in interest for or by whom the excavation is made such as the water company for water pipes and the gas company for gas pipes.

*Contractor* shall mean any person, firm, partnership, association, corporation or any organization of any kind performing work for the permittee.

*Emergency* shall mean an unforeseen need to open a street surface for the repair of any underground utility. Emergent situation shall be made on an individual basis to the Township Engineer or his/her designated representative. An emergency shall not include the connection to any underground utility such as water, sewer, electric or gas unless said connection or hookup is necessitated as a result of a burst, break or other serious condition to the underground utility or utility connection so as to seriously endanger person or property.

*Excavation* shall mean the excavation, opening, construction or any other work performed under a permit and required to be performed under this section.

*Extraordinary restoration* shall mean restoration of a utility opening beyond the standards prescribed in this section, including complete replacement of the asphalt surface and subsurface fill material.

*Large project* shall mean any installation or replacement of a utilities main, as well as the repair or installation of four (4) or more laterals within one (1) block within the same month.

*M.U.T.C.D.* shall mean the Manual on Uniform Traffic Control Devices.

*Permittee* shall mean any person who has been granted and has in full force and effect a permit issued hereunder.

*Person* shall mean any person, firm, partnership, association, corporation, company, organization, or public utility of any kind.

*Sawcutting* is applicable to street openings that are equal to or greater than fifty (50') linear feet.

*Standard Specifications* shall mean the 2007 New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction as promulgated by the New Jersey Department of Transportation.

*Street* shall mean any highway, avenue, street, alley or any other public way or public ground in the Township of Upper and under control of the Township of Upper.

**13-1.2 Permits.**

- a. *Required; Fee.* No person shall tear up, excavate, open, perform work of any other nature on any street, under the control of the Township without first having obtained and being in possession of a valid permit to do such work issued by the Township Clerk's office, and paying a fee of five (\$5.00) dollars per square yard to be opened and posting sufficient security.

- b. *Expiration.* Any permit issued pursuant to this section shall become null and void unless work is commenced pursuant to the permit, within ten (10) days of issuance of the permit, unless the applicant has sought and received an extension from the Township Clerk's office for commencement of the work.
- c. *Recently Resurfaced or Repaved Streets.* Unless otherwise required by an emergency, the Township Clerk's office shall not issue a permit for the opening or excavation of any street under the control of the Township where such street has been resurfaced or repaved within three (3) years of the date of application for the permit. Any such emergency must be so certified by the Township Engineer.

Notwithstanding the provisions of this section, street openings may be permitted for utility services prior to the conclusion of the three (3) year period under the following conditions:

1. Change of ownership of the subject property following notice of the street paving. The change of ownership must be documented by the applicant and proof of the ownership change through deed, or comparable evidence.
2. Provision of evidence that water service to the subject property will be inadequate if it is provided by branching off of the existing service line behind the curb. The applicant must present certification in writing by a representative of the water utility company.
3. Infared pavement restoration is required as part of the final restoration and shall include the following conditions:
  - (i) Infared pavement restoration shall be completed in accordance with subsection below.
  - (ii) Township Engineer must be notified 24-hours prior to start of infared pavement restoration.
  - (iii) Permittee shall post an additional performance bond in an amount as determined by the Township Engineer in accordance with the general requirements of Section 19-8 of the Township Code.
  - (iv) Performance bond shall be released by Resolution of Township Committee after inspection report is submitted by the Township Engineer of adequate completion of the work.
- d. *Other Necessary Permits or Licenses.* In addition to obtaining a permit from the Township as outlined above, the applicant must likewise where required by law, obtain all necessary permits or licenses from the public utilities whose lines, property or equipment may be affected by the opening, excavation or construction.
- e. *Notice of Commencement of Work.* Subsequent to acquiring the necessary permits, the applicants must give forty-eight (48) hours' notice to the Township Engineer's office before commencement of any street opening, excavation or construction.

### **13-1.3 Application for Permit; Submission of Plans or Drawings.**

All applicants for a street opening, excavation or construction shall prepare and file with the Township Clerk an application obtained from the Clerk's office. The application shall be accompanied by a plan or drawing describing the portion of the street to be opened or excavated indicating the dimensions of the opening, the purpose for the opening, and the expected duration of the opening or excavation.

### **13-1.4 Adjustment of Fees.**

The Township Committee or the Township Engineer may order the measurement of any section and then demand by registered mail or direct service an increased deposit to be made by the applicant if the original permit is for a lesser area than that actually opened.

### **13-1.5 Traffic Control; Notification of Road Foreman; Maintenance of Safe Working Conditions.**

- a. During the period of time that the street is under construction, excavated or opened, it shall remain, wherever safely reasonable, open to traffic and the applicant shall assist the Township in providing for continuous vehicular access. In the event detouring is necessary, it shall be coordinated with and approved by the Township Road Foreman.
- b. While under construction or excavation, the applicant shall be responsible for providing barricades or other safety devices or warnings as reasonably required by the Township Engineer so as to inform motorists, bicyclists, and pedestrians of any construction or excavation. The applicant shall also promptly notify the Road Foreman of any excavation or construction site and provide the Road Foreman with the name, address, and phone number where the applicant or his representative may be reached.
- c. The contractor shall be responsible for maintaining safe working conditions at the site of construction or excavation. The provisions of the "Construction Safety Code" as promulgated by the Commissioner of Labor and Industry under the authority of the Construction Safety Act, P.L. 1962, Ch. 45, shall be adhered to. Excavated materials shall be placed three (3') feet back from the edge of the trench. Where conditions do not allow for the sloping of the trench sides, the contractor shall brace and support the trench in accordance with recognized practice.

### 13-1.6 Specifications.

- a. The applicant shall be responsible for the immediate refilling of any excavation or construction site and the restoring of any street in accordance with the following specifications.
- b. The following standards shall govern the excavation, refilling and restoration of any street:
  1. Location of Existing Utilities. Prior to any excavation, the contractor shall bear the responsibility of locating and marking either by paint on the pavement or placement of stakes in the ground, the location of all water services, gas services, gas mains, water mains, sewer mains, telephone and electric raceways or conduits, and drains within the area to be excavated.
  2. Pavement Cutting. Pavement shall be saw cut or milled.
  3. Trench Excavation
    - (a) The paved roadway surfaces shall be cut vertically on a straight line before excavating to avoid undermining of adjacent roadway. The trench in which any utilities and/or appurtenances are to be constructed shall be excavated in an open cut from the surface, and in such a manner and in such a depth and width as will give suitable room for bracing and supporting, pumping and draining at the contractor's discretion.
    - (b) The maximum trench width at the top of the pipe shall be two (2') feet plus the outside diameter of the pipe. The contractor may, where it will not interfere with the work or adjacent structures of property, slope the sides of the excavation beyond the width specified above. The sides of the trench may only be sloped from a point starting two (2') feet above the pipe;
    - (c) The minimum trench width at the surface of any street or roadway shall be two (2') feet, in order to facilitate compaction of the sub-base and top course of asphalt and/or the finishing of concrete.
    - (d) No trench shall be excavated more than fifty (50') linear feet in advance of pipe laying. New trenching will not be permitted when earlier trenches need backfilling or labor is needed to restore the surfaces of the streets to a safe and proper condition.
  4. Backfilling Trenches
    - (a) In backfilling a trench, the contractor shall carefully inspect and supervise the backfilling operation to ensure safety.
    - (b) No stone larger than one and one-half (1 1/2") inches in diameter, rock or frozen earth shall be put in the excavation as backfill. Unsuitable, noncompactable material shall not be used as backfill. Material removed from the trench shall be considered unsuitable unless inspected by the Township Engineer and deemed suitable. The permittee shall provide, at his expense, suitable imported fill material to replace any unsuitable material.
    - (c) The top twelve (12") inches of backfill shall be road gravel, aggregate 1-5 or other material meeting that designation. Material shall be placed in layers not more than six (6") inches thick and compacted with approved flat-faced mechanical tampers, or jumping jack.
    - (d) All street opening restorations must be certified by the permittee, in writing, as to adequate compaction of the fill material, prior to placement of the asphalt or concrete surface.
    - (e) As the trench is refilled, all sheeting and timbering shall be removed in such a manner as to avoid the caving of the trench.
  6. Care of Existing Structures. Care shall be taken not to move, without the consent of the Township Engineer, any sewers, drains, culverts, poles, water or gas pipes, etc., or structures near them that may be encountered during the construction. They shall be securely hung, braced or supported in place by the contractor at his own expense. All utility poles adjacent to the excavation shall be protected and braced during construction. Whenever it is necessary to interfere with the structures, the contractor shall maintain services at his own expense and repair all damages. He shall leave them in as good condition as he found them.
  7. Dewatering
    - (a) The contractor shall furnish sufficient pumping equipment at his own expense for satisfactory drainage whenever needed in the trench and other excavating during the progress of the work.
    - (b) All water pumped and bailed from the trench or other excavation shall be conveyed in accordance with Federal and State environmental regulations to a suitable point of discharge.
    - (c) The flow in all sewers, drains and water-courses encountered in the work site or in gutters alongside of or across the work, shall be entirely provided for, both temporarily and permanently, as required, by the contractor and at his expense.
    - (d) Hay bales or other approved method shall be placed at inlets to prevent sand and silt infiltration.
    - (e) All catch basins and inlets shall be cleaned of debris, hay bales, sand and silt by the contractor at the completion of the job. Maintenance of drainage shall be the responsibility

of the contractor during the course of construction. The Township shall be notified upon completion of this cleaning for inspection purposes.

8. Street Restoration.

(a) *General Conditions.*

Pavement restoration shall include temporary restoration followed by permanent restoration as described below.

For deficient surfaces, permanent restoration may be ordered to be performed in accordance with the prescribed requirements below.

Permanent restoration is not required for openings made within streets or alleys for which the utility company or the property owner have received notification of the Township's intent to pave, provided the opening is made prior to resurfacing. In such cases, temporary restoration is still required.

The permittee is responsible for maintenance of deficient street and alley opening restorations for a period of five (5) years following completion of the initial restoration.

(b) For all street openings, the following standards shall govern the surface restoration of any street:

1. Temporary Surface Restoration.

(i) During the months when Hot Mix Bituminous Concrete is commercially unavailable, the trench or excavation surface shall be restored using UPM brand, or approved equal, to a depth of six (6") inches from the surface, graded and compacted to meet existing road grades.

(ii) When hot mix is available, Hot Mix Asphalt 19L64 base course, shall be utilized for surface restoration, to a depth of six (6") inches from the surface, graded and compacted to meet existing road grades.

(iii) Permittee shall, to the satisfaction of the Township Engineer or his/her designee, maintain the surface of the trench until permanent restoration is made.

2. Permanent restoration shall meet the following requirements:

(i) After completion of temporary restoration, the permittee shall provide permanent restoration within four (4) months.

(ii) The entire area disturbed due to utility work plus an additional twenty-four (24") inches of the perimeter shall be milled to a depth of two (2") inches. The Township Engineer may direct additional adjacent area to be restored including full width of the pavement based on location/size of the trench and condition of the adjacent pavement.

(iii) If UPM or other temporary patch was utilized during temporary surface restoration then Hot Mix Asphalt 19L64 base course four (4") inches thick, shall be utilized for a depth of six (6") inches from the surface, graded and compacted.

(iv) The prepared surface and edges shall be tack coated with grade RS-1 or SS-1 applied at a rate of 0.02 to 0.10 gallons per square yard.

(v) Two (2")-inch surface course of HMA Surface Course, 9.5M64 shall be installed.

(vi) Curbs, gutters, manholes and other structures and exposed cut edges of existing pavements will be painted with a thin, uniform coating of cutback asphalt.

(vii) The permittee shall furnish all labor, materials and equipment required to properly restore all centerline stripes, edge of pavement stripes, cross stripes and lettering destroyed by the installation. The type and application rates of the paint required shall be as specified by the Township Engineer, or his/her designee.

3. Infrared restoration for repair of asphalt in streets and alleys that have been opened for utility work shall be utilized after a minimum four (4) month settlement period has elapsed following initial backfill.

(i) The following methods of construction shall apply:

(1) After completion of permanent restoration, the permittee shall provide infrared restoration.

(2) The area shall be swept clean of dirt, loose aggregate, or standing water.

(3) A chalk line shall be drawn six to twelve (6"-12") inches back from the seam of the original opening to use as a guide raking.

- (4) The infrared chamber shall be lowered over the repair being sure to allow at least twelve to eighteen (12"-18") inches of heated area beyond the perimeter of the original opening.
  - (5) To insure the proper heating time, the contractor shall check the surface temperature of the asphalt at seven (7) minutes and every minute thereafter using an infrared thermometer so as not to allow the surface temperature to exceed three hundred fifty (350°) degrees Fahrenheit. This is required since the ambient temperature, the color of the pavement, the size of the aggregate, and the moisture content influence the heating time.
  - (6) After the appropriate heating time (typically eight to ten (8-10) minutes), the asphalt surface will be softened to a depth of two to two and one-half (2" - 2 1/2") inches.
  - (7) The infrared chamber shall be then removed from the heated area.
  - (8) The backside of a steel rake shall be used to neatly square off the repair, cutting six to twelve (6"-12") inches back from the original excavation along the chalk line.
  - (9) The area inside the repair shall be deeply scarified, taking special care to eliminate the original seam between the repair and the road.
  - (10) Approximately one-half to one (1/2"-1") inch of existing three-fourths (3/4") inch stones shall be raked out and removed from the patch.
  - (11) Maltenes rejuvenator shall be applied to the repair and surrounding heated asphalt surface. Emulsified maltenes recycling agent (rejuvenator) shall be applied in a ratio of 1:1 with water. This solution shall be well dispersed with a commercial grade sprayer at a rate of eight (8) ounces per square yard of heated area. This application area shall include both the area under repair as well as the area heated by left undisturbed around the perimeter of the repair. The application shall take place after the area has been scarified and just prior to the addition of new asphalt. The rejuvenator replaces the light oil component of asphalt, which has oxidized out over time.
  - (12) HMA 4.5M64 Surface Course shall be added to the area to bring it up to proper grade and luted smooth.
  - (13) The area shall be compacted. The edges shall be rolled first to fuse the hot repair to the heated but untouched surrounding pavement.
  - (14) Light coating of stone dust can then be spread over the repair to remove the tackiness. The road can then be opened to traffic.
- (ii) Equipment shall meet the following specifications:
- (1) Infrared Heater. The heating chamber used shall consume no more than twelve thousand five hundred (12,500) BTU per square foot heated area. This rate of consumption shall translate into the ability of the heater to soften asphalt to a depth of one and one-half to two and one-half (1 1/2" to 2 1/2") inches in eight to ten (8-10) minutes without burning the surface.
  - (2) Asphalt Storage Unit: A thermostatically controlled storage unit will be utilized to insure the sufficient hot virgin asphalt is on hand. This unit must insure that the temperature of the asphalt is never in excess of three hundred twenty-five (325°) degrees Fahrenheit.
  - (3) Compactor/Roller: The compaction equipment used will generate at least two thousand (2,000) pounds of applied force/square foot.
  - (4) Steel Rake: A steel rake shall be used to delineate the repair area along the chalk line and to scarify the heated area of the patch inside the chalk line to a depth of at least two (2") inches.
  - (5) Asphalt Lute: A thirty-six (36") inch wide lute shall be used to evenly distribute the added asphalt and to establish the proper grade.

#### 9. Clean Up.

- (a) All areas shall be kept neat and clean during construction. During work hours, debris in the street shall be properly barricaded. Traffic flow and access shall be maintained in a safe and reasonable manner in accordance with the standards set forth in the latest edition of the M.U.T.C.D. After work hours, construction debris shall not be left in any street or alley.
- (b) Persons performing work shall remove any and all construction related debris from the site of the excavation on a daily basis. All debris removed from the excavation site shall be disposed of properly and legally. No debris shall be left at the site. Broken pavement, large rock and other objectionable materials such as piping are to be kept segregated from the clean surplus material and trucked to the contractor's disposal site.

- (c) No debris shall be disposed of on public or private property.
- (d) Construction equipment and construction material shall not be parked or placed in any street overnight unless a permit has been made part of the street opening permit.
- (e) Any damage to private property such as, but not limited to, fences, lawns, driveways, parking areas, curbing, landscaping and sidewalks shall be restored to a condition equal to or better than the condition prior to the street opening.
- (f) All depressions, whether on public or private property, occurring during or resulting from the street opening shall be repaired by the permittee. The Township Engineer or his/her designated representative shall determine the cause of any depression and notify the contractor and/or permittee accordingly.

**13-1.7 Bonding Requirements.**

- a. Every application shall be accompanied by a maintenance bond in an amount as determined by the Township Engineer in accordance with the general requirements of Section 19-8 of the Township Code.
- b. A public utility or construction company, in lieu of giving a separate bond for each project, may annually once in January of each year post a bond in an amount sufficient to encompass the estimated work performed by the company during the ensuing calendar year. In the event that construction, excavation or road openings exceed the posted bond amount, additional bonds and/or cash security will be required.
- c. The purpose of depositing the maintenance bond, surety bond or cash is to guarantee to the Township that any construction, excavation or road opening will be performed and completed in an acceptable fashion consistent with the provisions of this section. In the event that the Township Engineer determines that the excavation, construction or restoration and refilling has not been performed consistent with the requirements of this section, he shall be entitled, after reasonable notice to the applicant to correct such deficiencies, to take the maintenance bond, surety bond or cash posted by the applicant and utilize them to correct any deficiencies and have the area restored to its proper condition.

**13-1.8 Resurfacing and Maintenance Required.**

The applicant shall fill in and resurface any excavated section and shall maintain the same in a condition similar to the surrounding surface area for a minimum period of five (5) years. Upon certification of the Township Engineer, by inspection made thereof, to the Township Committee, the deposit shall be returned by motion of the Township Committee. If such inspection does not show the surface to have been substantially returned and maintained in its original condition and level, the deposit shall be forfeited by ten (10) days registered mail or direct service notice from the Township Engineer. The Township may use the same for the proper leveling and surfacing of the section, returning any balance of the deposit or charging the applicant for any excess required to place the section in proper condition. If, during the ten (10) day period, the applicant corrects the condition and so notifies the Township Engineer in writing then the notice shall be considered as a new application subject to reinspection and maintenance for five (5) years from date of correction notice.

**13-1.9 Insurance Requirements; Indemnification and Hold Harmless Clause.**

- a. Every application for construction, excavation, or opening of a street under the control of the Township, shall be accompanied by a certificate of insurance demonstrating that the applicant possesses personal injury liability insurance and property damage liability insurance in an amount and under the terms as recommended by the Township's Risk Management Consultant. The insurance shall be maintained by the applicant during the period of construction or excavation.
- b. The applicant shall also agree in writing to indemnify and hold harmless the Township, its agents, servants, and employees from any damage or liability sustained by any person or property arising out of the negligence of the applicant or its agents, servants and employees during the course of any construction, excavation, restoration or refilling of any road or street under the control of the Township. The agreement shall require the applicant in the event a claim is made against the Township, its agents, servants and employees arising out of the applicant's construction activities, to provide the Township with a legal defense and to pay any and all attorney's fees or costs incurred by the Township in connection with any claims, suit or litigation.

**13-1.10 Emergencies.**

- a. Work shall be performed between the hours of 7:00 a.m. and 7:00 p.m. In emergent situations, with a determination of an emergency being in the sole discretion of the Township Engineer, these requirements may be waived under those terms and conditions to be set by the Township Engineer.
- b. When any work is done on a weekend by a contractor, the inspection shall be done by the Township Engineer and must be paid for by the applicant at those rates to be set by the Township.
- c. *Emergency Permit.* In the event of an emergency, a permit may be issued by any member of the Township Committee as well as the Township Engineer and the deposit made on the next business day.

**13-1.11 Responsibility of Public Utilities.**

A public utility shall not directly or indirectly charge to or claim indemnity from any other party, such as its customers, for the application, deposit or responsibility under this section but shall be solely responsible for the application, deposit and proper repair and maintenance of any excavated area.

**13-1.12 Appeal.**

Any person injured by any official action under this section may file an appeal with the Township Committee within ten (10) days from the date of the rendering, service or mailing of the appealed ruling. Any notice may be by ordinary mail to the address set forth in the application unless otherwise ordered hereunder. An appeal shall specify the grounds for the same and the relief sought and all records of the Township Engineer shall be deposited with the Township Committee not less than ten (10) days nor more than twenty (20) days from the date of filing the appeal. Ten (10) days' notice shall be given by the Township to all parties in interest of the date of the hearing of the appeal.

**13-1.13 Majority Vote.**

The vote of the majority of the Township Committee shall control its action under this section.

**13-1.14 Fines and Penalties.**

- a. Any person violating any provision of this section shall be subject to the General Penalty established in Chapter I, Section 1-5 of this Code.
- b. Any person violating the provisions of this section shall not obtain a permit under this section for a three (3) year period.

**SECTION 2: EFFECTIVE DATE:** This ordinance shall take effect immediately upon the following publication as required by law.

**SECTION 3: REPEALER:** All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

**SECTION 4: SEVERABILITY:** If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

**SECTION 5: CODIFICATION:** This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

ATTEST:

\_\_\_\_\_  
BARBARA L. YOUNG, Township Clerk

\_\_\_\_\_  
RICHARD PALOMBO, Mayor

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 28<sup>th</sup> DAY OF SEPTEMBER, 2020 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD TO BE HELD EXCLUSIVELY BY ELECTRONIC MEANS, AS SET FORTH BELOW, ON THE 26<sup>th</sup> DAY OF OCTOBER, 2020 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

BARBARA L. YOUNG, TOWNSHIP CLERK  
TOWNSHIP OF UPPER

Please be advised, the September 28, 2020 Upper Township Committee meeting will be conducted exclusively by electronic means.

The public will be able to attend the meeting and participate in public comment by utilizing a computer, tablet, or smartphone that has a microphone and speaker, or by dialing in on a telephone.

The meeting will commence electronically on September 28, 2020 at 7:30 p.m.

From your computer, tablet or smartphone:

Please go to <https://www.gotomeet.me/UpperTownship-NJ/ut-public-meeting-room>.

To dial in using your phone:

United States: 1 (872) 240-3311

Access Code: 617 672 469

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For any questions please contact the Clerk's Office at 609-628-2011 ext. 200.