

## **ORDINANCE #7-2020**

### **AN ORDINANCE REPEALING CHAPTER 57, EXCAVATIONS, AND ADOPTING A NEW CHAPTER 57 OF THE CODE BOOK OF THE BOROUGH OF CLAYTON TO BE ENTITLED STREET/RIGHT-OF--WAY ROAD OPENING PERMIT**

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council of the Borough of Clayton, County of Gloucester and State of New Jersey that Chapter 57, Excavations, is hereby repealed and a new Chapter 57 is hereby adopted to be entitled "Street/Right-of-Way Road Opening Permit" to read as follows:

#### **Section 1. Applicability.**

The regulations in this section shall apply to the opening of any Borough street or right-of-way.

#### **Section 2. Definitions**

The words, terms or phrases listed below shall, for the purpose of this section, be defined and interpreted as follows:

- a. **Connection.** The installation of a pipeline or pipeline to bring utilities of any kind into property from a public street or the extension of an existence utility within a public street.
- b. **Improved Road.** Any Borough road surfaced with existing asphalt, concrete, bituminous concrete, or similar pavement. Minimum standards for improved roads shall be six inches of dense graded aggregate or soil aggregate, (I-5), four inches of bituminous-stabilized-concrete base course (HMA 19M64) and two inches of HMA 12.5M64 surface course.
- c. **Inspection and Approval Officer.** The person designated by the Public Works Director or his designee to supervise street openings on all Borough roads in the Borough of Clayton.
- d. **Person.** Includes corporations, companies, associations, societies, firms, partnerships and joint-stock companies as well as individuals.
- e. **Right-of-Way (ROW).** That portions of land as delineated on the Borough Tax Maps and on property surveys which allows continuous right of passage to the Borough.
- f. **Unimproved Road.** Any cinder, dirt or gravel road without concrete or bituminous concrete treatment and all other road and rights-of-way under the jurisdictions of the Borough of Clayton.

### **Section 3. Permit required.**

- a. No person shall cut, dig, or drill or mark any hole, trench or other excavation in any portion of the Borough right-of-way including, but not limited to, a road, street, alley, highway or other public way under the jurisdiction of the Borough of Clayton without first having obtained a permit from the Department of Public Works in the manner set forth in this section; nor shall any person willfully or otherwise mar, deface, injure or destroy the surface of any such road, street, alley or public way.
- b. Any Street/Right of Way Road Opening Permit granted under this chapter shall expire sixty (60) days from the date the project mark out is completed.
- c. If a mark out request is not received within fourteen (14) days of Permit approval by the Borough of Clayton Department of Public Works for any project requiring Street/Right-of-Way Road Opening Permit, then the permit shall be voided and the application fee paid shall be forfeited to the Borough.

### **Section 4. Emergencies.**

- a. In the event of any emergency, when the Public Works Department is unavailable to receive applications for permits and to issue permits in compliance with the provisions of this section, it shall be lawful for the street to be opened to cure such an emergency; provided, however, that the appropriate permit application, accompanied by the proper fees, guarantees, and deposits, is submitted and a permit received no later than at the end of the next regular business day of the Department of Public Works. Failure to do so and to procure the necessary permit will constitute a violation of this section.
- b. The emergency hereinbefore referred to must be such as to endanger health, life or property only. Unauthorized openings shall not be permitted except as hereinabove stated, and any violation of the provision will be prosecuted as stated in this section.

### **Section 5. Fees; performance guarantees; escrow.**

- a. The application fee shall be \$100.00 per opening.
- b. The applicant must post a performance guarantee in the amount of \$1,500.00 per opening for excavations totaling 50 square yards or less. For trench areas greater than 50 square yards, the guaranty amount shall be calculated at \$50.00/square yard.
- c. The inspection fee to be paid upon filing an application for utility openings permit for the improved roads shall be based on the following:
  - 1. A separate fee of \$300.00 for trench areas totaling 50 square yards or less; and

2. For trench areas greater than 50 square yards, an additional fee in an amount equal to 5% of the performance guaranty as determined by paragraph b. above.
- d. The inspection fee to be paid upon filing an application for curb and sidewalk openings permit for the improved roads shall be based on the following:
  1. A separate fee of \$500.00 for disturbed areas totaling 50 square yards or less; and
  2. For disturbed areas greater than 50 square yards, an additional fee in an amount equal to 5% of the performance guaranty as determined by paragraph b. above.
- e. Where trenching is to take place outside the cart way but within the R.O.W., fees and bonding requirements will be as in paragraphs a., b. and c. above.
- f. When the number of opening by a single applicant exceeds three within five years, the trenching is associated with a utility main replacement, or requires the installation of a curb or sidewalk, the following shall apply:
  1. A pre-construction meeting will be mandatory with the Borough Public Works Director and Borough Engineer. No work shall occur, nor will the permit be considered valid, until such meeting is held.
  2. Roadway restoration for the individual trenches shall be combined into a single roadway repair. This single repair shall encompass all individual openings on the same side of the street. The restoration shall be performed from the curb line (or gutter line) to the centerline of the roadway and to the satisfaction of the Borough.
- g. A utility company may request a master permit for a main replacement or phone, electric, communications line installation or replacement project. A master permit will consist of a single Street Opening Permit issued per project. This permit shall be limited to no more than three individual streets. The minimum fees shall be based on the following:
  1. The application fee shall be \$2,000.00.
  2. The performance guaranty shall be calculated at \$20/square yard with roadway restoration areas determined as per Section 5 (e) (2).
  3. The escrow inspection fee initial deposit shall be \$10,000.00. When the balance of the escrow falls below \$5,000.00, another deposit of \$5,000.00 shall be required.
- h. Where tunneling or trenchless technology is utilized in lieu of the open cut method, a

guarantee, will be posted as required in paragraph b. above, with the provision that the trench width will be based upon the open cut method. All fees will be as required in paragraphs a., b. and c. above.

- i. No fee shall be charged for a permit to complete cosmetic repairs on a curb on any street unless such construction will result in damage to the street surface. In such an event, an escrow fee shall be determined by the Inspections and Approval Officer in such amount as shall be required to pay the cost of repairing the surface of such street by the Borough of Clayton should the permittee fail in his responsibility to repair the road surface as required. Curbing broken or removed during the installation of utilities covered under a utility opening permit shall be repaired or replaced by the permittee. The cost of the repair shall be borne by the permittee. Should the permittee fail to repair curbing broken by his activities, Borough of Clayton shall repair curb and assess the permittee for all costs incurred.
- j. In the event that the Inspection and Approval Officer determines that any excavation for which a permit has been issued is of greater dimensions than those stated in the permit, or if the Inspection and Approval Officer determines that any street surface has been damaged in connection with the construction of curbs and such damage has not been repaired, then and in either case the Inspection and Approval Officer shall notify the applicant, who shall pay any additional fee and post any additional bond as required forthwith and before continuing any further work in connection with such excavation or construction.
- k. In all cases where the foregoing guarantees are posted, the permittee shall restore the surface of the street upon the completion of the work by the permittee in accordance with the provisions of this section. Upon verification of completion of the restoration of the street surface by the Inspection and Approval Officer, and a twelve-month maintenance period, the guarantee fees shall be released to the permittee. Any unused escrow fees shall be returned to the permittee.

## **Section 6. Permit rules and regulations.**

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

- a. Every permittee shall keep each opening properly guarded and shall backfill and close open trench areas by the end of each workday. Restoration with bituminous stabilized base material must occur within 24 hours of opening the trench. Under no circumstances will trenches be left backfilled to grade with stone or similar material for more than 24 hours. Additional devices shall be installed by the applicant as required by the Inspection and Approval Officer. All work done under any permit shall be done in such a manner as to cause a minimum of interference with travel along the affected street. No street shall be closed to traffic unless specific permission therefore has been granted by the Inspection and Approval Officer and proper notification has been provided to the Borough of Clayton Police Department

and all emergency service agencies.

- b. Each permittee shall, as a condition of accepting any permit issued hereunder, save, hold and keep harmless and indemnify the Borough of Clayton, its officers, and agents against any claims, demands or expense arising out of any suit or claim for damage or injury alleged to have been sustained as a result of any work done under such permit.
- c. Upon application being made therefore, the Inspection and Approval Officer may extend the time during which any permit shall be valid for such a period as the Inspection and Approval Officer deems it advisable. In the event that the work required to be done by a permittee shall not be completed within the time stated on any permit or any extension thereof, then the Inspection and Approval Officer may complete the work required to be done by the permittee and restore the surface of the street affected. The permittee shall upon demand, pay the Borough of Clayton the cost of completing such work as the permittee is required to do under this section, and such amount may be recovered by the Borough of Clayton in a court of competent jurisdiction.
- d. No work for which a permit is issued hereunder shall be conducted in such a manner as to interfere with any water main or sewer line or any connection from either of the same to any building, unless specific permission to interfere with such main or line is obtained in advance from the Inspection and Approval Officer. No excavation which may result in damage to or destruction of any trees or shrubbery or any Borough property shall be made unless specific permission therefore is granted by the Inspection and Approval Officer prior to the work being done.
- e. Every permittee shall completely backfill any excavation made and replace as much as possible of the material excavated. Such material shall be compacted by rolling, tamping or other suitable means as directed by the Inspection and Approval Officer. Any additional backfill material required shall be furnished by the permittee. In any case where the Inspection and Approval Officer determines that the excavation material is unsatisfactory for backfill, the permittee shall backfill the excavation with sand, gravel, other approved material, or flowable fill as directed. Backfill shall be placed in layers not exceeding six inches in depth, moistened and thoroughly compacted as directed by the Inspection and Approval Officer as to achieve minimum 95% modified proctor density. Upon completion of the work, the permittee shall remove any excess material and leave the premises in a clean condition. Upon determination of the Inspection and Approval Officer that any backfilled excavation has settled or caved in, the permittee shall promptly upon notice of such determination continue backfilling as above described until the Inspection and Approval Officer determines that the settlement is complete.
- f. In the event that tunneling operations shall be required to reach a point of connection with any main line, the backfill in any such tunnel shall consist of rammed cement concrete or flowable fill material.

## **Section 7. Restoration of surface.**

In all cases where permits are issued hereunder wherein the permittee is to restore the surface of the street, the following rules, regulations and requirements shall apply:

- a. No permittee shall commence the restoration of any street foundation or surface until the Inspection and Approval Officer deemed that the settlement of the subsurface is complete and the area properly prepared for restoration.
- b. All sub bases and base courses shall be restored to a width of 12 inches wider than the width of the excavation and to a length of 12 inches longer than the length of the excavation.
- c. The street surface shall be restored to a width of 12 inches wider than the width of the restored foundation and to a length of 12 inches longer than the length of the restored foundation.
- d. When any foundation is restored by the use of cement concrete, the same shall consist of 3,000 psi concrete in accordance with NJDOT.
- e. All foundations and surfaces of improved roads shall be restored to their original thickness, width and grade with the same type of material as existed prior to the making of the excavation. Care should be taken to reconstruct the trench areas so as to recreate or improve upon the road cross section. In no case, however shall restoration be completed with less than the following materials and thickness:
  1. Six inches compacted dense graded aggregate or soil aggregate, I-5.
  2. Four inches bituminous stabilized base course, HMA 19M64 constructed in layers not more than two inches compacted thickness.
  3. Two inches HMA 12.5M64 surface course applied and tack coated to existing edge of pavement.
  4. A hot sealer shall be applied to all joints where new and old bituminous material meet.
- f. The foundations and surfaces of improved roads shall be made with the materials as specified herein or as directed by the Inspection and Approval Officer.
- g. Restoration work must be completed within 60 days of the original approval of the utility opening permit and application.

## **Section 8. Revocation upon noncompliance.**

The Borough Public Works Director or his designee may revoke any permit for noncompliance with any provision of this section. In any special case, the Borough Council may by resolution impose special conditions to which issuance of the permit will be subject, or the Borough Council may in any such case deem by resolution that any provision of this section shall not apply or shall be altered.

**Section 9. Violations and penalties.**

Any person who shall violate any provision of this section shall, upon conviction thereof, be subject to a fine not exceeding \$2,000.00 or imprisonment not exceeding 90 days, or both.

**Section 10. Moratorium on openings.**

No permits shall be granted on a newly improved Borough road for period of five years except in cases of emergency. Emergencies shall include utility repairs and any other emergency certified by Borough Public Works Director, Borough Engineer, or Borough Administrator.

**Section 11. Severability.**

If any section, subsection, sentence, clause or phrase of this section is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the remaining portions of this section, which shall remain valid and in effect irrespective of such decision affecting any part thereof.

**BE IT FURTHER ORDAINED** that this Ordinance shall take effect immediately upon formal approval by the Clayton Borough Council and publication as required by law.

BOROUGH OF CLAYTON



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THOMAS BIANCO, Mayor

Attest:



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CHRISTINE NEWCOMB, Borough Clerk

**ORDINANCE 7-2020  
BOROUGH OF CLAYTON  
GLOUCESTER COUNTY, NEW JERSEY**

**AN ORDINANCE REPEALING CHAPTER 57, EXCAVATIONS, AND ADOPTING A  
NEW CHAPTER 57 OF THE CODE BOOK OF THE BOROUGH OF CLAYTON TO BE  
ENTITLED STREET/RIGHT-OF-WAY ROAD OPENING PERMIT**

This Ordinance was introduced at a meeting held on the 7<sup>th</sup> day of July, 2020. It is scheduled for a public hearing and final adoption at a meeting of the Mayor and Council of the Borough of Clayton beginning at 6:30 p.m. on the 24<sup>th</sup> day of September, 2020, at the Municipal Building, 125 N. Delsea Drive, Clayton, New Jersey.

The purpose of this Ordinance is to repeal Chapter 57, Excavations and adopting a new Chapter 57, Excavations of the Code Book of the Borough of Clayton to be entitled Street/Right-of-Way Road Opening Permit.

A copy of this Ordinance can be obtained without any cost, by any member of the general public in the Borough Clerk's office within the Borough of Clayton in the Municipal Building, 125 North Delsea Drive, Clayton, New Jersey, during normal business hours, Monday through Friday from 8:00 a.m. to 4:00 p.m.

Christine Newcomb, Municipal Clerk  
Borough of Clayton



**BOROUGH OF CLAYTON  
NOTICE OF INTRODUCTION**

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**TAKE NOTE** that the foregoing ordinance was introduced at a meeting of the Mayor and Council of the Borough of Clayton held on July 9, 2020 and was then read for the first time. The said ordinance will be further considered for final passage by the Mayor and Council at the Municipal Building, 125 N. Delsea Drive, Clayton, New Jersey, at a meeting beginning 6:30 p.m. on September 24, 2020, at which time and place, or any time and place to which such meeting be adjourned, all persons interested will be given an opportunity to be heard concerning such ordinance.

**BY ORDER** of the Mayor and Council of the Borough of Clayton.

Christine Newcomb  
Borough Clerk

**NOTICE OF ADOPTION**

**BOROUGH OF CLAYTON**

**ORDINANCE # 7-2020**

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The foregoing Ordinance was finally adopted by the Mayor and Council of the Borough of Clayton on September 24, 2020.

Christine Newcomb  
Borough Clerk