

ORDINANCE # 07 - 18

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE CURRENT BOROUGH CODE SECTION CHAPTER 86 EXCAVATION IN ITS ENTIRETY WITH A NEW CHAPTER 86

WHEREAS, the Borough Engineer reviewed the Borough Code to address situations where requests are made to open roadways that were resurfaced within the last five (5) years. Specifically, where the request was associated with changing from an oil-fired heating system to gas-fired, it was felt that the environmental benefit of cutting open a relatively new road in order to potentially prevent the release of heating oil into the environment warranted some consideration when reviewing a permit application. The repair requirement of repaving two hundred (200) feet full width paving as restoration for a new gas service seemed excessive. As the wording was reviewed, it was noted that the formatting was a bit awkward and that there were a couple conflicts within the ordinance. Additional clarification and direction was also found to be beneficial. As a result, the entire ordinance was revised, using appropriate parts of the current ordinance and making it more readable. Cross references in other chapters were researched, with none found. As such, these changes can be made without causing issues elsewhere in the ordinance. Consequently, it is determined that Chapter 86 Excavation needs to be revised in its entirety; and

WHEREAS, the Mayor and Council for the Borough of Mount Arlington reviewed the Borough Engineers' suggestions and desires to amend and supplement the current code section Chapter 86 Excavation in its entirety with a new Chapter 86.

BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Mount Arlington, County of Morris and State of New Jersey that the current code section Chapter 86 Excavation be removed and amended, supplemented and replaced in its entirety as follows:

SECTION 1. Chapter 86 Excavation, of the Code of the Borough of Mount Arlington is hereby amended, supplemented and replaced to read as follows:

Chapter 86 - EXCAVATIONS IN RIGHTS-OF-WAY

- § 86-1. Permits for excavations.
- § 86-2. Applications
- § 86-3. Fees and Escrows
- § 86-4. Performance Guaranty
- § 86-5. Schedule of Values for Excavations in Rights-of-Way
- § 86-6. Indemnification of Borough.
- § 86-7. Manner of Performing Work
- § 86-8. Violations and penalties.

§ 86-1. Permits for excavations. [Amended 3-4-2014 by Ord. No. 01-14]

A. Permit required. No person shall make any surface penetration, excavation, opening or tunnel in or on or under, any right-of-way (R.O.W.) of the Borough of Mount Arlington (Borough) without having first obtained an Excavation Permit (Permit) as hereinafter set forth and without complying with the provisions of this chapter, or in violation of or variance from the terms of any Permit. [Amended 3-27-2006 by Ord. No. 08-06]

B. No Permit for excavation within the public right-of-way will be issued where the subject roadway has been re-surfaced within the last five (5) years, except as follows:

1. The excavation relates to the conversion of an oil-fired heating system to an alternate fuel and that the subject heating system is the primary heating system for the premises.

2. The excavation relates to the repair of a utility service line that is required for the operation of the primary heating system for the premises.

3. The excavation is required for the emergency repair of critical subsurface infrastructure.

C. Any entity maintaining pipes, lines or other underground facilities within the Borough may proceed with an opening in the street, road or path without first obtaining a Permit as required by Subsection A when emergency circumstances demand the work to be performed immediately and the Permit cannot reasonably and practically be obtained beforehand. In such case, a complete application for a Permit shall be made to the Borough Construction Department on the next regular business day on which the Borough Construction Department is open for business, and said Permit shall be retroactive to the date when the work was begun.

D. Notwithstanding the provisions of this chapter, any person may open up any Borough R.O.W. to repair any utility, provided that it is an emergency and any delay in obtaining the required Permit would result in endangering the health and general welfare of the inhabitants of the Borough; provided, further, that a Permit, as required herein, is obtained within seventy-two (72) hours after the emergency is discovered.

§ 86-2. Applications

A. Application for a Permit shall be made in writing and filed in triplicate with the Construction Office and shall describe the exact location of the intended excavation, opening or tunnel, the size, the purpose therefor, the identity of the contractor doing the actual work, the name of the person for whom the work is being done and the period of time within which the work shall be performed. The application shall also contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done. [Amended 3-27-2006 by Ord. No. 08-06]

B. Upon receipt of the application, the Construction Office shall forward a copy to the Borough Engineer. The Borough Engineer shall then prepare a written estimate setting forth the amount required to restore the R.O.W. to its original conditions after it has been excavated, opened or tunneled in accordance with the application and thereupon shall forward a copy of the estimate to the Construction Office. The Construction Office, upon preparation of the estimate, shall issue the Permit, provided that the applicant has paid an application fee; submitted the initial escrow deposit; and filed a performance guaranty with the Borough. If the escrow balance is depleted prior to completion of the work, the applicant shall provide additional escrow money as necessary to cover administration costs and engineering inspections. [Amended 3-27-2006 by Ord. No. 08-06]

§ 86-3. Fees and Escrows

A. The Application Fee shall be one hundred dollars (\$100.00) for any excavation, unrelated to project size.

B. Engineering Escrows

1. Application Review

A \$500.00 initial escrow deposit shall be submitted with the application, with provisions that additional deposits may be necessary should review expenses exceed \$500.00. Any excess escrow will be refunded.

2. Construction Inspection and Closeout:

Prior to issuance of a Permit the escrow balance shall be replenished to a minimum of \$500.00 or consistent with the New Jersey Municipal Land Use Law (MLUL), NJSA 40:55D-53h, an amount equal to five percent (5%) of the estimated value of the proposed work. Costs shall be estimated utilizing current Schedule of Values for Excavations in Right-of-Ways adopted by resolution of the Mayor and Council. Any excess escrow will be refunded.

§ 86-4. Performance Guaranty.

A. Performance Guaranty Required

1. No Permit shall be issued until the applicant has filed with the Construction Office a performance guaranty in an amount equal to the estimate of the Borough Engineer to insure that the surface of such portion of the public way to be excavated, opened or tunneled shall be restored to its original condition within the time set forth in the application for Permit.

2. Consistent with the New Jersey MLUL, NJSA 40:55D-53a(1) (MLUL) bonding equal to one hundred twenty percent (120%) of the estimated value of the proposed work shall be provided. Costs shall be estimated utilizing current Schedule of Values for Excavations in Right-of-Ways adopted by resolution of the Mayor and Council.

B. Form of Guaranty

1. Bond or Surety: The Performance Guaranty may be in the form of a performance bond which shall be issued by a bonding or surety company licensed to do business in the State of New Jersey and shall be submitted to the Borough Attorney for approval as to form, sufficiency and execution.

2. Certified Check: The Performance Guaranty may be in the form of a certified check with the Construction Office, payable to the Borough of Mount Arlington.

3. Amount of Guaranty: The Performance Guaranty shall be in an amount equal to the Borough Engineer's estimate.

C. Release of Guaranty

The bond shall remain in full force and effect until released by resolution of the Borough Council, which release shall be given upon certification by the Borough Engineer that the work has been completed in accordance with the terms of the Permit.

§ 86-5. Schedule of Values for Excavations in Right-of-Ways

Curb replacement \$20.00 per linear foot
Sidewalk replacement \$50.00 per square yard
Asphalt restoration \$30.00 per square yard
Lawn restoration \$8.00 per square yard
Relocation of storm pipe \$75.00 per linear foot
Relocation of storm structure \$3,000.00 each
Relocation of water main \$125.00 per linear foot
Relocation of fire hydrant \$5,000.00 each

Relocation of sanitary sewer main \$75.00 per linear foot

Relocation of sanitary structure \$5,000.00 each

§ 86-6. Indemnification of the Borough.

All Permits issued under this chapter shall be subject to the following requirement: Any person shall, as a condition of accepting any Permit issued hereunder, save, hold and keep harmless and indemnify the Borough and its consultants against any loss, damage, claim, demand 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.

§ 86-7. Manner of performing work.

A. Preparation

1. All existing utilities must be marked in the field prior to the commencement of work. The request for utility mark-out lies solely with the entity performing the work. Utility mark-out must comply with applicable regulations

2. The Borough Engineer must be advised of the start of the work no less than forty-eight (48) hours prior to the start of work, not including weekends and holidays as defined by the Borough. Notice shall also be given to such persons maintaining the pipes, cables or conduits which are or may be endangered or affected by the work to be performed before such pipes, cables or conduits shall be disturbed.

3. The applicant is responsible for the coordination of the work with the Borough's Police, Fire and emergency services departments, as well as the school district. Such coordination shall include the coordination of road closures, lane closures, and detours as they effect these entities.

4. Adequate protections shall be provided to safeguard vehicular and pedestrian travel in the vicinity of the work. These protections shall be reviewed by the Borough Engineer prior to the required notice of the start of the work.

B. Performance

1. No person shall make any excavation, opening or tunnel in any way contrary to or at variance with the terms of the Permit. Proper bracing in accordance with O.S.H.A. regulations shall be maintained to prevent the collapse of adjoining ground; and excavations shall not have anywhere below the surface any portion which extends beyond the opening at the surface.

2. During the progress of the work and until such street, road or highway has been restored to its former conditions, the person responsible for making such excavation, opening or tunnel shall cause the same to be properly guarded, both in the daytime and at night, in such a manner as to prevent injury to persons and property and in accordance with the provisions of Title 39 of the Revised Statutes and Chapter 169, Vehicles and Traffic, of the Mount Arlington Code.

3. The Borough Engineer shall from time to time inspect or cause to be inspected all excavations, openings or tunnels being made in, on or under any R.O.W. in the Borough to see to the enforcement of the provisions of this chapter.

4. All cuts in asphalt areas shall be neatly sawcut prior to excavation. Sidewalks shall be removed as entire slabs between joints to the nearest joint.

5. All trenches shall be backfilled with NJDOT Dense Graded Aggregate except that recycled concrete is not an acceptable alternative.

6. All trenches shall be backfilled in lifts and thoroughly compacted with equipment approved by the Borough Engineer. Compaction using the excavator bucket or by driving vehicles over the excavation is not acceptable.

7. Initial pavement repair shall consist of six inches (6") of NJDOT Hot Mix Asphalt 12.5M64 placed in three-inch (3") lifts. Prior to placing the initial pavement repair, the excavation edges shall be re-cut if they were damaged during the work, and coated with tack coat.

8. Final pavement repair shall be performed no less than sixty (60), but no more than one hundred twenty (120) days from the initial repair, following a re-notice in accordance with A.2 and 3, and accordance with one of the following:

a. For trenches that are perpendicular to the roadway centerline, a two inch (2") deep mill shall be performed over and extending one foot (1') beyond the initial repair. The area to be restored shall be fully tacked and restored with two inches (2") of NJDOT Hot Mix Asphalt 9.5M64 and compacted with a motorized roller.

b. For trenches that are parallel to the roadway centerline, a two inch (2") deep mill shall be performed over and extending for the full width of the lane in which the excavation was performed. In the case where the trench is under, or gradually crosses the centerline of the roadway, the milling shall be in both lanes so as to extend the milling to one foot (1') beyond the initial repair without impacting the crown of the road. The area to be restored shall be fully tacked and restored with two inches (2") of NJDOT Hot Mix Asphalt 9.5M64 and compacted with a motorized roller.

9. Enhanced Restoration: In areas where a Permit is issued in accordance with §86-1.B, the restorations shall be in accordance with §86-3.B.8, with the exception that the edges of the restoration shall be blended with the existing roadway with infrared methods.

§ 86-8. Violations and penalties.

Any person failing to comply with any part of this chapter shall, upon conviction thereof, be liable to the penalty provided by Chapter 1 Article III.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistencies.

SECTION 3. If any article, section, subsection, paragraph, phrase, or sentence is for any reason held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed separable.

SECTION 4. This Ordinance shall take effect upon final publication as provided by law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Mount Arlington, adopted on June 12, 2018 and will be further considered after a Public Hearing held on July 10, 2018 at the Municipal Building at 7:00 P.M.

INTRODUCED:

PUBLISHED:

ATTEST:


Linda DeSantis, RMC, Borough Clerk

BOROUGH OF MOUNT ALRINGTON
COUNTY OF MORRIS
STATE OF NEW JERSEY


Michael Stanzilis, Mayor