

BOROUGH OF AVALON
CAPE MAY COUNTY
NEW JERSEY

Ordinance No. 847-2022

AN ORDINANCE READOPTING AND SUPERSEDING ORDINANCE 844-2022 AMENDING CHAPTER 15 OF THE AVALON BOROUGH CODE PERTAINING TO STREET OPENINGS AND THE ISSUANCE OF PERMITS

OFFICIAL STATEMENT

Ordinance 847-2022 readopts Ordinance 844-2022, with amendments, and supersedes same. The modifications involve changes to the engineering specifications pertaining to the temporary and permanent repair and/or resurfacing of streets which were opened pursuant to permit for utility installations and repairs.

WHEREAS, a working group consisting of the Director of Public Works, the Construction Official / Fire Official; The Chief of Police, and the Borough manager of the Water & Sewer System (Utility Service Affiliates, Inc.) the Borough Engineer, the Business Administrator and Assistant Business Administrator (the "Borough Group") and after meetings and consultation with various utility companies servicing the Borough, the Borough Group has proposed a comprehensive amendment to Chapter 15 of the Avalon Borough Code (hereafter "Code" or "Borough Code"); and

WHEREAS, the proposed amendment was presented to and reviewed by Borough Council at its regularly scheduled meeting on May 25, 2022 and approved for introduction at a subsequent meeting of Borough Council: and

WHEREAS, the proposed amendment is deemed necessary and will provide a more expeditious way to deal with street openings within the Borough while promoting public safety and wellbeing and by promoting existing infrastructure including preserving the integrity of recently paved streets;

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL, the Governing Body of the Borough of Avalon, in the County of Cape May and State of New Jersey as follows:

SECTION 1. Chapter 15 (Streets and Sidewalks) of the Borough Code Section 15-1 through and inclusive of Section 15-1.18 are hereby repealed effective on the effective date of this Ordinance. Such repeal shall not apply to any outstanding and valid Street Opening Permit issued and outstanding prior to the effective date hereof. As to any such outstanding permits, the repealed sections shall continue to apply and as to those permits only shall remain in full force and effect.

SECTION 2. Chapter 15 (Streets and Sidewalks) of the Borough Code is hereby amended and supplemented by adding new sections which shall read as follows:

Section 15-1.19 Laying Out of Streets [No Change]

Sections 15-1.20 to 15-1.24 RESERVED

Section 15-1.25 [New]

ORDINANCE AUTHORIZING THE ISSUANCE OF STREET OPENING PERMITS AND AMENDING CHAPTER 15

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15-1.25 APPLICANTS FOR PERMIT. Only public utilities licensed and regulated by the New Jersey Board of Public Utilities are eligible to apply for a permit to open any street or other area located in the right-of-way within the Borough of Avalon. Any unregulated entity such as a contractor performing the actual work for or on behalf of the utility applicant, must be a co-applicant for the permit.

15-1.26. PERMIT NOT REQUIRED. A permit under this chapter shall not be required whenever any excavation work takes place entirely on the property side of the curb and provided that no excavation of the street is involved, including any directional drilling or excavation under the street.

15-1.27. EXEMPTION. The Borough of Avalon and its third-party contractor(s) and subcontractors are exempt from the fee provisions of this chapter except that the contractor and subcontractor shall be required to file with the Borough the standard application form and “as-built” drawings and comply with in all respects with the one call requirements of the New Jersey Board of Public Utilities. Insurance requirements shall be as per contract with the Borough.

15-1.28. TYPES OF PERMITS. A permit will be issued for either “Minor Work” or “Major Work”. A permit for Major Work has a separate fee structure and will require an escrow. If a permit application is submitted for Minor Work and the Director determines, either on his own initiative or in consultation with the Borough Engineer, that the work contemplated is Major Work, the applicant will be notified and required to submit the appropriate fee and the required escrow. The time for the issuance of the permit will be tolled until such time as the required fee and escrow is received by the Borough.

15-1.29. FEES. The fee for a street opening permit shall be as follows:

Minor Work: A fee of \$100.00 plus \$75.00 for each individual excavation or Opening up to but not to exceed 3 excavations on a single block.

Major Work: A fee of \$750.00 plus \$75.00 for each individual excavation or opening plus an escrow amount which shall be determined by the Director of DPWU in consultation with the Borough Engineer provided that the minimum escrow shall be not less than \$2,400.00.

Cross reference: See Section 15-1.33 herein.

All fees and escrow deposits must be paid before the issuance of any permit.

15-1.30. DEFINITIONS.

As used in this Chapter, the following terms shall have the meaning indicated:

“ADDITIONAL INSURED” shall mean the *“Borough of Avalon, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of the Borough of Avalon”*. The Certificate of Insurance must name, as ‘Additional Insured’ the Borough using the exact terminology set forth in the definition. A Certificate of Insurance simply naming the ‘Certificate Holder’ is not sufficient and will be rejected.

“Applicant” shall mean the **public utility** applying for a permit under this Chapter and shall extend to and include applicant’s agents, contractors, and their respective employees.

“BLOCK” or “STREET BLOCK” shall mean a single street, or a section thereof, which is located between two (2) intersecting streets. For example, one block shall mean the area on 40th Street between Dune Drive and Ocean Drive (a/k/a Third Avenue); or the area on Dune Drive between 7th and 8th Street. “Block” shall also mean the entire length of those streets known as 4th Avenue, 5th Avenue, Pelican Drive, Seagull Drive, Flamingo Drive, and Heron Drive.

“BOROUGH” shall mean the Borough of Avalon, in the County of Cape May, and State of New Jersey,

“Closing” or “Street Closing” can be either a complete or a partial closing and can result from any activity that results in the blocking of traffic as a result of road maintenance or repair, road construction activity or construction related activity at a construction site; or by excavation of the street or tunneling under any street.

“Chief” or “Chief of Police” shall mean the Chief of the Avalon Police Department or his designee.

“Complete Street Closing” shall mean one that requires more than 50% of the street to be closed for more than one hour and one in which no traffic may pass, in either direction, for the duration of the closure. Dependent upon the particular circumstances and the nature and extent of the work necessitating the closure, local traffic may be permitted, that is, access to the closed street if such access can be accomplished safely. Through traffic shall not be permitted access. Such a closing may, under appropriate circumstances, also require the removal of parked vehicles by owners – including those parked both on and off-street.

“Construction Related Activity” shall include any construction activity that involves the excavation or opening of any part of the street or public right-of-way associated with the construction of any new building or structure or any appurtenant building or structure or the addition to or improvement of any existing building or structure.

“County Road” or “County Highway” shall mean Third Avenue which is also known as Ocean Drive and which is designated as a “primary street” under this section. It shall also encompass the definition of “Street” as set forth in this section.

“Director” shall mean the Director of the Department of Public Works and Public Utilities (DPWU) of the Borough of Avalon or his designee.

“DPWU” shall mean the Department of Public Works and Utilities of the Borough of Avalon.

“Emergency” shall be any condition which poses an immediate threat to the health, safety, or welfare of any person, persons or property and requiring immediate or urgent intervention or repair. Examples include a rupture of a sewer or water main or a gas main, or a gas leak likely to cause an explosion or fire. It shall also include a medical emergency, fire, or police emergency at any address on any affected street.

“Excavate” or “excavating” or “excavation” or “demolition” means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes but is not limited to drilling, grading, boring, milling to a depth greater than six inches, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence post or pile driving, and wrecking, razing, rending, or removing any structure or mass material, but does not include routine residential property or right-of-way maintenance or landscaping activities performed with non-mechanized equipment, excavation within the flexible or rigid pavement box within the right-of-way, or the tilling of soil for agricultural purposes to a depth of 18 inches or less. . [Source: NJS A 48:2-75]

"Excavator" means any person performing excavation or demolition and may include a contractor having oversight for an excavation or demolition to be performed by rented, operated equipment under the contractor's on-site direction provided the contractor contacts the One-Call Damage Prevention System in the contractor's name, thereby assuming responsibility and liability, to give notice of the intent to engage in excavation or demolition work in that manner;

“Local Traffic Only” shall mean that traffic which may safely operate on the street or roadway in order to access a dwelling or structure up to the point of road closure and not beyond. As a general rule such traffic shall have a destination of a structure located between the “road closed” warning sign and the point of closure. [Definition: MUTCD sec. r11-3 and r11-4]

“Major Work” means four or more openings in any one block by the same utility within thirty-six consecutive months. Once there have been four or more openings, albeit under separate permits, then the 5th opening, and each subsequent opening within 36 consecutive months shall be deemed “Major Work” even though the application may be for less than the 4 openings.

“Mechanized equipment” means equipment powered by a motor, engine, or hydraulic, pneumatic, or electrical device, including but not limited to trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing-in cable or pipe, but does not include tools manipulated solely by human power. [Source: NJS A 48:2-75] [3-9-2016]

“MUTCD” shall mean the Manual of Uniform Traffic Control Devices.

“Partial Street Closing” is anything less than a complete closing and one which results in a blockage or closing of a single lane of traffic and which causes two-way traffic to utilize a single lane only.

“Person” shall have the meaning set forth in Section 1-2 of this Code.

“Permittee” or “Permit Holder” shall mean the applicant for a permit under this chapter and the person or entity to whom a permit is issued.

“Primary Streets” *shall mean the following streets in the Borough:

- First Avenue
- Dune Drive
- Third Avenue (Ocean Drive) [Avalon Avenue is intentionally omitted as a “Primary Street”]
- 21st Street – West of Third Avenue (Ocean Drive)
- 24th Street West of Third Avenue (Ocean Drive) including the 2400 Block of Harbor Avenue and the 25th Street Bridge;
- 31st Street – 100 Block only;
- 42nd Street – West of Third Avenue (Ocean Drive)
- 8th Street east of Third Avenue (Ocean Drive) to Dune Drive (emergency vehicle access to Inlet Drive, 7th Street, and access from Dune Drive to Ocean Drive for mutual aid emergencies to Sea Isle City)
- 9th Street east of Dune Drive to the beach vehicle path
- 15th Street east of Dune Drive to the beach vehicle path
- 22nd Street east of Third Avenue (Ocean Drive) to Dune Drive (200 block) (emergency vehicle access to 21st Street Bridge from Dune Drive and avoids Veteran's Plaza and the congested 21st Street and Dune Drive intersection)
- 25th Street west and east of Third Avenue (Ocean Drive) to Dune Drive (emergency access to 25th Street Bridge from Dune Dr.)
- 32nd Street east of Dune Drive to the beach vehicle path
- 38th Street east of Dune Drive to the beach vehicle path
- 60th Street east of Dune Drive to the beach vehicle path
- 9th Street east of Dune Drive to the beach vehicle path

“Secondary Streets” * shall mean all other streets which are not designated as “primary streets”, including Avalon Avenue.

**These definitions have meaning only insofar as work is impacted by the “MUTCD”.*

“Street” shall mean any road, highway, public way, public alley, easement, or other right-of-way accepted or maintained by the Borough as a public street, as well as any State or County Road or highway over which the Borough has acquired jurisdiction by agreement.

“TUNNELLING” SEE ‘EXCAVATION’

15-1.31. PERMIT APPLICATION. An application for a street-opening permit must be submitted on forms provided by the Borough for such purpose. No application will be considered unless deemed complete in all respects. To be deemed complete, the application must be completed in full and be submitted with the following:

- Fee.
- Escrow, if required.
- An engineer’s drawing(s) showing the number and precise location of each proposed excavation including the designated Block and Lot(s) as appearing on the Municipal Tax Map.
- A Certificate of Liability Insurance, for both the utility company and its designated contractor, issued by an insurance company authorized to transact business in the State of New Jersey and in such amounts as required by the Borough and naming the Borough as an additional insured as herein provided.
- An Indemnification and Hold Harmless Agreement signed by an authorized officer of both the utility company and its designated contractor.
- Either the utility company and its designated contractor(s) may, with the approval of the Borough, submit one Hold Harmless Agreement which shall cover any street opening permit that may be issued during the calendar year. Such Hold Harmless Agreement shall remain in full force and effect for the maximum term permitted by law.
- The utility company and its designated contractor(s) may, with the approval of the Borough, execute one indemnity agreement with the required insurance coverage to cover each street opening permit that may be issued during the calendar year. The utility company and its contractor(s) shall be responsible to defend any claim or claims by the Borough or any third party alleging any loss or damage or injury arising out from the work covered by the permit. Such indemnification shall remain in effect for a minimum of two (2) years following completion of the project and acceptance by the Borough and shall cover any claim or claims made within such time.

15-1.32. PROCEDURE FOR ISSUANCE; TIME FOR ISSUANCE AND COMPLETION.

Permits to open any street or area within the Borough right-of-way will be issued by the Director of Public Works and Utilities (DPWU) or his designee.

Upon receipt of a complete application, it will be reviewed by the Director who may consult with the Borough Engineer, Borough Legal Counsel or other official prior to issuing a permit. The Director may, in the exercise of his discretion require the applicant and/or applicant’s contractor to supplement the application by the submission of additional information.

Permits will be issued or denied within 20 business days from when the permit application is deemed complete unless the Director has required that the application be supplemented as herein provided. In such case the time for issuance shall be 20 business days from the date of receipt of the supplemental information.

No permit will be issued to open any street which is subject to moratorium on street openings except in the case of a bona fide emergency and following the procedures established in this Chapter.

The permit shall specify the date when work is to be completed which time shall be of the essence. The permit may also designate certain days or times when no work shall be undertaken. Generally, no street openings shall occur from May 15 to September 15 of each year except in the case of a bona fide emergency.

15-1.33. TYPES OF PERMITS. A permit will be issued for either “Minor Work” or “Major Work”. A permit for Major Work has a separate fee structure and will require an escrow. If a permit is submitted for Minor Work and the Director determines, either on his own initiative or in consultation with the Borough Engineer, that the work contemplated is Major Work, the applicant will be notified and required to submit the additional fee and the required escrow. The time for the issuance of the permit will be tolled until such time as the required fee and escrow is received by the Borough.

Whenever the permit authorizes Major Work involving four (4) or more openings in any one block within thirty-six (36) consecutive months, the applicant may be required to perform a complete or partial resurface in accordance with the provisions of Appendix A hereof.

Cross reference: See Appendix A; Section 15-1.28; Section 15-1.42 and Section 15-1.43

15-1.34. INFRASTRUCTURE OWNERSHIP. All infrastructure which is installed below any street shall continue to be owned by the utility installing such infrastructure from the source of supply to the location of the meter on the property being serviced. Such utility shall remain responsible for all maintenance and services of such infrastructure as herein indicated. This provision shall exclude the Borough’s water and sewer infrastructure (potable water, sewer system and stormwater system) which is owned by the Borough and maintained by the Borough or its designee. The property owner shall be responsible for any repairs or maintenance required beginning at the meter.

15-1.35. INSURANCE REQUIREMENTS¹

- a. No permit application will be accepted by the Borough unless such application is accompanied by a Certificate of Insurance verifying that that ***applicant*** and its contractor is insured against injury to persons and damage to property caused by any act or omission of the applicant, his agents, employees, contractors or subcontractors done in the course of the work to be performed under the permit. The insurance shall cover all hazards likely to arise in connection with the work, including but not limited to collapse and explosion, and shall also insure against liability arising from complete operations. The limits of the policy of insurance shall be **TWO MILLION (\$2,000,000.00) DOLLARS** combined single limit for bodily injury, death, and property damage. Any such policy or policies of insurance shall, in addition, conform to the current minimum limits of coverage established or recommended by the Atlantic County Municipal Joint Insurance Fund (ACMJIF) or any other Joint Insurance Fund of which the Borough is a member.
- b. In addition, any such policy or policies shall name the Borough of Avalon and its elected and appointed officials, officers, and employees as “Additional Insured” and comply with ACMJIF notice requirements concerning cancellation, change in limits of coverage, non-renewal and other requirements as may from time to time be established by ACMJIF or its successors or assigns. Certificate of Insurance shall be approved by the Borough Solicitor.
- c. Separate Certificates of Insurance shall be required for the public utility and each primary contractor with the “additional insured” requirement included. Subcontractors working for the prime contractor must have liability insurance with the required limits of coverage, and it shall be the responsibility of the utility and the prime contractor to make certain that such insurance is in effect, but the policy does not have to name the Borough as an additional insured.

15-1.36. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT²

Every permit applicant, that is both utility company and its contractor, and any subcontractor(s) shall be required to execute a Hold Harmless Agreement in favor of the Borough as follows:

“To the fullest extent permitted by law, the permit [applicant] [contractor] agrees to defend, pay on behalf of, indemnify, and hold harmless the Borough of Avalon, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of the Borough of Avalon against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the Borough of Avalon, its elected and appointed officials, its agents, employees, volunteers or others working on behalf of the Borough of Avalon by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which arises out of or is any way connected or associated with permit activity.”

¹ Per Atlantic County Municipal Joint Insurance Fund (ACMJIF).

² Per Atlantic County Municipal Joint Insurance Fund (ACMJIF).

The foregoing Hold Harmless Agreement shall be required in addition to, and not in lieu of, the liability insurance requirements specified herein and the required Certificate of Insurance naming the Borough of Avalon and others (as specified herein) as "Additional Insured".

15-1.37. PRE-CONSTRUCTION MEETING. Should the Borough determine that the proposed work is of such a nature that a preconstruction meeting is required, then the applicant shall be required to attend such a meeting and upon failure to do so, the permit application will be denied. The time for issuance of a permit shall be tolled from the time that a preconstruction meeting is noticed to the applicant and the time when such meeting is actually held.

15-1.38. MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES (MUTCD). Any public utility and its designated contractor performing any work pursuant to a permit issued under this chapter, shall comply with the Manual of Uniform Traffic Control Devices (MUTCD) as adopted by the State of New Jersey as follows:

- a) "Flaggers" (as defined in the MUTCD) **SHALL** be required for a partial closing of any PRIMARY STREET(S) between May 15 and September 15 inclusive. "Flaggers" shall utilize a "Stop and Go Paddle" as those terms are described in the MUTCD to control the flow of two-way traffic into a single lane of traffic. Such permit holder shall also comply with the provisions of the MUTCD as appropriate for the particular closure.

"Flaggers shall not be required on primary streets labeled as "beach vehicle access," however it is expected that at least one lane of travel shall be kept open on these primary streets for emergency vehicle access to the beach. When circumstances make it impossible for one lane to be kept open on these streets, the contractor shall notify the Chief of Police, and clearly designate an alternate emergency access route to the beach." (The reason for this is that after Labor Day, the Avalon Beach Patrol no longer has a consistent presence on the beach. Especially in the fall shoulder season, emergency services respond to numerous rescue calls on the beach, thereby necessitating the primary street designation for these important access points.)

- b) "Flaggers" **MAY** be required on such PRIMARY STREETS after September 15 and before May 15 when two-way traffic is reduced to a single lane of traffic and if the Chief of Police, *or his designee*, in the exercise of his judgment, determines that Flaggers are required in the interest of public safety and that it is unreasonable to expect that traffic can be self-regulating. In addition to the use of "Flaggers" the permit holder causing such excavation shall comply with the applicable provisions of the MUTCD to the extent required or reasonably necessary.
- c) "Flaggers" (as defined in the MUTCD) **MAY** be required on the partial closing of any SECONDARY STREET(S) when such closing takes place between May 15 and September 15 inclusive. Flaggers *shall not be required* after October 1 or before May 15 on SECONDARY STREET(S). The determination shall be made by the Chief of Police, *or his designee*, in the exercise of his judgment, based on considerations of whether the street involved is one of low-volume traffic; the length of the street involved; and whether users from both directions are able to see and observe the traffic approaching from the opposite direction through and beyond the worksite; and whether, all conditions considered, the movement of traffic through a one-lane, two-way constriction may be self-regulating. (See: MUTCD § 6C.10 ¶ 01, 05.) Whether Flaggers are required or not, the permit holder shall comply with the applicable provisions of the MUTCD to the extent required or reasonably necessary.
- d) Nothing contained herein shall be construed as relieving the permit holder from the obligations and duty to comply with the provisions of the MUTCD to the extent required or reasonably necessary and appropriate under the totality of the circumstances.
- e) The complete or partial closing of any street – either PRIMARY and SECONDARY STREETS - shall require the posting of signage, barricades, cones, or other safety warning devices as required by the MUTCD to the extent required or reasonably necessary and appropriate under the totality of the circumstances then in effect.
- f) All MUTCD compliance measures by the permit holder shall be approved by the chief of police or his designee.
- g) Any street opening occurring between May 15 and September 15 shall be limited to bona fide emergencies as defined herein and for no other purpose.

15-1.39. PERMIT ISSUED SUBJECT TO GENERAL TERMS AND CONDITIONS. Every permit shall be issued subject to certain standard general terms and conditions which form a part of the permit. The violation or disregard of such conditions shall be cause for the revocation or suspension of the permit or the issuance of a Stop Work Order. The standard general terms and conditions is available in the Department of DPWU, the office of the Construction Official, or the Borough Clerk. Those conditions may be amended and supplemented from time to time with the approval of Borough Council pursuant to Resolution duly adopted.

15-1.40. EMERGENCY STREET OPENINGS; PROCEDURE. Only in the case of a bona fide emergency immediately impacting public health or safety, or posing an immediate threat to life or property, a utility and its contractor may open a street without adhering to the application process as follows:

The utility shall give immediate telephone or email notice to the Director of DPWU of the nature of the emergency and the action being undertaken. This shall be followed up by the filing of an appropriate permit application within 48 hours following the occurrence of the emergency. If necessary, the required engineer's drawing may be submitted later to supplement the permit application but not later than 10 business days after the emergency. The required fee, escrow if applicable, and all other documents required as part of the permit application shall be submitted to the Borough within the 10-business-day requirement.

If the emergency occurs after normal business hours of the DPWU, including weekends and holidays, the required notice to the Director shall be given not later than the first business day following the emergency.

No street openings shall occur between May 15 and September 15 except for a bona fide emergency as defined in this section.

15-1.41. NEWLY PAVED STREET; MORATORIUM; CIVIL PENALTY FOR VIOLATION OF MORATORIUM.

- a. No permit shall be issued for any street opening which would disturb the pavement of any road having been constructed, reconstructed, or overlaid until a period of five years after the completion of said construction, reconstruction, or overlay, except in the event of an emergency or hardship as described in this chapter.

Cross reference: See Section 15-1.40 hereof.

- b. Any person, firm or corporation violating any of the provisions of the moratorium shall pay to the Borough an administrative penalty, which shall be in addition to any other penalty prescribed by this Chapter, as follows:
 - For the first opening in violation of the moratorium a penalty of \$2,000.00;
 - For the second opening in violation of the moratorium a penalty of \$5,000.00;
 - For the third and each subsequent opening in violation of the moratorium a penalty of \$10,000.00;
 - The second or subsequent opening of a street subject to a moratorium does not have to occur on the same street but will apply to any street within the Borough which is under a moratorium.
 - In addition to the foregoing monetary penalties, and in addition to all other penalties and requirements of this Chapter, any party responsible for the opening of any street which is subject to a moratorium, even in the case of an emergency, shall be required to repave a portion of such street in accordance with Section 15-1.42 hereof.
- c. Nothing in this section shall be construed to relieve such person, firm, or corporation from complying with all other requirements of this Chapter.

15-1.42. CONSTRUCTION SITE STANDARDS; BACKFILLING.

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

All excavations shall be kept properly barricaded at all times and at the conclusion of the workday shall be backfilled or plated steel.

- a. During the hours of darkness, if the work area is restricted or not open to regular vehicular or pedestrian traffic, then such work area shall be provided with proper warning lights. This regulation shall not excuse the permittee from taking any other precaution reasonably necessary for the protection of persons or property.
- b. All work shall be done in such a manner as to cause a minimum of interference with travel on the street affected.
- c. All refuse and material must be removed immediately at the conclusion of the construction activity or at the conclusion of the event.
- d. All pavement shall be mechanically cut or milled for the full depth through the existing sub-base prior to excavation. The pavement shall be saw cut six (6) inches beyond the outer limits of the subgrade that is to be disturbed. In general, trench widths shall be kept to a minimum. The material excavated from the trench opening shall not be replaced as backfill unless specifically permitted by the director.
- e. All excavations shall be completely backfilled by the permittee, and shall be compacted by mechanical tampers, hydro-tampers or high speed vibro-tampers or other method approved by the Borough Engineer as soon as practicable following trench backfilling. Where the Department determines that the excavated material is unsuitable for backfill, the permittee shall backfill the excavation with sand, dense graded aggregate, or other suitable material which shall be placed in layers not exceeding twelve (12) inches in depth and thoroughly compacted in the manner prescribed by the department. Suitable backfill material shall be placed to within ten (10) inches of the roadway surface to allow for a six (6) inch compacted dense graded aggregate base course, a two and one-half (2½) inch hot mix asphalt base course, and a one and one-half (1½) inch hot mix asphalt surface course. Upon completion of the work, the permittee shall remove any excess material and leave the premises in a clean condition. If the Department determines that any backfilled excavation has settled or caved in, it shall so notify the permittee, who shall promptly continue backfilling until the Department determines that settlement is complete.
- f. If tunneling operations are required, the tunnel shall be backfilled with bentonite, or other suitable material approved by the Borough Engineer.
- g. If the work is not performed in accordance with the regulations set forth in this subsection and any other regulations that may be established by the Department, then the Department may complete the work itself and restore the surface of the street. Prior to undertaking and commencing any such remedial work, the Department shall first notify the Surety, if any, and the permit holder of the deficiencies and the Borough's proposed action to correct the deficiencies and that the cost of such remedial action will be charged against the bond, if any, or charged to the permittee and deducted from any deposit or recovered in an action filed in a court of competent jurisdiction.

Cross reference: Appendix A and Section 15-1.43 hereof.

15-1.43. RESTORATION OF SURFACE; STANDARD SPECIFICATIONS; SPECIAL CONDITIONS AND ESCROW.

The permittee shall be required, in all circumstances to restore the surface of the street in accordance with specifications of the Borough Engineer and in accordance with the following:

The specification for the restoration of the street appears in Appendix A of this chapter. Those specifications may be modified by the Borough Engineer when the unique circumstances of a particular restoration require.

Whenever the restoration must be made under emergent or unusual circumstances, the Borough Engineer is authorized to impose additional standards in addition to or in place of those appearing in Appendix A. Whenever such circumstances exist, the restoration shall be subject to inspection by and approval of the Borough Engineer. Under such circumstances the applicant shall be required to deposit an escrow payment to be used to defray Borough expense incurred in such engineering expense even when the permit is for minor work only. Whenever the opening involves a street subject to moratorium, and in violation of such moratorium, whether or not the opening is due to an emergency as defined in this Chapter, the party responsible for the opening, in addition to any other penalty or requirement imposed by this Chapter shall mill and pave one hundred (100) feet of new paving as determined by the Borough Engineer.

Cross reference: Appendix A and Section 15-1.42 hereof.

15-1.44. ENFORCEMENT

This Section shall be enforced by any of the following:

- Construction Official
- Code Enforcement Official
- Zoning Enforcement Office
- Director of DPWU or his designee
- Avalon Police Department officers and members
- Such other officer or official so authorized by law.

15-1.45. REVOCATION OF PERMIT.

The Director may revoke a permit for any of the following reasons:

- a. Violation of any provision of this chapter or any other applicable rules, regulations, law, or ordinance.
- b. Violation of any condition of the permit issued.
- c. Carrying on work under the permit in a manner which endangers life or property, or which creates any condition which is unhealthy, unsanitary, or declared by any provision of this CODE to constitute a nuisance.
- d. d. The procedure for revoking a permit shall be the same as that set forth in the CODE for the revocation of licenses, except that the initial hearing shall be before the Director with a right of appeal to the Borough Business Administrator or his designee and the Director may provide in his decision that the revocation shall not become effective if the permittee corrects the violation within a specified period of time.

15-1.46. STOP WORK ORDER; GROUNDS FOR ISSUANCE.

A Stop Work Order may be issued in any of the following situations:

A. BY THE CONSTRUCTION OFFICIAL

- 1) for failure to obtain any required construction permit;
- 2) for a violation of the conditions of the construction permit;
- 3) for any other reason authorized by the Uniform Construction Code or the regulations promulgated thereunder.

B BY THE DIRECTOR OF DPWU OR HIS DESIGNEE AND/OR THE CODE ENFORCEMENT OFFICIAL

- 1) for failure to obtain a construction permit or a DPWU Permit;
- 2) for a violation of the terms and conditions of the DPWU Permit;
- 3) for failure to comply with the provisions of this section and the subsections hereof;
- 4) for conduct or creating or maintaining conditions resulting in a public nuisance or which poses a health or safety hazard;
- 5) for failure to maintain the construction site in such a manner as to comply with this section;
- 6) for any other reason permitted by law

THE STOP WORK ORDER shall remain in effect until rescinded by the issuing authority upon correction or remedy of the underlying conditions giving rise to the issuance of such STOP WORK ORDER.

Failure to obey the stop work order shall subject the contractor to the penalty provisions of this chapter.

15-1.47. ADMINISTRATIVE PENALTIES AND ASSESSMENT

- a. Any person violating this Chapter shall be subject to one of more of the following:

An Administrative Penalty of up to \$200.00 per day for each day that the permit holder is in violation of any requirement under this Chapter for such time as the violation remains unabated; and/or

Any Administrative Penalty imposed under the Uniform Construction Code or any other law or regulation of the state of New Jersey; and/or

Upon the filing of a complaint with the Municipal Court or other Court of competent jurisdiction, and upon conviction, such penalty as such Court may impose.

The foregoing penalties are cumulative and not exclusive. Such penalties may, in appropriate cases, also be imposed in addition to a permit revocation or stop work order.

- b. Each day that a violation continues shall be treated as a separate violation.
- c. Such penalties shall be recovered by the Borough through a Penalty Enforcement Action in accordance with N.J.S.A. 2A:58-11 and N.J.S.A. 52:27D-138 or by a charge against any escrow deposit.
- d. Any Administrative Penalty imposed under this section shall be in addition to, and not in place of, any other penalty established in this section or by this Code.

15-1.48. VIOLATIONS AND PENALTY

Any Person violating any of the provisions of this article, except for violations of the moratorium provisions specified in Section 15-1.41, shall, upon conviction, be subject to one (1) or more of the following:

- a) For a First Offense or subsequent offense, a penalty in accordance with the provisions of Section 1-5 of this Code.

15-1.49. Violations Occurring within One Year.

Any Person convicted of violating this Ordinance within one (1) Year of the date of a previous violation and who was fined for the previous violation, shall be sentenced by the Court to an additional fine as a repeat offender. The additional fine imposed by the Court upon a Person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the Ordinance but shall be calculated separately from the fine imposed for the violation of the Ordinance. (See N.J.S.A. 40:49-5)

The penalty for violations imposed under this section shall be in addition to, and not in place of, any Administrative Penalty imposed by this Chapter.

15-1.50. Power to Adopt Rules and Regulations

The Director of DPWU, in consultation with the Borough Engineer and Borough Administration, is hereby authorized to adopt reasonable Rules and Regulations for the efficient enforcement of this Chapter. Such Rules and Regulations shall be writing and shall be filed with the Borough Clerk who shall inform Borough Council thereof. Such Rules and Regulations shall have the force of law unless the same are modified or rescinded by Resolution of Borough Council.

SECTION 3. SUPERSEDES ORDINANCE 844-2022. This Ordinance is intended to amend, supplement, and restate Ordinance 844-2022 and, as restated, to supersede Ordinance 844-2022.

SECTION 4. REPEALER. All Ordinances or parts of Ordinances, including those specified in Section 3 hereof, which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

SECTION 5. SEVERABILITY. If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause, or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect August 1, 2022 after final adoption and publication as required by law.

APPENDIX A FOLLOWING IS A PART OF THIS ORDINANCE.

ORDINANCE No. 847-2022

CHAPTER 15

APPENDIX A

In all cases where the permittee is required to restore the surface of the street, he shall do so in accordance with the following rules, regulations, and requirements:

- a. No permittee shall commence the restoration of any street foundation or surface until the Department has determined that settlement of the subsurface is complete and the area properly prepared for restoration.
- b. The street surface restoration shall consist of temporary and permanent pavement restoration as described in section c. and d. below.
- c. Temporary pavement restoration. After the trench has been backfilled and thoroughly compacted by means of mechanical consolidation, a six (6) inch thick compacted course of dense graded aggregate shall be placed and mechanically compacted. A four (4) inch compacted course of hot mix asphalt (19M64 Base Course) shall then be placed. The finish surface of this course shall be left flush with the existing pavement. The restored trench shall be maintained in a safe and satisfactory condition until the permanent pavement restoration is accomplished.
- d. Permanent pavement restoration. Following a minimum four (4) month settlement period the permittee shall mill the temporary pavement six (6) inches on either side of the temporarily restored trench and perform permanent pavement restoration with 1.5 inches of hot mix asphalt (9.5M64 surface course).

All excavation required in connection with the permanent pavement replacement operations shall be made neatly to minimize damage to the existing pavement.

Rubber tired equipment shall be employed, and extreme care shall be taken to prevent damage to or marking up of the existing pavement. No cold or hot paving material shall be permitted to be dumped on undisturbed pavement.

All permanent pavement shall be completed prior to the onset of cold weather or shall be deferred until spring the following year.

The limits of the temporarily restored trench shall be milled six (6) inches on either side to a depth of one and one-half (1½) inches to remove one and one-half (1½) inches of the previously placed hot mix asphalt base course. The removed material shall be replaced with one and one-half (1½) inches of compacted thickness of hot mix asphalt (9.5M64 surface course).

Prior to placing permanent pavement all surfaces to be paved shall receive a tack coat of grade RC-0 asphaltic oil or Grade RS-1 emulsified asphalt at the rate of 0.05 gallons per square yard. Tack coat shall be spread by power-operated distributing equipment. The existing pavement shall be painted with additional tack coat along the proposed edge of permanent pavement to be placed under this item. (2000 Code § 15:8)

The additional provisions shall also apply:

Restoration of excavated area.

- A.** The applicant to whom such permit is issued shall, within the time limited in such permit, or as specified in this Chapter, replace the earth and pavement in the excavation in such manner that the same shall be left in as good condition as it was before the excavation was commenced. Except as otherwise herein stated, all street work performed shall be in accordance with the applicable provisions of the most recent publication of the New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction, as amended. Reference to articles or sections hereinafter refer to said state highway specifications.

- (1)** Trenches shall be backfilled in layers not to exceed twelve inches and a vibratory tamper must be used. Ninety-five percent maximum dry density compaction shall be required. Puddling of backfill is strictly prohibited. Should there be a deficiency, additional backfill material shall be supplied by the permittee. Whenever the Borough Engineer shall deem the material unsatisfactory for backfill, the permittee shall provide acceptable material for the backfill.
- (2)** Roadways with a concrete base shall be restored using a combination of concrete and asphalt. The amount of concrete and asphalt to be used at each such excavation shall be as directed by the Borough Engineer.
- (3)** If 3 or more excavations are required by the same utility within 100 feet on the same side of the street, or a new or existing utility main is constructed, reconstructed, repaired, replaced, or extended for a length exceeding 50 linear feet, the final restoration will require a minimum of 1/2 width of the cartway. The area resurfaced shall be milled to a depth of two inches to a distance of at least 12 inches beyond the limits of the furthest excavations from the center line of the cartway to the curbline. All edges shall be coated with an asphaltic tack coat prior to a two-inch lift of hot mix asphalt (HMA 9.5M64 surface course) being placed to a level even with the existing road grade.

 - (a)** If the same utility makes subsequent excavations on the same block of the same roadway for any reason, this section shall also apply.
 - (b)** The Borough Engineer, at his sole discretion, may allow alternate methods of restoration in lieu of a half-width pavement restoration.
- (4)** Any opening crossing perpendicular to the center line of the road will require a full-width road restoration to the surface and an additional trench width of two feet on each side of the disturbance. Any longitudinal opening straddling the centerline will require a full trench-width restoration extending two feet beyond the edges of the trench.
- (5)** In all cases where concrete has to be removed prior to any excavation, saw cut methods of removal shall be used. The restoration of the concrete shall be according to the following specifications:

 - (a)** It shall be Class B with a design strength of 3,700 psi.
 - (b)** It shall have a minimum thickness of not less than four inches for sidewalk, six inches for driveway aprons and eight inches for gutter.
 - (c)** It shall have a minimum width of not less than four feet for sidewalks.
 - (d)** It shall have control joints not more than five feet for sidewalk and 10 feet for curb and gutter; and expansion joints not more than 20 feet for sidewalk, curb, and gutter.
 - (e)** Driveway aprons shall be reinforced with six-inch-by-six-inch, 10-gauge A36 steel wire mesh.
- (6)** If an opening occurs in an area which does not have a pavement surface, the applicant is required to restore the given area with a minimum of eight inches of gravel.

(7) If an opening occurs in an area typically reserved for sidewalks, but has none at the time of the opening request, it is required to be restored with as called for herein and also shall include an installation of four inches of topsoil with a finished application of sod, or such other material as may be approved by the Borough Engineer.

(8) All exploratory holes shall be repaired as directed by the Borough Engineer.

B. By the acceptance of such a permit, the applicant shall be deemed to have agreed to comply with the terms hereof, and upon his failure to do so to pay on demand any cost or expense that the Borough may incur by reason of any shrinkage or settlement in the excavated area resulting from such excavation if such shrinkage or settlement shall occur within one year from the time the surface thereof is restored.

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed on first reading of the Municipal Council of the Borough of Avalon on July 13, 2022. It will be further considered for second reading, public hearing and final adoption at a meeting of said Council to be held on the 27th day of July, 2022 in the Meeting Room of the Municipal Building, Avalon, New Jersey at 4:15 p.m. and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

C. DANIELLE NOLLETT
Borough Clerk