

**BOROUGH OF OLD TAPPAN
ORDINANCE 1202-22**

**AN ORDINANCE TO AMEND CHAPTER 214 OF THE CODE OF THE BOROUGH OF
OLD TAPPAN ENTITLED "STREETS AND SIDEWALKS" BY REPEALING AND
REPLACING ARTICLE 1 THEREOF AND RENUMBERING ARTICLE 2**

BE IT ORDAINED by the Mayor and Council of the Borough of Old Tappan, County of Bergen and State of New Jersey, as follows:

Section 1. Chapter 214, Article 1, is hereby repealed and replaced with the following:

ARTICLE I

WORK AND EXCAVATIONS WITHIN STREETS

§ 214-1. Definitions.

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

STREET — Any dedicated road, highway, public way, public alley, easement, or other right-of-way, whether accepted or not accepted by the Borough, that is maintained by the Borough. The term "street" shall include all areas within the right-of-way, including curbs and sidewalks.

§ 214-2. Permits required.

It shall be unlawful for any person, persons, firm, corporation or entity of any kind, to disturb or tear up any of the road surfaces of, or make any excavation in, any of the public streets, avenues, highways or public places in the Borough, for the purpose of constructing surface or subsurface improvements or for the purpose of laying, examining, replacing or repairing of gas mains, water mains, sewers, sewer connections, telephone conduits, electrical outlets, or for any other purpose, except and until the consent, permission and approval thereto, in writing, of the Borough Council, after consultation and review by the Borough Engineer and/or the DPW Superintendent or his or her designee, is obtained.

- A. No person shall perform work that affects any portion of a street, which does not involve an excavation or tunnel without first obtaining a right-of-way permit.
- B. In case of an unforeseen circumstance or occurrence, the existence of which constitutes a clear and immediate danger to person and property, hereinafter referred to as "emergency," any utility company or provider (water, gas, electric, cable, telephone, sewer, etc.), resident, property owner or lessee shall not be required to provide the above information in advance of the work, but shall do so within 24 hours thereafter, provided that:
 - (1) A true emergency exists and the person(s) or entity doing the excavation notifies the Borough Police Department; the Police Department shall log the emergency and inform the DPW Superintendent.
 - (2) An application for a permit for the emergency work is filed with the Borough Building Department within 24 hours of the street opening or on the next business day, whichever is more practical.
 - (3) Said utility, resident, property owner or lessee makes the payment required for the permit.
 - (4) The excavation is performed in accordance with the provisions of this article.

§ 214-3. Denial of permit; appeal.

The Borough Council is authorized to refuse the issuance of any street opening or right-of-way permit if it ascertains, after consultation with the DPW Superintendent, Borough Engineer or otherwise, that such refusal is in the interest of public safety, public convenience, or public health. If such a permit is refused,

an appeal may be taken to the Borough Council. The Borough Council, after hearing the applicant and considering the evidence produced, may either direct the issuance of the permit or sustain the refusal.

§ 214-4. Application information.

- A. All applications for permits referred to in this article shall be made to the Building Department at least five business days in advance of the proposed road opening, unless it is an emergency, and shall
- (1) Specify the name and address of the individual, firm, corporation, or utility for whose benefit the excavation is to be made.
 - (2) Specify the name and address of the excavation, construction and/or restoration contractor(s).
 - (3) Identify the specific location of the proposed excavation and the width, length, and depth thereof.
 - (5) Identify the type of road surface being disturbed.
 - (6) Identify the location of any and all utilities, storm drains, sanitary sewers or sewer mains within 10 feet of the limits of the proposed opening.
 - (7) Identify the excavation start date and expected duration and method of work or repair.
 - (8) Identify the applicable fees for the issuance of the permit as hereinafter provided, together with the charges as hereinafter set forth.
 - (9) Include a signed statement by the applicant agreeing to indemnify the Borough and hold it harmless from and against any claim, liability, damage and/or expense, including any attorney fees, arising out of the granting of the permit or from any negligence or fault of such applicant, his or her servants, or agents in connection with any of the excavation performed under or in connection with such permit.
- B. A nonrefundable fee as set forth in § 214-6 shall accompany every application to offset the cost of processing the application and inspection subsequent to the road repair.
- C. Street opening permits shall be valid for one year from date of issuance. A permit may be extended for up to six months if the permit holder is actively working in the street at the time of the expiration of the permit. If the permit holder needs to reopen the street to continue work after the expiration date of the original permit, a new permit is required.

§ 214-5. Issuance of contents of permit.

- A. In the event that the applicant shall be granted a street opening or right-of-way permit, the applicant shall be solely responsible for any and all damages, liability and costs of any nature arising out of such excavation or work, and the applicant agrees that (s)he will:
- (1) Indemnify the Borough and hold it harmless from all loss, damage, claim or expense, including expenses incurred in the defense of any litigation arising out of injury to any person or property resulting from any work done by the applicant under the permit.
 - (2) Indemnify the Borough for any expense incurred in enforcing any of the provisions of the chapter.
 - (3) Indemnify any person who sustains personal injuries or damage to his/her property as a result of any act or omission of the applicant, his/her agents, employees or subcontractors done in the course of any work under the permit.
- B. Each permit shall state the identity and address of the applicant, the name of the street and the location where the excavation, tunnel or work is to be made and the dimensions of the opening.
- C. The original of each permit shall remain on file in the Building Department. The Building Department Technical Assistant shall provide a copy of same to the applicant, the Chief of Police, the DPW Superintendent and Borough Administrator.

§ 214-6. Permit Fee; Inspection.

The applicant shall be charged a nonrefundable fee of \$200 for each permit, which fee shall be paid when the application is made. Inspections shall be made as required by a borough representative.

§ 214-7. Deposits.

The applicant shall be required to deposit in cash or by certified check a sum as hereinafter set forth to defray the expense of restoring the street to its preexisting condition should the permittee fail to do so. The deposit shall be \$2,000 for excavations of areas of 100 square feet or less. For excavations of areas greater than 100 square feet, the applicant shall be required to deposit \$3,000 for excavation work not exceeding a total area of 1,000 square feet. In the event that the area to be excavated shall exceed 1,000 square feet, the amount of the deposit shall be determined by the Borough Engineer; provided, however, that the minimum deposit in such event shall be \$15,000.

The deposit for work within the Borough's right-of-way (not within or disturbing the roadway) shall be \$950.

§ 214-8. Return of deposit upon satisfactory restoration.

The deposit paid to the Borough in accordance with § 214-7 shall be held by the Borough until 24 months after the completion of each improvement as a security deposit to guarantee the completion of the improvement and maintenance thereof for 24 months thereafter, pursuant to the terms of the application, in a good and workmanlike manner and in accordance with the specifications and standards of the Borough to the satisfaction of the Mayor and Council. Twenty-four months after such completion and at the applicant's request, the Borough shall return the deposit to the applicant, provided that the work has been properly completed and maintained. Upon failure to complete and maintain the improvement to the satisfaction of the Borough, the Borough may complete and maintain the improvement, using the moneys so deposited or so much thereof as is necessary for such purpose, returning the balance of the deposit, if any, to the applicant after 24 months from the date of completion. If the security deposit is insufficient to pay for the cost of remediating the work, the person or entity responsible shall be obligated to reimburse the Borough for any excess costs which may be collected in accord with the Borough Code.

§ 214-9. Insurance.

No permit shall be issued until the applicant has furnished the Borough with satisfactory proof that (s)he is insured against injury to persons and damage to property caused, by any act or omission of the applicant, his/her agents, employees, 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 completed operations. The limits of the policy of insurance shall be \$1,000,000 for injury to any one person, \$1,000,000 for property damage for a single incident. The Borough may waive the requirements of this section in the case of public utilities upon the presentation of satisfactory proof that it is capable of meeting claims against it up to the amount of the limits of the insurance policy which would otherwise be required.

§ 214-10. Rules and regulations; backfilling.

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

- A. All excavations shall be kept properly barricaded at all times and during the hours of darkness 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 generated by the project shall be removed within 48 hours.
- D. All excavations shall be completely backfilled by the permittee and shall be compacted by tamping or other suitable means in a manner prescribed by the DPW Superintendent. Where the DPW Superintendent determines that the excavated material is unsuitable for backfill, the permittee shall backfill the excavation with sand, soft coal, cinders or other suitable material which shall be placed in layers not exceeding six inches in depth and thoroughly compacted with a mechanical vibrator or in the manner prescribed by the DPW Superintendent. The permittee shall replace all shoulder stone to a depth of six inches and thoroughly compact it with a mechanical compaction devise. Upon completion of the work, the permittee shall remove any excess material and leave the premises in a clean condition. If it is determined that any backfilled excavation has settled or caved in, the DPW Superintendent shall so notify the permittee, who shall promptly continue backfilling until settlement is complete.

- E. If tunneling operations are required, the tunnel shall be backfilled with rammed concrete composed of one part cement to 10 parts sand.
- F. If blasting is required to be done in the course of any excavation, it shall be done in strict compliance with all applicable state laws and regulations.
- G. If the work is not completed within the time specified in the permit or any extension granted by the Borough or is not performed in accordance with the regulations set forth in this section and any other relations that may be established by the Council, then the Borough may complete the work itself and restore the surface of the street. The cost of completing the work and restoring the street shall be charged to the permittee and may be deducted from his/her deposit or recovered by an action in any court of competent jurisdiction.
- H. The backfilling of the trench shall proceed in the following manner: earth, sand, gravel or broken stone removed from the trench shall be replaced in layers not exceeding 12 inches in depth and shall be properly compacted. The work of refilling shall continue in this manner until the material is brought up to within 24 inches of the finished pavement; any rocks larger than six inches in diameter shall be removed. The first layer shall be three-quarter-inch quarry-processed (QP) rock. The backfilling shall be continued until the top thereof, after being thoroughly compacted, shall be one inch higher than the pavement. No animal or vegetable matter or refuse shall be used or permitted in the backfill, and all refuse or surplus material from the trench shall be removed from the work area immediately after the trench has been excavated. After the fill has thoroughly settled, the road surface shall be restored to a like-new condition.
- I. The person or entity conducting this work shall remain responsible for the repair of the resurfaced repair work for a period of five years and shall repair same if required by the DPW Superintendent or his designee.
- J. Any restoration of a trench or series of openings more than 15 linear feet in the aggregate on any one street or portions of a street shall include restoration in accord with the engineering details found in the Appendix as applicable and shall also include the milling and resurfacing of the roadway from curb to curb for the length of the opening. The milling and resurfacing of the roadway will be supervised by the Borough's Engineer. The supervision costs will be paid for by the applicant of the road opening permit.
- K. Any restoration of macadam which is not milled and paved shall be completed using infrared paving to ensure a smooth transition from the adjoining surface to the satisfaction of the DPW Superintendent or his designee.

§ 214-11. Rules and regulations for restoration of surface.

In all cases the permittee shall restore the surface of the street in accordance with the following rules, regulations, and requirements:

- A. No permittee shall commence the restoration of any street foundation or surface until the DPW Superintendent has determined that settlement of the surface is complete, and the areas properly prepared for restoration.
- B. The street surface shall be restored so as to extend six inches beyond the excavation on all sides.
- C. The street surface shall be restored pursuant to the section designated by the DPW Superintendent in the permit, but in no case shall be less than the structural equivalent of the following:
 - (1) Six-inch course of quarry process subbase (Type 5 soil aggregate) thoroughly compacted.
 - (2) Two inches of bituminous concrete Type FABC.

§ 214-12. Reopening of streets.

No Borough Street which has been constructed or restored shall be opened for a period of three years thereafter without the special permission of the Borough Council. In the event an applicant seeks to disturb a road which has been repaved or installed within the preceding three years, and the municipality shall have given notice of intent to repave by ordinance or actual notice to the applicant, the fees shall be doubled for the permit and bond. In addition, the applicant shall be required to mill and repave the entire width of the road to achieve a cosmetic and surface match. The milling and resurfacing of the

roadway will be supervised by the Borough's Engineer. The supervision costs will be paid for by the applicant of the road opening permit.

Utility companies, including those engaged in the installation of gas, water, and electric lines, shall report quarterly to the DPW their intentions with regard to prospective work requiring future street openings in the community, for the purpose of coordinating such activity with pavement projects anticipated by the Borough.

Except in the case of an emergency, the Borough shall have the right to schedule street openings with utilities companies in a manner which will create the least disturbance to pavement courses, in furtherance of which purpose the Borough provide to the utilities a schedule of expected street construction and resurfacing.

§ 214-13. Permit conditions and regulations.

- A. Transferability. A permit shall apply only to the person to whom it is issued and shall not be transferable.
- B. Commencement of work. Work under a permit shall commence within 45 days from the date of issuance of the permit. If the work is not commenced within that time, the permit shall automatically terminate unless extended, in writing, by the Borough Council.
- C. Possession of permit. A copy of the permit together with a copy of the plan endorsed with the approval of the DPW Superintendent shall be kept in possession of the person actually performing the work and shall be exhibited on demand to any duly authorized employee of the Borough or police officer.
- D. Revocation of permit.
 - (1) The Borough Council may revoke a permit for any of the following reasons:
 - (a) Violation of any provision of this article 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 matter which endangers life or property, or which creates any condition which is unhealthy, unsanitary, or declared by any provision of the revision to constitute a nuisance.
 - (2) The procedure for revoking a permit shall be the same as that set forth in this Code for the revocation of licenses, except that the initial hearing shall be before the member of the Borough Council in charge of the Road Department with a right of appeal to the Council, and the Chairperson may provide in his/ her decision that the revocation shall not become effective if the permittee corrects the violation within a specified period of time.
- E. Modification of permit conditions. In a special case, the Borough Council may, by resolution, impose special conditions to which the issuance of the permit may be subject, or may decide that any provision of this article shall not apply or shall be altered.
- F. Damage to sidewalks, aprons and curbs occurring during a street opening may be repaired under the authority of the street opening permit. The permittee is liable for any accidents that occur while the sidewalk/apron/curb is damaged. All street-opening-related sidewalk damage repairs will be deemed complete after inspection by the DPW Superintendent.

§ 214-14. Power to make additional rules and regulations.

The Borough Engineer, in conjunction with the DPW Superintendent, may make any rules and regulations considered necessary for the administration and enforcement of this article, but no regulation shall be inconsistent with, alter or amend any provision of this article or impose any requirement which is in addition to those expressly or by implication imposed by this article. No regulations shall be effective unless they are approved by the resolution of the Borough Council. Copies of all current regulations shall be furnished each permittee at the time of the permit.

§ 214-15. Temporary closing of street for preservation of public safety, health or welfare.

- A. Closing by regulation. The Mayor may provide by resolution for the closing of any street or portion thereof to motor vehicle traffic on any day or days or during specified hours on any day or days whenever it finds that such closing is necessary for the preservation of the public health, safety or welfare.
- B. Posting of warning signs. Proper warning signs shall be posted in any street or portion thereof during the time the same is closed.
- C. Violations and penalties. For violation of this § 214-15, the penalty upon conviction shall be a fine not exceeding \$150 for each and every offense.

§ 214-16 Traffic control on private construction.

Any contractor or other employer requiring additional traffic management services on any project or event occurring in the Borough shall utilize the Old Tappan Police Department for such services and bear the cost of such.

§ 214-17 Utility road opening.

- A. All utilities registered by the New Jersey Board of Public Utilities under Title 48 which open roads in the Borough shall submit an application and pay a nonrefundable application fee of \$200 per opening as per § 214-6.
- B. All utilities servicing the Borough shall post a cash bond in the amount of \$2,500 with the Borough to be held in a noninterest escrow account to be held in perpetuity to pay the cost of application fees and repair to road openings done in an unsatisfactory manner. If this bond is diminished by utilization for restoration or payment of application fees, the utility shall deposit additional funds sufficient to bring the balance of the cash bond to \$2,500 within 10 days of receipt of a notice of deficiency sent by the Borough.
- C. Roadways opened by utilities shall be returned to a like-new condition. Roadway openings shall be saw cut whenever possible and paved using infrared heat paving to the satisfaction of the DPW Superintendent or his/her designee.
- D. Roadway material shall be of the same material as the roadway: e.g., concrete roads shall be repaired with concrete and asphalt with asphalt.
- E. Within 90 days of completion of all road opening repair, the Borough shall advise the utility if the closing is satisfactory or not, and if not, a directive of corrective action shall be included. Repairs made subsequent to notice from the Borough of unsatisfactory repairs shall be concluded within 30 days of notice. If repairs are not made within 30 days and/or the repair is not done to the satisfaction of the DPW Superintendent or his/her designee, then the Borough may cause the repair work to be done and use the escrow to pay for same. In such event, the utility shall replenish the escrow within 30 days of notice from the Borough

§ 214-18 Repair of hazardous conditions by Borough.

Should a hazardous condition develop in connection with a road opening and the permittee is not available or does not remedy the condition promptly, the borough reserves the right to do or to have done such work as it deems necessary to eliminate the hazard and to charge the cost of such work to the permittee.

§ 214-19 Violations and penalties.

- A. Any person, firm or corporation violating any of the provisions of this article, or neglecting or refusing to comply with any of the terms or conditions hereof, shall, upon conviction, be liable as follows:
 - (1) Failure to deposit a performance bond: the amount set forth in §214-7 plus \$500.
 - (2) Opening a roadway without a permit and/or failing to comply with the provisions for filing an application for emergency work within 24 hours of conducting the work or the first business day thereafter: the amount set forth in §214-6 plus \$1,000.

- (3) Failure to restore any roadway as required: the amount set forth in § 214-6 plus \$1,500.
- B. Each and every nonconformance of this article, or each day that any provision of this article shall have been violated, shall be construed as a separate and distinct violation thereof.

§ 214-20 Enforcement.

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

Section 2. Chapter 214 Article 2 is hereby renumbered to read as follows:

ARTICLE II

Traffic Control During Construction

§ 214-21. Definitions.

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

CHIEF OF POLICE — The Chief of Police or a person designated by the Chief of Police to perform the function indicated.

§ 214-22. Manual on Uniform Traffic Control Devices.

The Borough of Old Tappan hereby adopts the Manual on Uniform Traffic Control Devices (hereinafter "the MUTCD," except as the MUTCD may be supplemented or amended by the provisions hereof. The MUTCD provides traffic controls and regulations for construction, maintenance operations and utility work. Any person, contractor or utility who fails to comply with the provisions of the MUTCD is in violation of this article.

§ 214-23. Preconstruction meetings.

It shall be the responsibility of the person, contractor, or, in the case of a public utility, such person as may be designated in accordance with a public utility agreement, conducting work on, under or above a street to contact the Chief of Police to arrange a preconstruction meeting for the submission and review of plans for the safe movement of traffic during such period of construction or work. Any person, contractor or utility who fails to comply with this article prior to the start of such work, or whose plans are not approved by the Chief of Police, is in violation of this article.

§ 214-24. Emergency contacts for correction of hazardous conditions at work site.

Prior to the start of any work, the person, contractor, or utility shall provide the Chief of Police with at least two emergency contact phone numbers, to be called in case of emergency problems at the construction or maintenance site. If, for any reason, emergency contact cannot be made, or if the emergency contact person does not respond to the call from the Old Tappan Police Department to correct a hazardous condition, the Borough may correct such hazardous condition. The cost of such emergency service by the Borough shall be charged to the person, contractor, or utility responsible for such condition.

§ 214-25. Hours.

There shall be no construction, maintenance operations or utility work on, under, or above any street in the Borough before the hour of 9:00 a.m. or after the hour of 4:00 p.m. This time limit may be adjusted by the Chief of Police to permit work prior to 9:00 a.m. or after 4:00 p.m. If it is determined by the Chief of Police that construction or maintenance operations prior to 9:00 a.m. or after 4:00 p.m. would substantially delay traffic or cause a safety or health hazard, then the work shall be permitted only between 9:00am and 4:00pm.

§ 214-26. Road closings and detours.

Road closings and/or traffic detours shall not be permitted unless approved by the Chief of Police.

§ 214-27. Traffic directors.

Traffic directors shall be posted at all construction or maintenance sites when determined by the Chief of Police that such directors are necessary to provide for the safe and expeditious movement of traffic.

§ 214-28. Stop work.

The Chief of Police shall have the authority to stop work for the purpose of abating any nuisance and/or safety hazard or to assure compliance with this article. This authority shall include, but is not limited to, the authority to order the removal of equipment, vehicles, and stored materials from within the street and right-of-way; the backfilling of open excavations; and/or other related work.

§ 214-29. Site preparation.

No materials, vehicles or equipment are to be placed in the street or sidewalk area until all construction signs, lights, devices, and pavement markings are installed.

§ 214-30. Violations and penalties.

Any person, contractor or utility who violates this article 1 or 2 of this ordinance, upon conviction thereof, shall pay the following fines: for a first offense, not less than \$100 nor more than \$1,000 or imprisonment for a term not exceeding 90 days, or both; for a second offense, not less than \$250 nor more than \$2,000 or imprisonment for a term not exceeding 90 days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Section 3. All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 4. This Ordinance shall take effect upon final passage and publication according to law.

Section 5. All other parts of the Code of the Borough of Old Tappan not specifically amended herein shall remain in full force and effect.