

NOTICE IS HEREBY GIVEN that Ordinance #20- was introduced and passed on first reading at the regular meeting of the Mayor and Council on the 20th day of October, 2020 and that said Ordinance will be taken up for further consideration for final passage at a regular meeting of the Mayor and Council to be held on the 24th day of November, 2020 at 8:00 p.m. or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning same.

Karen Hughes, Borough Clerk
Borough of Westwood

ORDINANCE NO. 20-15

An Ordinance to Amend Chapter 330 Streets and Sidewalks Article V Street Openings

BE IT ORDAINED by the Mayor and Council of the Borough of Westwood that Chapter 330 Streets and Sidewalks, Article V Street Openings, be amended as follows (deleted sections are noted by strikethroughs, new sections are **bold and underlined**):

Section 1. Amend:

§ 330-26 **Permit required.**

- A. It shall be unlawful for any person, persons, firm or corporation to tear up any of the road surfaces of, or make any excavation in, any of the public streets, avenues, highways or public places in the Borough, for the purpose of constructing surface or subsurface improvements or for the purpose of laying, examining, replacing or repairing of gas mains, water mains, sewers, sewer connections, telephone conduits, electrical outlets, or for any other purpose, except and until the consent, permission and approval thereto, in writing, of the Borough Administrator or the Borough Clerk, after consultation and review by the Superintendent or Foreman, or his designee, of the Department of Public Works and/or the Borough Engineer is first had and obtained.
- B. In case of an unforeseen circumstance or occurrence, the existence of which constitutes a clear and immediate danger to person and property, hereinafter referred to as "emergency," any utility (water, gas, electric, cable, telephone, sewer, etc.), resident, property owner or lessee shall not be required to provide the above information in advance of the work, but shall do so within 24 hours thereafter, provided that:
- (1) A true emergency exists and the person(s) doing the excavation notifies the Borough Police Department; the Police Department shall log the emergency; **When notified of an emergency, the dispatcher via their Department's chain of command will inform the Superintendent of Public Works, the Borough Clerk, and the Borough Administrator.**
 - (2) An application for a permit is filed with the Borough Clerk within 24 hours of the street opening or on the next business day, whichever is more practical;
 - (3) Said utility, resident, property owner or lessee makes the payment required by § **330-27**; and
 - (4) The excavation is performed in accordance with the provisions of this article.

§ 330-27 **Application.**

- A. All applications for permits referred to in this article shall be made in writing to the Borough Clerk at least five business days in advance of the proposed road opening, unless it is an emergency, and shall:

- (1) Specify the name and address of the individual, firm, corporation or utility for whose benefit the excavation is to be made.
 - (2) Specify the name and address of the excavation, construction and/or restoration contractor(s).
 - (3) Identify specific location of the proposed excavation and the width, length and depth thereof.
 - (4) Confirm Borough jurisdiction of the work area and provide a list of all federal, state, local governmental/quasi-governmental agencies having jurisdiction thereover, and, if such agencies require approval, whether such approval has been obtained and provide copies thereof.
 - (5) Identify the type of road surface.
 - (6) Identify the location of any and all utilities, storm drains, sanitary sewers or sewer mains within 10 feet of the limits of the proposed opening.
 - (7) Identify excavation start date and expected duration and method of repair.
 - (8) Identify the applicable fees for the issuance of the permit as hereinafter provided, together with the charges as hereinafter set forth.
 - (9) Include a signed statement by the applicant agreeing to indemnify the Borough and hold it harmless from and against any claim, liability, damage and/or expense, including any attorney fees, arising out of the granting of the permit or from any negligence or fault of such applicant, his servants or agents in connection with any of the excavation performed under or in connection with such permit.
- B. A nonrefundable fee of \$200 shall accompany every application to offset the cost of processing the application and inspection subsequent to the road repair.

§ 330-27.1 Deposits required; performance guarantee.

No permit shall be granted unless the sums hereinafter set forth shall be paid to the Borough Clerk. These sums shall be held by the Borough Clerk until 18 months after the completion of each improvement as a security deposit to guarantee the completion of the improvement and maintenance thereof for 18 months thereafter, pursuant to the terms of the application, in a good and workmanlike manner and in accordance with the specifications and standards of the Borough to the satisfaction of the Mayor and Council. Eighteen months after such completion, the Borough shall return the deposit to the applicant, provided that the work has been properly completed and maintained. Upon failure to complete and maintain the improvement to the satisfaction of the Borough, the Borough may complete and maintain the improvement, using the moneys so deposited or so much thereof as is necessary for such purpose, returning the balance of the deposit, if any, to the applicant after 18 months from the date of completion. If the security deposit is insufficient to pay for the cost of remediating the work, the person or entity responsible shall be obligated to reimburse the Borough for any excess costs which may be collected in accord with the Borough Code.

§ 330-27.2 Insurance.

The applicant shall present evidence satisfactory to the Borough Attorney or Risk Manager of insurance sufficient to indemnify and save harmless the Borough, its officials, employees, agents and servants against and from all suits and costs of every kind and from all personal injury or property damage resulting from negligence or from any phase of operation performed under the permit.

§ 330-28 Amount of permit deposits.

The permit deposits shall be in the following amounts for each opening excavated, up to 100 square feet of area disturbed:

- A. For openings on any road paved with concrete: \$750 plus \$7.50 per square foot over 100 square feet.
- B. For openings on any road paved with macadam: \$500 plus \$5 per square foot over 100 square feet.
- C. For openings on any unimproved road or unpaved portion of improved roads: \$250 plus \$2.50 per square foot over 100 square feet.
- D. Regulated utilities governed by the New Jersey Board of Public Utilities pursuant to N.J.S.A. Title 48 are exempted from this section; refer to § **330-30**, Utility road opening.

§ 330-29 Safeguards.

All excavations, earth, stone, lumber, pipe or other material shall be safely and securely barricaded and further guarded at night by at least two lights, one at each end of the excavation or material, and in any other manner as the Superintendent (or Foreman or his designee) of Public Works may deem necessary for the reasonable protection of the public from injury.

§ 330-29.1 Staging for excavation.

Not more than 1/2 of the trench shall be excavated at one time where the trench will run from one side of the pavement to the other, and the part so excavated shall immediately be backfilled under the supervision of and to the satisfaction of the Superintendent of Public Works (or Foreman).

§ 330-29.2 Manner of backfilling and restoration.

- A. The backfilling of the trench shall proceed in the following manner, namely: earth, sand, gravel or broken stone removed from the trench shall be replaced in layers not exceeding 12 inches in depth, and shall be properly compacted. The work of refilling shall continue in this manner until the material is brought up to within 24 inches of the finished pavement; any rocks larger than six inches in diameter shall be removed. The first layer shall be three-quarter-inch quarry-processed (QP) rock. The backfilling shall be continued until the top thereof, after being thoroughly compacted, shall be one inch higher than the pavement. No animal or vegetable matter or refuse shall be used or permitted in the backfill, and all refuse or surplus material from the trench shall be removed from the work area immediately after the trench has been excavated. After the fill has thoroughly settled, the road surface shall be restored to a like-new condition.
- B. The person or entity conducting this work shall remain responsible for the repair of the resurfaced repair work for a period of five years and shall repair same if required by the Superintendent (or Foreman) of Public Works.
- C. Roadway restoration shall be in accord with the engineering details set forth in the Appendix which may be found at the end of this chapter.
- D. Any restoration of a trench or series of openings more than 15 linear feet **in the aggregate on any one street or portions of a street**, shall include restoration in accord with the engineering details found in the Appendix as applicable and shall also include the milling and resurfacing of the roadway from curb to curb for the length of the opening. **The milling and resurfacing of the roadway will be supervised by the Borough's Engineer. The supervision costs will be paid for by the applicant of the road**

opening permit.

- E. Any restoration of macadam which is not milled and paved shall be completed using infrared paving to ensure a smooth transition from the adjoining surface **to the satisfaction of the Superintendent of Public Works.**

§ 330-29.3 Interference with gutter flow or traffic; permits.

It shall be unlawful for any person, firm or corporation to place any stones, earth, ashes, lumber, pipe or other materials of any description whatsoever upon any road or street so as to interfere with the flow of water along the gutters or so as to interfere with traffic on the road or street. Any unlawful exercise of this privilege shall be deemed a violation of this section and be punishable by a fine of \$50 to \$200. Nothing herein shall apply to leaves or vegetative waste. The purpose of this section is to prevent construction-related material from obstructing or interfering with the flow of water.

§ 330-29.4 Enforcement.

It shall be the duty of the Borough Superintendent of Public Works, Building Code Official, Property Maintenance Official, Borough Police Department, or any other officer as the Mayor and Council may designate to ascertain whether permits have been issued covering each operation and to supervise all excavations, backfilling and restoration as provided herein.

§ 330-30 Utility road opening.

- A. All utilities registered by the New Jersey Board of Public Utilities under Title 48 which opens roads in the Borough of Westwood shall pay a nonrefundable application fee of \$200 per opening. Said payment shall be sent to the Borough Clerk within 24 hours of completion of the utility work related to the road opening.
- B. Roadways opened by utilities shall be returned to a like-new condition as set forth in § 330-29.2. Infrared heat paving shall be used to the satisfaction of the Superintendent of Public Works, Foreman or his/her designee.
- C. Roadway material shall be of the same material as the roadway: e.g., concrete roads shall be repaired with concrete and asphalt with asphalt.
- D. Within 90 days of completion of all road opening repair, the Borough shall advise the utility if the closing is satisfactory or not, and if not, a directive of corrective action shall be included. Repairs made subsequent to notice from the Borough of unsatisfactory repairs shall be concluded within 30 days of notice. If repairs are not made within 30 days and/or the repair is not done to the satisfaction of the Borough Superintendent of Public Works (or Foreman) or his/her designee, then the Borough may cause the repair work to be done and use the escrow to pay for same. In such event, the utility shall replenish the escrow within 30 days of notice from the Borough.
- E. All utilities servicing the Borough of Westwood shall post a cash bond in the amount of \$2,500 with the Borough Clerk to be held in a noninterest escrow account to be held in perpetuity to pay the cost of application fees and repair to road openings done in an unsatisfactory manner. If this bond is diminished by utilization for restoration or payment of application fees, the utility shall deposit additional funds sufficient to bring the balance of the cash bond to \$2,500 within 10 days of receipt of a notice of deficiency sent by the Borough.

§ 330-31 Utility companies; disturbance of recently repaved or installed roads.

- A. Utility companies, including those engaged in the installation of gas, water and electric lines, shall report to the Department of Public Works, quarterly, their intentions, with regard to prospective work requiring future street openings in the community, for the purpose of coordinating such activity with pavement projects anticipated by the Borough of Westwood.
- B. Except in the case of an emergency, the Borough of Westwood shall have the right to schedule street openings with utilities companies in a manner which will create the least disturbance to pavement courses, in furtherance of which purpose the Borough of Westwood shall provide to the utilities a schedule of expected street construction and resurfacing.
- C. In the event an applicant seeks to disturb a road which has been repaved or installed within the preceding five years, and the municipality shall have given notice of intent to repave by ordinance or actual notice to the applicant, the fees shall be doubled for the permit and bond. In addition, the applicant shall be required to **mill and** repave the entire width of the road to achieve a cosmetic and surface match. **The milling and resurfacing of the roadway will be supervised by the Borough's Engineer. The supervision costs will be paid for by the applicant of the road opening permit.**

§ 330-32 Traffic control on private construction.

Any contractor or other employer requiring traffic management services on any project or event occurring in the Borough of Westwood shall utilize the Westwood Police Department for such services.

§ 330-33 Violations and penalties.

- A. Any person, firm or corporation violating any of the provisions of this article, or neglecting or refusing to comply with any of the terms or conditions hereof, shall, upon conviction, be liable as follows:
 - (1) Failure to deposit a performance bond: the amount set forth in § **330-28** plus \$500.
 - (2) Opening a roadway without a permit and/or failing to comply with the provisions for filing an application for emergency work within 24 hours of conducting the work or the first business day thereafter: the amount set forth in § **330-28** plus \$1,000.
 - (3) Failure to restore any roadway as required: the amount set forth in § **330-28** plus \$500.
- B. Each and every nonconformance of this article, or each day that any provision of this article shall have been violated, shall be construed as a separate and distinct violation thereof.

Article VI

Underground Utility Placement

[Adopted 11-22-2005 by Ord. No. 05-36]

§ 330-34 Notification requirements.

Before a public utility places, replaces or removes a pole or an underground facility located in the Borough of Westwood, the public utility shall notify both the Municipal Engineer and the Municipal Code Official in writing, which may be by fax or e-mail, at least, but not less than, 24 hours before undertaking any excavation related to the replacement or removal of the utility pole or underground facility, which pole or underground facility is used for the supplying and distribution of electricity for light, heat or power or for the furnishing of water service or telephone or other telecommunications service on or below a public right-of-

way in the Borough. The Borough Clerk of the Borough of Westwood shall notify any public utility that provides service in the Borough of the application of the provision of this article.

§ 330-35 Definitions.

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

HOT PATCH

The installation of a mixture of asphalt to restore property within the right-of-way to its previous condition subsequent to the construction or excavation of a site required for the placement of a pole or an underground facility pursuant to this article.

POLE

In addition to its commonly accepted meaning, any wires or cable connected thereto and any replacements therefor which are similar in construction and use.

UNDERGROUND FACILITY

One or more underground pipes, cables, wires, lines or other structures used for the supplying and distribution of electricity for light, heat or power or for the providing of water service or for the furnishing of telephone or other telecommunications service.

§ 330-36 Restoration of property.

After completing the placement, replacement or removal of a pole or an underground facility pursuant to this article, the public utility shall remove from such right-of-way any pole or underground facility no longer in use, as well as any other debris created from such placement, replacement or removal, and restore the property, including, but not limited to, the installation of a hot patch as needed to restore the property, within the right-of-way to its previous condition.

§ 330-37 Violations and penalties; enforcement; facilities used by multiple utilities.

- A. In the event a public utility does not meet the requirements of § **330-36** of this article concerning the removal of debris and the restoring of property, including, but not limited to, the installation of a hot patch, within a right-of-way to its previous condition within 90 days of placement, replacement or removal of a pole or an underground facility, said public utility shall be punishable as provided in Chapter **1**, General Provisions, Article **III**, General Penalty, of the Code of the Borough of Westwood each day until the requirements of § **330-36** are met, except that if the public utility is unable to complete the installation of a hot patch due to the unavailability of asphalt material during the period of time from November through April, the public utility shall not be required to complete the hot patch installation until 60 days immediately following the end of the period from November through April. At least five business days prior to the end of the ninety-day period established by this section, the municipality shall notify the public utility that the penalties authorized by this section shall begin to be assessed against the utility after the end of the ninety-day period unless the utility complies with the requirements of § **330-36** of this article. Any penalty imposed shall be collected or enforced in a summary manner, without a jury, in any court of competent jurisdiction, according to the procedure provided by the Penalty Enforcement Law of 1999, N.J.S.A. 2A:58-10 et seq.
- B. The Superior Court and Municipal Court shall have jurisdiction to enforce the provision of this article.
- C. In the case of removal or replacement of a pole or an underground facility utilized by two or more public utilities, the public utility last removing its pipes, cables, wires, lines or other structures shall be

liable for the removal and restoration required under § **330-36** of this article unless a written agreement between the public utilities provides otherwise.

§ 330-38 **Emergency conditions.**

Under emergency conditions which significantly impact the placement of a pole or underground facility resulting from natural forces or human activities beyond the control of the public utility or which pose an imminent or existing threat of loss of electrical, water, power, telephone, or other telecommunications service or which pose an imminent or existing threat to the safety and security of persons or property, or both, or which require immediate action by a public utility to prevent bodily harm or substantial property damage from occurring, the provision of § **330-34** of this article shall not apply when a public utility undertakes any construction or excavation related to the placement, replacement or removal of a pole or an underground facility in response to such emergency, provided that the public utility undertaking such construction or excavation notifies the Municipal Engineer and the Municipal Code Official of the Borough of Westwood at the earliest reasonable opportunity, and that all reasonable efforts are taken by the public utility to comply with the removal and restoration requirements of § **330-36** of this article after responding to the emergency.

Section 2. If any section, subsection, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

Section 3. All ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 4. If any section, subsection, part, clause or phrase of this Ordinance shall be declared invalid by judgment of any court of competent jurisdiction, such section, subsection, part, clause or phrase shall be deemed to be severable from the remainder of this Ordinance.

Section 5. This Ordinance shall take effect immediately upon final passage and publication as required by law.

Adopted: _____

Approved:

Attest:

Ray Arroyo, Mayor

Karen Hughes, Borough Clerk