

## ORDINANCE 1157

### AN ORDINANCE AMENDING CHAPTER XI OF "REVISED GENERAL ORDINANCES OF THE BOROUGH OF DEAL, 1982", Streets and Sidewalks

THE BOARD OF COMMISSIONERS OF THE BOROUGH OF DEAL  
HEREBY ORDAIN:

Section 1. That Chapter XI, Streets and Sidewalks, of the "Revised General Ordinance of the Borough of Deal, 1982 be and it hereby is amended in the following particulars:

Section 2. Subsection 11-1 **Excavation of Streets** is amended to add as follows:

#### **11-1.1 Permit Required.**

No street or portion thereof within the Borough shall be opened, excavated or dug up by any person unless an application shall first be made to the Borough Clerk and a permit in writing be issued by the Clerk authorizing such work.

It shall be unlawful for any person, persons or corporation to dig up or excavate or tunnel under any street or avenue, or any portion thereof within the corporate limits of the Borough for the purpose of laying or connecting new pipe or conduit with any water, gas, sewer, electric or other main, or for the construction or reconstruction of any sidewalk, curb or driveway ramp, or for any other purpose whatsoever, without first obtaining a permit. Application for such a permit shall be obtained from the Borough Clerk.

#### **11-1.2 Application for Permit.**

Each opening shall require a separate application and permit, and the payment of a fee as stated herein. A series of excavations separated from each other shall not be deemed to be contiguous and shall require a separate application and permit and the payment of fees, as stated herein. Applications shall be clearly and accurately completed.

#### **11-1.3 Nonrefundable Permit Fees.**

The following nonrefundable permit fees are established and shall be collected by the Borough Clerk before issuing a permit:

- a. Unless a specific fee is established hereinafter, the permit fee shall be \$400.00.

- b. Discharge of a sump pump drain, roof drain or area drain into the public right-of-way where no connection to the public stormwater connection system is proposed - \$400.00 (paragraph c. below applies if a connection is proposed).
- c. Connecting to the sanitary sewer or stormwater collection system - \$400.00, and where a pavement opening is required, \$25.00 additional for each 100 square feet, or fraction thereof, of area disturbed.
- d. For other excavations or occupancies which disturb improvements, such as utility connections - \$400.00, plus \$25.00 additional for each 100 square feet, or fraction thereof, of area disturbed.
- e. For utility infrastructure installations, repairs, upgrades, or replacements - \$400.00, plus \$0.50 per linear foot of utility main installed, repaired, upgraded, or replaced for the purposes of the fee calculation, lineal footage of directional drilling, micro-tunneling, Jack and Bore, moling or other trenchless installation shall be included.

#### **11-1.4 Refundable Fees.**

- a. *Application Review Escrow Fee.* If the nature and extent of the work proposed requires review by the Borough Engineer or will require an unusual level of review by municipal officials or others to be retained by the municipality, the Borough Clerk, upon the advice of such other Borough officials as the Clerk deems necessary, may recommend to the Borough Commissioners that a refundable application review escrow fee be required. The Commissioners may accept, modify or reject the recommendation.
- b. *Inspection Escrow Fee.* If the nature and extent of the work proposed will require constant or regular periodic inspection by Borough staff or by the Borough Engineer or by others to be retained by the Municipality, the Borough Clerk, upon the advice of such other Borough officials as the Clerk deems necessary, may recommend to the Borough Commissioners that a refundable inspection escrow fee be required. The Commissioners may accept, modify or reject the recommendation.
- c. Refundable application review escrow or inspection escrow fees shall be administered in the same manner as similar fees required by the Planning and Development Regulations Code of the Borough of Deal.
- d. *Application Review and Inspection Escrow Fees.* For reimbursing the Borough for direct fees, costs, charges, and expenses shall be billed in the same manner as by the Planning and Development Regulations Code of the Borough of Deal.

#### **11-1.5 Performance Guarantees.**

- a. Permits shall not be issued unless a cash repair deposit or satisfactory performance guarantee has been provided by the applicant.
- b. Cash repair deposits shall be:
  1. Disturbance area
    - (a) Less than 100 square feet - \$400.00.
    - (b) 100 square feet, but less than 500 square feet - \$1,500.00.
    - (c) 500 square feet or more - \$1,500 + \$2.00/square foot for each square foot in excess of 500.
  2. In case of disturbance of other improvements such as drainage, sidewalks, drives or utilities, the Borough Clerk shall determine in each case the amount of cash repair deposit sufficient to allow the Borough to perform all repairs and restorations. The Clerk may request an estimate from the Borough Engineer or other appropriate officials.
- c. If a required cash repair deposit exceeds two thousand five hundred (\$2,500.00) dollars or if the annual aggregate of cash repair deposits required of a single applicant exceeds ten thousand (\$10,000.00) dollars or if the applicant is a regulated public utility, then the Borough Clerk may accept, in lieu of a cash repair deposit, a performance guarantee in the form of a surety bond or other adequate guarantee acceptable to the Board of Commissioners. If a surety bond is accepted it shall be at least one hundred fifty (150%) percent of the greater of the required cash repair deposit or the estimated cost of restoration.
- d. Fifty (50%) percent of a cash repair deposit shall be released upon completion of all restoration. The balance shall be released one (1) year later if there are no restoration deficiencies. Surety bonds or other non-cash guarantees shall not be released until one (1) year after restoration is complete.

#### **11-1.6 Permittee's Responsibilities.**

In addition to conforming with any other applicable Federal, State, county or municipal regulations, permittee shall assume the responsibility described in this section and shall take all actions necessary to properly execute these responsibilities:

- a. Take appropriate measures to assure maintenance of traffic and the safety of those using the streets. Permittee shall review all traffic control measures, restrictions, closures and detours with and obtain the approval of the Deal Police Department. Permittee shall conform to all conditions imposed by the Police Department. Permittee shall, if required by the Borough Clerk, establish an escrow fund to reimburse the extraordinary cost of the Borough for any police services.
- b. Maintain access at all times for fire, first aid, police and other emergency services.
- c. Assure that all measures for protection of the public conform to the Uniform Manual on Traffic Control Devices, the New Jersey

Uniform Construction Code and other applicable laws, regulations and standards.

- d. *Protect all Utilities.* Do not interfere with any utilities except as permitted by the utility owner.
- e. Protect all adjoining properties from damage.
- f. Maintain temporary walkways in all sidewalk areas at least four (4) feet wide and adequately protected unless otherwise permitted by the Borough.
- g. Maintain all portions of the stormwater collection system in full operation without obstruction unless otherwise permitted by the Borough.
- h. *Avoid Unnecessary Noise, Dust and Debris.* Take measures to clean the work site daily, lay dust as required and sweep all pavement areas as required or directed by the Borough Clerk, Superintendent of Public Works and/or Borough Engineer.
- i. *Protect all Monuments and Survey Markers.* If any monuments or markers are destroyed or disturbed, cause them to be restored under the supervision of a licensed New Jersey Land Surveyor to the satisfaction of the Borough Engineer.
- j. Do not allow, permit or suffer any unguarded attractive nuisances including, but not limited to, excavations, excavated material, machinery, equipment or materials having the characteristics of an attractive nuisance likely to attract children or others, and presenting a potential hazard to safety or health.
- k. As the work progresses, clean all streets and private properties of all rubbish, excess earth, rock and other debris resulting from such work. All cleanup operations shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the Borough. From time to time as may be ordered by the Borough and, in any event, immediately after completion of the work, the permittee shall clean up and remove all refuse and unused materials of any kind resulting from the work; and upon failure to do so within twenty-four (24) hours after having been notified to do so by the Borough, the work may be done by the Borough pursuant to subsection 11-1.15.

#### **11-1.7 Restrictions.**

- a. No permit will be issued by the Borough Clerk to open or excavate a new, reconstructed or repaved street within five (5) years of its construction, reconstruction or repaving.
- b. The Board of Commissioners may authorize a permit prohibited by paragraph a. above if the applicant can clearly demonstrate that the public health or safety requires the proposed work or a significant hardship exists. The Commissioners may impose additional conditions on the permit including extraordinary repair requirements.
- c. If the Borough has given notice of its intent to construct, reconstruct or repave a street to all persons owning property

abutting that portion of the street to be repaved and to all public utilities and authorities operating in the Borough by notice in the Borough's official newspaper and by mail to the address of the property owners as shown on the official tax records of the Borough and to the utilities or authorities at their principal places of business advising them of the nature of the proposed work and notifying them that they have fifteen (15) days from the date of mailing to notify the Borough if they intend to open or excavate the street within the next five (5) years, then an additional fee will be paid by any applicant failing to respond to such notice if the Board of Commissioners authorizes a permit pursuant to paragraph b. above. The additional charge shall be on a sliding scale and shall be equal to two (2%) percent of the Borough Engineer's or Borough Employee estimate of the cost of restoration for each unelapsed month or fraction thereof of the five-year restricted period.

- d. No work related to any permit may be performed in violation of the provisions of subsection 5-1.5, of the Code of the Borough of Deal except as may be specifically approved as part of the permit documentation.

#### **11-1.8 Indemnification and Insurance.**

- a. *Indemnification.* By applying for and accepting a permit, the permittee indemnifies and saves harmless the Borough of Deal, the Borough Engineer and their officers, officials, employees, agents and servants from and against any loss, injury or damage (including costs of defense) resulting from or related in any way to the work permitted except to the extent that the loss, injury or damage results from the sole negligence of the parties indemnified.
- b. *Insurance.* A permittee, prior to the commencement of excavation or occupancy, shall furnish to the Borough Clerk satisfactory certificates of insurance indicating that the permittee has in force and will maintain in force, during the performance of the work and the period of the permit, required worker's compensation, automobile liability and public liability insurance of not less than three hundred thousand (\$300,000.00) dollars for any one (1) person and one million (\$1,000,000.00) dollars for any one (1) accident, and property damage insurance of not less than five hundred thousand (\$500,000.00) dollars, duly issued by an insurance company authorized to do business in this State. The Borough shall be named as an additional insured on the permittee's public liability insurance policy. If the permittee is not performing the work, the Borough Clerk will accept insurance from contractors which meets the requirements of this section, assumes the permittee's contractual liability and names the permittee and Borough as additional insureds. In cases where the character or nature of the proposed excavation work are such as to present an unusual hazard or a higher than normal risk of damage or

injury, the Board of Commissioners may require the provision of increased amounts of liability and property damage insurance. Any permits which occasion such increased hazard or liability shall be referred, by the Borough Clerk, for the consideration of the Commissioners prior to the issuance of a permit.

#### **11-1.10 Tunnels.**

Tunnels under pavement shall not be permitted except by permission of the Borough Engineer or Borough Official. If permitted, tunnels shall be adequately supported by timbering and backfilling under the direction of the Borough Engineer.

#### **11-1.11 General Restoration Requirements.**

- a. All restoration of pavement, drainage facilities, curbs, sidewalks, driveway aprons, accessible curb ramps, and any other street improvement shall, to the extent specifications and details are provided therein, conform to the New Jersey Department of Transportation Standard Specifications and Standard Details for Road and Bridge Construction and to the specific requirements of this section. All pedestrian access routes, within Borough of Deal Right-of-Way, shall be constructed in accordance with the United States Access Board-Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way.
- b. Details and/or specifications for restoration of street improvements not provided in the Standard Specifications and Details will be subject to approval by the Borough Engineer.
- c. All restoration will be subject to review and approval by designated Borough officials. Any dispute which may arise as to the acceptability of restoration will be resolved by decision of the Borough Engineer.
- d. In the case of utility work undertaken by a public or private utility, which work involves placing of new or replacing or repairing existing utility infrastructure, including but not limited to gas lines, water lines, electrical lines, communication and data lines, and sewer lines, where the area to be excavated (including horizontal directional drilling, moling, jack and bore, or tunneling) is greater than 50 linear feet, upon completion or within a reasonable amount of time as determined by the Borough Engineer, the permittee shall mill and repave the entire pavement surface from edge to edge or curb to curb for the full length of the excavation, in accordance with the restoration requirements herein. When the limits of restoration include an intersection with pedestrian sidewalks, barrier free accessible curb ramps shall be installed in accordance with the requirements contained herein.

### **11-1.12 Excavation and Backfilling Requirements.**

- a. All trench openings shall be neatly saw cut. Unless specifically allowed, in writing, by a Borough representative for unusual circumstances, no excavation work area shall remain open overnight.
- b. All applications for excavations exceeding six (6) feet in depth or with a proposed depth greater than twice the distance from the limit of the excavation to the right-of-way line shall be accompanied by plans prepared by a New Jersey licensed professional engineer showing how the excavation will be protected from side-wall collapse and damage to adjoining property and structures. All excavation shall be under the supervision of a "competent person" as required by regulation.
- c. All trench openings shall be backfilled with material meeting the requirements of the NJDOT Dense Graded Aggregate (DGA) unless otherwise specifically permitted by the Borough representative. The backfill shall be tamped in twelve (12) inch layers with a mechanical tamper and made thoroughly compact, firm and unyielding as backfilling progresses. The backfill material shall be brought to six (6) inches from the finished surface in roadway areas
- d. 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.
- e. Unless otherwise allowed, all trenches shall be backfilled at the end of each working day with suitable materials from the trench excavation or with granular borrow material. Rocks larger than two (2) inches may not be included in backfill. Backfill material shall be deposited in layers and mechanically compacted to a minimum ninety (90%) percent Modified Proctor Density or as otherwise accepted by a Borough representative. Consolidation will not be acceptable as a method to achieve the soil densities specified.
- f. The backfilling, replacement of sub-base and installation of base course shall be completed within twenty-four (24) hours after completion of work except as otherwise permitted by a Borough representative.

### **11-1.13 Restoration of the Surface.**

- a. Following compaction, the permittee shall install no less than six (6) inches of dense graded aggregate followed by six (6) inches of bituminous stabilized base course to the trench. If the distance from the edge of the excavation work area to the existing curb or roadway edge is less than two (2) feet, the permittee shall be required to excavate to the curb and evenly install six (6) inches of dense graded aggregate followed by six (6) inches of bituminous stabilized base course in the entire area.

- b. Unless otherwise permitted or directed by a Borough representative, the partially restored pavement shall be allowed to settle for no less than 90 days and no more than one hundred eighty (180) days. The permittee shall have the responsibility to monitor and maintain the trench so that a depression does not develop. If at any time during the settlement period, the Borough becomes aware that the trench condition is unacceptable, the permittee shall be notified of the condition requiring repair. Such repair shall be performed by the permittee within twenty-four (24) hours of such notification by the Borough. In the absence of such timely repair, the Borough may proceed pursuant to subsection 11-1.15.
- c. Following the period of settlement, the permittee shall be required to mill the excavation work area surface as specified in paragraph d. below and install no less than two (2) inches of Hot Mix Asphalt surface course. The permittee shall also be required to provide a tack coat on all existing bituminous concrete surfaces and hot-poured, rubber asphalt joint sealer per Section 908 of New Jersey Department of Transportation Standard Specifications for Roads and Bridges when appropriate.
- d. All excavations unless otherwise permitted by the Borough shall require milling and restoration of the excavation work area extending from the curb or edge of pavement to the center line of the road or a minimum of one (1) foot beyond the outer edges of the excavation, whichever is greater. Any trenches across the centerline shall require milling and restoration of the excavation work area extending from the curb or edge of pavement to the opposite curb or edge of pavement.
- e. Excavations along the center line of the street for more than 50 linear feet shall require full-width milling of the street surface.
- f. The Borough Engineer or Borough representative has the discretion to extend, modify, or revise milling limits to accommodate existing pavement and drainage conditions.
- g. Unless otherwise permitted by the Borough, all excavation joints shall be repaired using infrared thermal bond seamless bituminous pavement patching.
- h. The permittee shall be required to replace any facilities, including but not limited to, curb, pavement, sidewalk, line striping, etc. that are affected by the excavation and restoration work.
- i. With Borough approval, the limit of road milling and restoration may be offset by the distance necessary to avoid disturbing the existing line striping or markers.
- j. *Maintenance Procedures.* It shall be the duty of the permittee to guarantee and maintain all site restoration for one (1) year after completion. Performance guarantees will be released one (1) year after final pavement restoration is complete and approved by the Borough. Such release shall be subject to the permittee having adequately maintained the restored excavation work

area for a period of one (1) year from the date of final completion and approval of the work. The Borough Clerk shall retain fifty (50%) percent of any cash repair deposit and/or the full amount of any non-cash performance guaranty during the one (1) year period.

If an inspection reveals that any restored excavation area becomes in need of repair within the maintenance period, the Borough shall notify the permittee that he must repair the area within thirty (30) days from the date of notification or sooner if safety or public convenience is involved. If the permittee fails to repair the trench within this time limit, the Borough may utilize the permittee's maintenance guarantee to pay for the cost of the repairs pursuant to subsection 13-2.18.

Upon termination of the maintenance period, any remaining portion of said performance guarantee that has not been expended shall be returned to the permittee without interest.

#### **11-1.14 Temporary Patching.**

The permittee may be required to place a temporary surface over openings made in paved traffic lanes if the street must be reopened before the normal completion of work. Except when the permanent replacement paving is to be placed before the opening of the excavation to traffic, the fill above the bottom of the existing pavement shall be tamped into place, properly graded and topped with a minimum of four (4) inches of bituminous patch material which is suitable to maintain the opening in good condition until permanent restoration can be made, but in no case, shall temporary patch be used for more than seven (7) days without the permission of a representative of the Borough.

#### **11-1.15 Borough's Right to Restore Surfaces or Eliminate Violations.**

- a. If the permittee shall have failed to restore the surface of any street or any other improvement to its original and proper condition upon the expiration of the time fixed by such permit or shall otherwise have failed to complete the excavation work covered by such permit or shall fail to adhere to other requirements of this section, the Borough shall have the right to do all work necessary to restore all improvements, to eliminate violations and to complete the work. The permittee shall be liable for the actual cost thereof and twenty-five (25%) percent of such cost, in addition, for general overhead and administrative expenses. The Borough shall have a cause of action for all fees, expenses and amounts paid out and due it for such work and shall apply, in payment of the amount due it, any funds of the permittee deposited as herein provided; and the Borough shall also enforce its rights under any non-cash guarantee provided. The Borough will normally give the

permittee twenty-four (24) hours notice of its intent to act, under the terms of this section, to eliminate violations of this section or to restore the surface, except that, in the case of immediate danger to public health or safety, certified to by the appropriate officials, no such notice must be provided.

- b. It shall be the duty of the permittee to guarantee and maintain all site restoration for one (1) year after completion.

#### **11-1.16 Trenches in Pipe Laying.**

Except by special permission from the Superintendent of Public Works or Borough Engineer, no trench shall be excavated more than one hundred fifty (150) feet in advance of pipe laying or left unfilled more than one hundred fifty (150) feet where pipe has been laid. The length of the trench that may be opened at any one (1) time shall not be greater than the length of pipe and the necessary accessories which are available at the site ready to be put in place during that single working day. Except with the written permission of the Superintendent of Public Works or Borough Engineer, no timber bracing, lagging, sheathing or other lumber shall be left in any trench.

#### **11-1.17 Drains and Sump Pump Discharges.**

- a. No person will discharge roof drains, area drains, yard drains or sump pump drains into the public right-of-way; connect them to any portion of the stormwater drainage system or discharge them outside of the public right-of-way in a manner to cause concentrated flow into the public right-of-way without obtaining a permit.
- b. A permit to discharge roof drains, area drains and other facilities, which do not convey groundwater and only flow during or immediately after rainfall, into the public right-of-way or to connect them to the municipal storm drainage system will be issued if the Borough Clerk determines that:
  1. No groundwater will be conveyed; and
  2. No hazard to public health or safety will result; and
  3. No damage to any public infrastructure or to any portion of the right-of-way will result; and/or
  4. All disturbed portions of the public infrastructure will be adequately replaced or repaired.
- c. A permit to discharge sump pump drains or other facilities which convey groundwater into the public right-of-way or connect them to the municipal drainage system is subject to the following:
  1. No permit will be issued if:
    - (a) The Board of Commissioners, on the advice of the Borough Clerk or other Borough official(s), finds that the proposed discharge will create significant, unacceptable public safety or public health issues; or

- (b) The Borough Clerk determines that a reasonable alternative other than discharge into the public right-of-way exists. Reasonable alternatives include modifications of the system to reduce or eliminate the volume of discharge and/or discharging into ponds, water courses or landscaped or natural areas on or adjacent to the property.
- 2. The Borough Clerk will only issue a permit subject to use of the following options, when available:
  - (a) Connection to a stormwater drainage system or adequate receiving piping available or to be made available on or adjacent to any portion of the permittee's property; or
  - (b) Connection to a stormwater drainage system or adequate receiving piping available or to be made available not more than one (1) property away from the permittee's property which can be reached within the public right-of-way without crossing a street; or
  - (c) Any other reasonably available alternative.
- 3. When issuing a permit to allow discharge into the public right-of-way or a connection to the stormwater drainage system, the Borough Clerk may designate the location of the discharge or connection.
- d. Drains and sump pump discharges in the public right-of-way legally existing on the date of adoption of this section may be continued without a permit and will not constitute violations of this ordinance until:
  - 1. The property owner is notified by the Borough Clerk that a permit must be obtained for the existing discharge; and
  - 2. One (1) year elapses from the date of notice by the Borough Clerk without the applicant obtaining a permit.

#### **11-1.18 Prompt Completion of Work.**

The permittee shall prosecute with diligence all excavation work covered by the permit and shall promptly complete such work and restore the street and other improvements as soon as practicable and, in any event, not later than the date specified in the permit.

#### **11-1.19 Urgent Work.**

If traffic conditions, the safety or convenience of the public or the public interest require that the work be performed as emergency work, the Borough shall have full power to order, at the time the permit is granted, or at such subsequent time that the need becomes apparent, that a crew of sufficient size and adequate facilities be employed by the permittee for extended periods up to twenty-four (24) hours a day, for the duration of the project so that such excavation and repair work may be completed as soon as possible. In enforcing this provision, the Borough does not assume under any circumstances the responsibility for the health and

safety of the permittee's employees, contractors, subcontractors, or other agents acting on behalf of the permittee, the public or other third parties.

#### **11-1.20 Emergency Action.**

In the event of an emergency, any person, otherwise subject to this section, having responsibility, jurisdiction and/or authority to cure, remedy or mitigate dangerous, hazardous, inconvenient, unhealthy or obnoxious conditions resulting from the emergency may, without first applying for and obtaining a permit under this section, take any lawful action which requires excavation and/or occupancy of any street. However, such person, or the agent or designee of such person shall apply for an excavation permit not later than the end of the second succeeding business day after any excavation or occupancy takes place and may not proceed with permanent restoration until a permit is obtained.

#### **11-1.21 Persons Exempt.**

This section shall not apply to excavation or occupancy by:

- a. The Borough or those acting under the control and direction of the Borough including any person acting pursuant to a specific agreement or contract approved by the Board of Commissioners.
- b. Federal, State or County agencies or those acting under their control and direction.

#### **11-1.22 Authority to Stop Work.**

The Borough, through its Police Department, the Borough Engineer, or agent of the Borough, shall have the authority to stop work at the site if any nuisance or safety hazard exists and is not corrected by the permittee. In order to abate any nuisance or safety hazard, the Borough shall have the authority to remove equipment, vehicles, materials and other property within the street right-of-way, backfill open excavations and perform any other related work necessary to correct a hazardous condition or violation of this chapter. In such event, the applicant shall be responsible to reimburse the Borough for all expenses incurred by it.

SECTION 3. If any part of this Ordinance shall be deemed invalid such part shall be deemed severable and the invalidity thereof shall not affect the remaining part of this Ordinance.

SECTION 4. Any Ordinance or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed and superseded.

**SECTION 5. This Ordinance shall take effect upon final passage and publication in accordance with Law.**

*Introduced by Commissioner Ades on September 13, 2017*

*Seconded by Commissioner Simhon*

*Roll Call: Ayes 3; Cohen, Ades & Simhon*

*Motion to Adopt by Commissioner Simhon on October 3, 2017*

*Seconded by Commissioner Ades*

*Roll Call: Ayes 3; Cohen, Ades & Simhon*