

**BOROUGH OF ELMWOOD PARK  
BERGEN COUNTY, NEW JERSEY  
RESOLUTION R-422-23**

**RESOLUTION BY: COUNCILWOMAN PELLEGRINE  
SECONDED BY: COUNCIL PRESIDENT BALISTRIERI**

**RE-INTRODUCE ORDINANCE #23-22  
SECOND READING**

**WHEREAS**, a public notice has been given by the Borough Clerk that an ordinance entitled:

**AN ORDINANCE OF THE BOROUGH OF ELMWOOD PARK, COUNTY OF BERGEN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH CHAPTER XXII, ENTITLED "STREETS AND SIDEWALKS," MORE SPECIFICALLY SECTION 22-1.15 ENTITLED "RESTORATION BY PERMITTEE" SO AS TO INCLUDE CERTAIN LANGUAGE CLARIFYING THE OBLIGATION AND RESPONSIBILITY SET FORTH THEREIN**

was introduced and passed at a meeting held on Thursday, October 19, 2023 and that further consideration of this ordinance would be taken up at this meeting; and

**WHEREAS**, all persons interested in said ordinance were given an opportunity to be heard concerning the same;

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Borough of Elmwood Park, that an ordinance entitled:

**AN ORDINANCE OF THE BOROUGH OF ELMWOOD PARK, COUNTY OF BERGEN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH CHAPTER XXII, ENTITLED "STREETS AND SIDEWALKS," MORE SPECIFICALLY SECTION 22-1.15 ENTITLED "RESTORATION BY PERMITTEE" SO AS TO INCLUDE CERTAIN LANGUAGE CLARIFYING THE OBLIGATION AND RESPONSIBILITY SET FORTH THEREIN**

pass on final reading.

APPROVED: November 9, 2023

\_\_\_\_\_  
Robert Colletti, Mayor

ATTEST: \_\_\_\_\_

Shanee Morris, CMR  
Acting Borough Clerk

Record of Council Vote on Passage

	AYE	NAY	Abstain	Absent		AYE	NAY	Abstain	Absent
Dennis	X				Pellegrine	X			
Fasolo	X				Sheridan	X			
Golabek	X				Balistrieri	X			

This resolution was approved by the Mayor and Council of the Borough of Elmwood Park at a regular scheduled meeting held on the 9<sup>th</sup> day of November 2023. Signed and sealed before me.

\_\_\_\_\_  
Shanee Morris, CMR  
Acting Borough Clerk

\_\_\_\_\_  
Dated

**BOROUGH OF ELMWOOD PARK  
BERGEN COUNTY, NEW JERSEY  
ORDINANCE NO.: 23-22**

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**AN ORDINANCE OF THE BOROUGH OF ELMWOOD PARK, COUNTY OF BERGEN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH CHAPTER XXII, ENTITLED "STREETS AND SIDEWALKS," MORE SPECIFICALLY SECTION 22-1.15 ENTITLED "RESTORATION BY PERMITTEE" SO AS TO INCLUDE CERTAIN LANGUAGE CLARIFYING THE OBLIGATION AND RESPONSIBILITY SET FORTH THEREIN**

**INTENT OF THIS ORDINANCE**

The intent of this Ordinance is to amend the part of the ordinance to place a much-expanded burden on a permittee, whether that permittee is a public or private entity, to undertake the responsibility of repairing and or restoring and or replacing pavement after a trench opening on any roadway of the Borough.

**WHEREAS**, the Mayor and Council have become aware that there exists, with regards to the conditions of many of the Borough's streets, as a result of street opening and the effect that it has on the health and safety of the residents of the Borough, resulting in improper repaving by a permittee which causes unlevel and uneven pavement of the roadway; and

**WHEREAS**, the Mayor and Council of the Borough of Elmwood Park have concluded that these created conditions referred to above have become a hazard to the health, safety, and welfare of the public.

**NOW THEREFORE BE IT ORDAINED** by the Mayor and Council of the Borough of Elmwood Park, County of Bergen, and State of New Jersey as follows:

**SECTION 1:** Chapter XXII of the Code of the Borough of Elmwood Park, entitled "Streets and Sidewalks," is hereby repealed and replaced with the following language:

**Section 22-1.1 Permit required.**

- A. No person shall make any excavation, create a penetration, or place or conduct construction in, over or upon any road or street in the Borough of Elmwood Park, or otherwise endanger or obstruct the normal flow of traffic or normal flow of surface water by the placing of any barricade, structure, material or equipment not designated normally to be operated, placed or used on a road or street without first obtaining a written permit, approved by the Borough Engineer, which shall be issued by the Construction Official upon payment of such fees as required by this chapter and complying with all the terms and conditions of this chapter. Before a permit is issued, application must be made upon forms provided by the Borough which are available in the office of the Construction Official. The application shall be accompanied by drawings satisfactory to the Borough Engineer or the Superintendent of Public Works, showing all details of any structure, pipes, ducts, wires, cables, or other facilities being installed in the road or street of any road or street being altered. Every permit shall specify the name and residence of the permittee, the location(s) at which the work is to be done, the character of the work and the time within which such work is to be completed, and other such information as required by the Borough Engineer or the Superintendent of Public Works. A permit issued shall be valid only for the place, time period and character or work specified in such permit.
- B. No permit shall be issued for the disturbance of a street which has been newly constructed, reconstructed, or resurfaced within a period of five years from the date of acceptance of such work, except in cases deemed to be an emergency by the Borough Administrator and the head of the department of public works and or the borough engineer.
- C. If, by special authorization of the Borough Administrator and the head of the department of public works and or the borough engineer, a permit is issued to open any street surface

less than five years old, the special fee provisions of §22-1.5A(3) and the special construction provisions of §22-1.8D shall apply.

- D. Application for street opening shall be submitted on forms available at the Department of Public Works. All applications must include said form, applicable fees and escrows, and a plan showing the work. The plan shall be drawn to scale, fully dimensioned and showing existing and proposed utilities.
- E. Tunneling or mechanical methods of boring under the road for service installations may be permitted only on written approval of the Borough Engineer. Application for tunnelling shall provide the same information as for a street opening.

#### **Section 22-1.2 Applicability of Chapter.**

- A. Contractors performing work in Borough streets under construction contracts with state, county, or municipal authorities are exempt from this chapter on the condition that such contracts shall contain provisions and specifications to ensure compliance with, or exceedance of the provision of this chapter.
- B. This chapter only regulates street and road openings as defined herein. It is not suggested or implied that permittees are exempt from obtaining other permits for work involved in the street or roadway opening, including but not limited to other municipal permits, utility connection fees, etc.
- C. This chapter only regulates the disturbance within the municipal rights-of-way.

#### **Section 22-1.3 Insurance Prerequisite**

- A. Prior to the issuance of any permit for excavation or penetration below existing pavement grade, the permittee shall file a certificate of insurance with the Borough Clerk certifying that there is in full force and effect liability and property damage insurance for the protection of the permittee, the Borough, as well as the Borough's agents and employees connected therewith from any and all claims for personal injury, including accidental death, and property damage in minimum amounts of \$500,000 to \$1,000,000 bodily injury and \$100,000 property damage.
- B. Every permittee shall, as a condition of accepting any permit issued hereunder, save and hold harmless the Borough or Elmwood Park and indemnify such Borough, its officials, agents, servants and employees from and against any and all loss, damage, claim, expense or demand whatsoever arising out of any matter or resulting from the opening of any street and the issuance of a permit therefor as provided in this chapter.

#### **Section 22-1.4 Deposit or Bond**

- A. No person shall be granted a permit to open any street until and unless there shall be deposited with the Borough Clerk, in cash or by certified check, an amount sufficient to secure the cost of repairing and replacing such street or other surfaces or appurtenances within the street area as may be determined by the Borough Engineer. Such sum shall be forwarded to the Borough Treasurer and the minimum amount deemed sufficient for such purposes shall be \$1,000.00, and such deposit shall be held for a period of 90 days following the completion of the work and only released upon the recommendation of the Borough Engineer or the Superintendent of Public Works. Any person may file a performance surety bond in the amount stated herein to secure the cost of repairing and replacing such street or other surfaces or appurtenances within the street area in the manner as herein provided.
- B. In lieu of security deposits required in §22-1.4A, any public utility subject to regulations by the Board of Public Utility Commissioners of this state may execute a bond in the penal sum of \$10,000.00 to the Borough and file same with the Borough Clerk. Such bond shall be conditioned upon compliance with the applicable provisions of this chapter. In lieu of filing certificates of insurance as provided in § 22-1.3, a public utility may file with the Borough Clerk evidence certifying that it is qualified as a self-insurer pursuant to

the appropriate statutes of this state. The provisions of this chapter shall not apply to the installation of public utility poles and anchors.

- C. Each bond filed pursuant to this chapter shall be in a form satisfactory to the Municipal Counsel.
- D. No such security deposit, certified check or performance surety bond shall be released by the Borough Clerk until all restorations of streets or other surfaces or appurtenances within the street are completed fully to the satisfaction of the Borough Engineer or Superintendent of Public Works. Further, all fees and escrows must be submitted as provided by this chapter and the work must be in compliance with all other provisions of this chapter.
- E. Each bond filed pursuant to this chapter shall be in a form satisfactory to the Municipal Counsel and shall remain in effect for a period of one year after the last restoration work under any permit which has been completed and accepted by the town.

### **Section 22-1.5 Fees and Escrows**

- A. Each permittee for a permit shall pay the following fees for the purposes of issuance of the permit, examination of drawings, and initial deposit for the administration and inspection of work:

- 1) Application fee:

- a) General application fee (reported opening): \$50.00.
- b) Nonreported, non-emergency opening application and initial assessment fee: \$200.00.

- 2) Permit fee:

- a) Up to 30 square feet: \$50.00.
- b) In excess of 30 square feet to 100 square feet: \$50.00.
- c) Over 100 square feet: Additional \$1.00 per square foot.

- 3) New Roadway Disturbance Fee

An additional fee shall be imposed for the disturbance of a street which has been newly constructed, reconstructed, or resurfaced within a period of five years from the date of acceptance of such work, except that the penalty shall be waived in the event the work is of an emergency nature. The New Roadway Disturbance Fee shall be on a sliding scale equal to 2% of the cost of restoring the opening for each unelapsed month or fraction thereof of the five year restricted period. The cost of restoration and the validity of any claim of an emergency shall be determined by the Borough Engineer or Superintendent of Public Works. The minimum New Roadway Disturbance Fee shall be \$1,000.00.

- B. Escrow

The permittee shall be required to post adequate funds in escrow to reimburse the town for costs of inspection by the Borough Engineer. The escrow deposit shall be computed as 5% of the restoration cost of the excavation, with a minimum of \$750.00. Any excess escrow funds shall be returned to the permittee upon approval, acceptance and recommendation by the Borough Engineer or Superintendent of Public Works to the Borough Clerk.

### **Section 22-1.6 Traffic and Public Safety**

- A. All persons making excavations in the street shall inquire of the Chief of Police to determine if flagmen or detours of traffic are needed, or the work is to be scheduled in order to minimize disturbance of the normal traffic flow.

- B. Every person making an excavation shall be required to place and maintain suitable warning devices, precaution notices, barriers and lighting devices pursuant to the requirements of Title 39 of the Revised Statutes of the State of New Jersey and amendments thereto, the Manual on Uniform Traffic Control Devices (MUTCD), and such additional safety warning devices as deemed necessary by the Borough Police Department, the Borough Engineer, or the Superintendent of Public Works.
- C. All work shall be conducted in such manner as to minimize the obstruction of traffic and inconvenience to the public and occupants of adjoining property. Where less than two complete traffic lanes are maintained, flagmen shall be employed. Flagmen shall meet the criteria set forth by the N.J. Department of Transportation. Where an excavation extends the full width of a street, only one-half of such street shall be open and backfilled prior to opening the remaining one-half.

### **Section 22-1.7 Excavation and Backfill**

Unless otherwise directed by the Borough Engineer or Superintendent of Public Works, the following specifications shall govern street opening process:

- A. The permittee shall provide 48 hours' notice of the start of the street opening to the Borough Engineer, the Department of Public Works, and the Elmwood Park Police Department.
- B. The holder of the permit shall guard the excavation or excavations by the erection of suitable barriers by day and the maintenance of suitable lights by night. The Borough Engineer and or Police Department may require additional security measures as required for public welfare. Under no circumstances shall an open trench remain open overnight. All open trenches shall be temporarily backfilled or sufficiently plated with steel plates anchored to the existing street.
- C. All excavations within paved surfaces shall be preceded by the saw cutting of the surface.
- D. The permittee shall provide access for the Borough Engineer to perform the required inspections. The inspections performed by the Borough Engineer do not relieve the permittee's responsibilities to perform all work in accordance with the provisions of this Chapter.
- E. All road, shoulder and driveway openings shall be backfilled with material meeting the requirements of the NJDOT Dense Graded Aggregate (DGA) unless otherwise specifically permitted by the Borough Engineer. The backfill material shall not contain recycled products. The backfill shall be tamped in 6 inch layers with a mechanical tamper and made thoroughly compact, firm and unyielding as backfilling progresses. The backfill material shall be brought to within six inches from the finished surface in roadway areas.
- F. All material not suitable for backfill and all excess backfill material shall be removed from the site. The proper disposal of excavated material shall be the sole responsibility of the permittee.
- G. Six inches of N.J. Department of Transportation 19.5M64 Hot Mix Asphalt shall be placed in two lifts and separately compacted so as to provide a smooth surface. A thin tack coat shall be applied to the edges of the excavation prior to the application of the asphalt.
- H. When, in the opinion of the Borough Engineer or the Superintendent of Public Works, settlement in the pavement opening has ceased, the bituminous concrete base course shall be removed to the required depth and the edges of the existing pavement shall be neatly cut back to a minimum of six inches with a pavement saw or pneumatic cutting tool, and a permanent pavement shall be installed in the following manner. There shall be no varying width in the final repair. The edges of the existing pavement shall be coated with tack coat, and hot mixed bituminous concrete pavement shall be installed consisting of

four inches of a N.J. Department of Transportation 19.5M64 Hot Mix Asphalt, and two inches of a N.J. Department of Transportation 9.5M64 Hot Mix Asphalt.

- I. All sidewalks, driveway openings, curbing and curb cuts shall be replaced with NJDOT Class B concrete. Curb cuts shall be formed by full depth depressed curb of a material consistent with the existing curb and installed in accordance with N.J.A.C. 5:21-4.17. Appropriate specifications for the shoulder openings or pavement openings shall govern replacement of same.
- J. In the event that the street opening requires removal of a portion or the whole crosswalk, the permittee is required to replace the existing crosswalk stripe from curb to curb in its entirety to the current crosswalk standard.
- K. In the event the permittee has been granted permission to make temporary and permanent restoration of pavement, the permittee agrees to assume all responsibility for any damage which may occur as a result of the opening from the time the opening is made until permanent restoration of pavement has been made and approved, at which time the Borough assumes responsibility therefor.

### **Section 22-1.8 Extent of Restoration**

- A. If the application for street opening permit involves a utility trench that generally follows the centerline of the roadway, the permittee shall be required to perform a two-inch mill and two inch overlay between the curb line and centerline of the roadway. If the permit extends to the next block or fraction of the next block the repaving will include the full block area from curb to centerline. Only the Mayor and Council shall have the authority to waive this requirement upon a showing an undue hardship and or extenuating excusable circumstances.
- B. If the application for street opening permit requires the street to be opened more than 25% of the surface area of the travel lane or parking lane in one block, the applicant shall be required to perform a two inch mill and two inch overlay between the curb line and centerline of the roadway. If the permit extends to the next block or fraction of the next block the repaving will include the full block area from curb to centerline. Only the Mayor and Council shall have the authority to waive this requirement upon a showing an undue hardship and or extenuating excusable circumstances.
- C. In the case where there are multiple street openings required by one entity or a combination of joint entities, and where the outside edges of those openings are less than 50 feet apart, measured along the centerline of the road, the permittee shall be required to perform a two-inch mill and two inch overlay between the curb line(s) and centerline of the roadway to include the openings. Note that this section shall apply to all openings required by the entity that remain visible within the roadway, including those made under prior permits.
- D. In the case of a New Roadway Disturbance, the restorations outlined in § 22-1.8A, § 22-1.8B and § 22-1.8C shall extend to the full width of the roadway. Only the Mayor and Council shall have the authority to waive this requirement upon a showing an undue hardship and or extenuating excusable circumstances.

### **Section 22-1.9 Progress of Work**

- A. It shall be the responsibility of the permittee to progress the street opening and restoration process in a timely manner, with no excavations being left open overnight. All openings shall receive temporary pavement within 48 hours of the backfill of the trench. All openings shall receive permanent restoration no less than 3, but no more than 6 months after the temporary restoration.
- B. Should the permittee, in the opinion of the Borough Engineer or the Superintendent of Public Works, fail to progress the work as required by this chapter, the Borough Engineer or Superintendent of Public Works shall notify the Construction Official of such failure and the Construction Official shall, upon 24 hours notice, whether oral or written, to the

permittee, order such conformity with this chapter or such repair or any such work deemed necessary and proper by the Borough Engineer or Superintendent of Public Works, whereupon the Department of Public Works of the shall commence such work and the cost thereof shall be deducted from deposits received under § 22-1.4 herein.

**Section 22-1.10 Emergencies**

- A. Street openings or excavations may be made without obtaining a written permit as provided herein in cases of emergency which would appear reasonably to endanger public health or safety. In such emergencies, adequate precautions shall be taken as provided in § 22-1.6. Prior to the start of such emergency work, the entity performing said work shall advise the Elmwood Park Police Department of the emergency work. Applications for a permit shall thereafter be made within a period of 72 hours and there shall be compliance with all other provisions of this chapter.

**Section 22-1.11 Enforcement officials**

The provisions of this chapter shall be enforced by the Town Engineer and/or the Construction Official, or their designees.

**Section 22-1.12 Violations and penalties**

Any person convicted of violating any of the provisions of this section shall, upon conviction thereof, be liable to the penalty stated in §1-5.

**SECTION 2.** In the event any section, part, or provision of this Ordinance shall be held unconstitutional or invalid by any Court, such holding shall not affect the validity of this Ordinance or any remaining part of this Ordinance other than the part held unconstitutional or invalid.

**SECTION 3.** All ordinances or parts thereof, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of their inconsistencies.

**SECTION 4.** This Ordinance shall take effect immediately upon its final passage and publication as required by law.

ATTEST: \_\_\_\_\_

Shanee Morris, CMR  
Acting Borough Clerk

APPROVED: \_\_\_\_\_

Robert Colletti, Mayor

Tabled: June 15, 2023

Re-Introduced: October 19, 2023

Adopted: November 9, 2023