

**TOWN OF WEST NEW YORK
COUNTY OF HUDSON, STATE OF NEW JERSEY**

ORDINANCE #6/23

**ORDINANCE AMENDING CHAPTER 352 OF THE TOWN OF WEST NEW YORK
CODE ENTITLED “STREETS AND SIDEWALKS”**

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality may make, amend, repeal and enforce ordinances not contrary to the laws of this State or of the United States, as it may deem necessary and proper for order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

WHEREAS, the Town of West New York (the “Town”), is a municipality as defined by Title 40 of the New Jersey Statutes; and

WHEREAS, Town has adopted rules and procedures for the permit applications, excavation and backfilling of streets as set forth in Chapter 352 Article V entitled “Excavations”; and

WHEREAS, The Town has spent millions of dollars to repave its streets, roads and sidewalks; and

WHEREAS, the Town receives numerous applications yearly for street and sidewalk excavation and opening permits; and

WHEREAS, after completion of the work authorized by street and sidewalk excavation and opening permits, the Town often finds the work performed to repave and otherwise restore the streets and sidewalks is substandard and not in the best interest of the health, safety, and welfare of its residents; and

WHEREAS, the Town seeks to amend Chapter 352 to establish section 24 and set forth procedures for permit applications to excavate street, road and/or sidewalks that have been repaved or otherwise restored in the preceding 10 year period.

NOW, THEREFORE, BE IT ORDAINED, by the Board of Commissioners of the Town of West New York, County of Hudson, State of New Jersey that the Code of the Town of West New York is hereby amended as follows:

SECTION ONE

Chapter 352 Section 20 shall be replaced as follows:

A. All permits required by this article shall be in writing and shall be issued by the Town’s Building Department. The Building department shall issue the permit if it appears that the applicant has the legal right or privilege granted to him in the use of any street, highway, or public place or in digging up the same for laying down pipes or conduits or for any purpose whatever and that the application and the proposed work described therein comply with this article; provided, however, that said applicant has submitted a detailed plan and surety bond as hereinafter provided. Upon the issuance of any permit, the Police Department shall be immediately notified of such issuance and the character of the work; and, where possible, the permit shall be posted for public display.

B. No permit authorized by this article shall be granted except pursuant to an application in writing therefor signed by the person desiring such permit, or his agent. The application, which may be submitted on forms provided by the Town of West New York, shall set forth the location, nature, extent and probable duration of the proposed work and the statutory or other authority pursuant to which it is to be performed.

C. No application shall be considered for approval unless the applicant shall attach to it a detailed set of plans, bearing the seal of a licensed architect, engineer or surveyor, showing the width, length and depth of the excavation and the nature of the job. All drawings or plans shall show the location of any sewer, utility or telephone lines and the exact steps which will be taken by the applicant to shore, cover and protect same with sheeting or other suitable materials. Said plans shall be reviewed and approved by the Construction Code Official and, where appropriate, the Town Engineer in order for a permit to be issued.

D. Each applicant for a permit to open a public right-of-way, upon the receipt of a permit for such opening as otherwise provided by ordinance of the Town, or other law, shall provide the Town with an adequate corporate surety bond, cash or certified check (“adequate security”) to guarantee faithful performance of the work authorized by such permit, for the payment of any necessary repairs occasioned by the opening of the public right-of-way by the Town, prior to such opening. The amount of such adequate assurance shall be equal to the amount of the actual cost of the closing and opening to the permittee. The adequate assurance shall be retained by the Town from the date of posting thereof and shall be returned or otherwise discharged by the Town upon the receipt by the permittee of a certificate of final inspection from the Construction Code Official (“the Code Official”), or the Code Official’s designee, or one year from the closing of the opening of the public right-of-way, whichever occurs earlier. (The permittee shall notify the Town of the date of such closing.) The form of such adequate assurance shall be in a form acceptable to the Code Official. If the permittee anticipates requesting more than one permit per year as required by this article, the permittee may furnish one continuing corporate surety bond in such amount as the Code Official deems necessary to guarantee faithful performance. The minimum amount of such bond shall be in relation to the cost of restoring openings to the public rights-of-way to be made by the permittee throughout the year. The Town may elect to waive the requirements of this section insofar as it pertains to a public utility company if such company files with the Township its corporate bond in a form satisfactory to the Township, conditioned upon compliance with the provisions of this article.

E. The permit shall state the maximum time allowed for the completion of the excavation and backfilling thereof. Permits shall be renewable upon the terms and conditions prescribed by this article for the issuance of original permits.

F. No permit shall be issued until the fee therefor, hereinafter prescribed, shall have been paid to the Town.

G. No permit shall be issued to any person given notice under this article, which would allow an excavation or opening in a paved and improved street surface less than 10 years old except as set forth in Section 352-24.

SECTION TWO:

Chapter 352 Section 24 shall be entitled “Roads, Streets and Sidewalks Less than 10 Years Old.” and shall set forth the following:

352-24 Roads, Streets and Sidewalks Less than 10 Years Old.

A. The Construction Code Official shall notify public utility providers and municipalities annually of planned work on Town roads, streets and sidewalks. Any work to be done on these roads, streets and sidewalks will have to be done before paving has commenced. Such notice shall state that no road, street or sidewalk opening permit shall be issued for openings, cuts or excavations in such Town road, street or sidewalk for a period of 10 years after the date of paving. The notice shall also notify such permittee that applications for road, street and sidewalk opening permits, for work to be done prior to such paving shall be submitted promptly in order that the work covered by the permit may be completed before paving.

B. During such 10 year period, no permit shall be issued to open, cut or excavate in such Town road, street or sidewalk unless, in the judgment of the Construction Code Official, an emergency or other condition exists which makes it absolutely essential that the road or street opening permit be issued.

C. Upon application for a permit involving street, road and/or sidewalks that have been repaved or otherwise restored in the preceding 10 years, the Town Engineer, in conjunction with the Town's Construction Official, shall determine the cost to repave, or otherwise restore, the sidewalk, road or street (from curb-to-curb and including restoration of signage, pavement marking and all other appurtenances) where the street opening will occur ("Repavement Fee"). The Town Engineer will convey the amount of the Repavement Fee to the Applicant and prior to issuance of the permit, the Applicant will provide payment by cash, certified check or bank draft to the Town Treasurer in that complete amount. The Repavement Fee will be deposited in an escrow account.

D. In the event of an emergency pursuant to 366-12, an initial estimated Repavement Fee of \$30,000 will be assessed. This initial estimated fee may increase – or decrease – upon final assessment of the application. If the Repavement Fee is assessed in an amount above the estimate, Applicant will be required to immediately pay the difference. All payments shall be by cash, certified check or bank draft to the Town Treasurer in that complete amount. In the event the Repavement Fee is calculated at an amount less than \$30,000, the difference shall be returned to the Applicant.

E. In lieu of the Permittee restoring or repaving the road, street and/or sidewalk, the Town will ensure same is accomplished by procuring a contractor to perform the work in compliance with the requirements of the Local Public Contract Law. In the event the Repavement Fee is calculated at an amount that is more than the cost to the Town to have performed the resurfacing or repavement, the difference shall be returned to the Applicant.

SECTION THREE

Severability. If any term or provision of this Ordinance is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, in whole or in part, such determination shall not affect the validity of the remaining terms and provisions of this Ordinance.

SECTION FOUR:

Repealer. To the extent that any provision of the Code of the Town of West New York is found to conflict with this Ordinance, in whole or in part, this Ordinance shall control.

SECTION FIVE

In order to avoid accidental repeal of existing provisions, the Town Clerk and the Corporation Counsel are hereby authorized to change any chapter numbers, article numbers and/or section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing Code.

SECTION SIX:

This Ordinance shall take effect upon passage and publication as required by law.

SUMMARY OF ORDINANCE

Chapter 352 is amended to require that Applicants for excavation and opening permits involving streets, roads or sidewalks that have been paved or otherwise restored in the preceding 10-year period shall provide a Repavement Fee to the Town and the Town shall perform the repavement or restoration through a contractor procured pursuant to the requirements of the Local Public Contract Law.

Introduced: 6/28/2023

Adopted: 7/19/2023

Statement

The foregoing ordinance having been previously adopted for first reading and published was further considered by the Mayor and Board of Commissioners of the Town of West New York on **July 19, 2023** and at said date was duly and finally adopted after public hearing thereon.

Adelinny Plaza, RMC
Town Clerk

Commissioner Marcos A. Arroyo

Commissioner Victor M. Barrera

Commissioner Marielka A. Diaz

Commissioner Adam W. Parkinson

Mayor Albio Sires
Board of Commissioners

Attest: _____
Adelinny Plaza, RMC
Town Clerk