

**ORDINANCE 2278-21**  
**AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 444,  
STREETS AND SIDEWALKS, ARTICLE III, STREET OPENINGS**

BE IT ORDAINED by the Municipal Council of the Borough of Hawthorne, in the County of Passaic and State of New Jersey, that:

Section One. Chapter 444, Streets and Sidewalks, Article III, Street Openings, repealed and replaced, with the revised Article to read as follows:

ARTICLE III  
STREET OPENINGS

§444-4. Permit required.

No street opening or excavation shall be permitted in any street in the Borough of Hawthorne for any purpose unless such person or entity seeking to perform such street opening or excavation complies with the provisions set forth hereafter. A separate permit shall be obtained for each opening.

§ 444-5. Application for permit.

A. No person or entity seeking to perform a street opening or excavation shall be authorized to commence work without having first applied for a street opening permit from the Department of Public Works in advance of such street opening or excavation, except in cases of "emergency" as said term is defined hereafter. With respect to nonemergent situations, any person or entity wishing to perform a street opening or excavation shall submit a written application for a street opening permit to the Director of the Department Works or his designee at least five business days prior to scheduling the street opening or excavation. Such application shall be accompanied with a permit application fee and escrow account deposit for engineering inspections as set forth in Chapter 220, Fees. Inspection fees shall be paid from the application fee or escrow amount paid by the applicant in accordance with the schedule for such services set forth in Chapter 220, Fees. In the event there is insufficient funds, as determined by the Municipal Engineer, to cover the cost of inspections, then the Engineer or Director shall have the authority to stop the work entailed by the permit until such time as the escrow account is replenished.

B. The Director or his designee may, in his discretion, require of the applicant drawings or specifications detailing the work to be undertaken and performed including, where deemed necessary, drawings prepared by an Engineer licensed in the State of New Jersey to perform such work.

C. Upon issuance of a street opening permit by the Director or his designee to the applicant, a copy of same shall be furnished to the Municipal Engineer and the Engineer shall thereafter assume supervision of such street opening or excavation, except as otherwise provided for below.

D. Any street opening permit issued hereunder shall be valid only if the work to be performed pursuant thereto is commenced within 45 days after issuance of said permit. If such work is not commenced within said period of time, the permit shall expire, and a new permit shall be required for work to be commenced. Notwithstanding the same, the Director or his designee, may grant an extension of the permit once issued for an additional 45-day period upon good cause shown by the applicant.

E. In the event the work entails any work to sidewalks or curbs, a separate permit shall be required in accordance with ordinance pertaining to the same.

#### § 444-6. Minor Road Opening Permit

A. Definition. Any road opening where the amount of pavement disturbed is less than 20 linear feet in any direction and less than 50 square feet in total shall be deemed Minor Work and subject to the issuance of a Minor Road Opening Permit.

B. Review. All Minor Road Opening Permits shall be reviewed by the Department of Public Works Director or his designee. In his discretion, the Director may require detailed plans or drawings prepared by a licensed engineer and may refer review to the Municipal Engineer.

C. Inspection of Work. All inspection of such work shall be conducted by the Department of Public Works unless the Director or his designee determines that the nature or scope of the project requires inspection by the Municipal Engineer. In such event, the fees associated with the work shall be those applicable to projects not deemed Minor Work. The permit fee paid by the applicant for Minor Work shall entitle the applicant to two (2) inspections by the Department of Public Works. In the event additional inspections are required, an additional fee shall be paid in accordance with the Ordinance. Inspection by the Municipal Engineer shall be as set forth elsewhere herein.

D. Payment of Costs and Bond Requirements. Notwithstanding anything to the contrary in this Ordinance, the Escrow and Bond Requirements applicable to projects not deemed Minor Work shall be deemed waived unless the Director or his designee, in his discretion, determines that the nature or scope of work requires review or inspection by the Municipal Engineer. In such event, the Director shall require the payment of expense by way of escrow payment and may, in his reasonable discretion, require a bond as set forth herein. Nothing herein shall relieve the applicant performing Minor Work of the obligation to provide the performance and maintenance guarantee set forth below.

E. Work by Public Utilities. Notwithstanding anything set forth in this section to the contrary, no work undertaken by a Public Utility that is subject to regulation by the New Jersey Board of Public Utilities (BPU) shall be deemed Minor Work.

#### § 444-7. Bond Requirement.

Any person or entity wishing to perform a street opening or excavation, other than Minor Work, shall post a cash performance bond with the Borough Clerk as follows:

A. With respect to any person or entity which has performed more than five street openings or excavations in the prior calendar year, such person or entity shall be required to post a cash performance bond in the amount of \$10,000 which shall be maintained in such amount for the entire current calendar, and replenished if and as needed.

B. With respect to any person or entity which has performed less than five street openings or excavations in the prior calendar year, such person or entity shall be required to post a cash performance bond in the amount of \$1,000 for each proposed street opening or excavation. This amount may be increased upon the recommendation of the Municipal Engineer based upon the street opening or excavation work to be performed, or after any inspection by the Municipal Engineer.

C. With the approval of the Municipal Engineer, the cash performance bond may be in the form of a letter of credit satisfactory in form and substance to the Municipal Attorney.

- D. The performance bond shall be available to the Borough in the event that any backfilling or permanent pavement restoration is not performed in accordance with the provisions hereof or should such backfilling or permanent pavement restoration be unacceptable to the Municipal Engineer after inspection thereof. The performance bond shall be held for a period of one year from completion of the work as a maintenance guarantee.
- E. For work requiring the excavation of a trench in excess of 50 linear feet in any direction or 100 square feet in total, including aggregation of all work within any 500-foot road section, the applicant shall, in addition to any performance bond hereunder, deliver to the Borough a two-year maintenance bond in such sum as may be determined by the Borough Engineer based upon an estimate he has prepared regarding the same.
- F. In the case of a public utility, regulated by the Board of Public Utilities, a blanket bond and blanket insurance policy may be substituted for the coverage called for above. For all other individuals or entities performing work in accordance with this Section, a Certificate of Insurance naming the Borough of Hawthorne as additional insured shall be provided as set forth elsewhere herein.
- G. In the case of Minor Work, the applicant shall post with the Borough the sum of \$500, which may be in the form of cash, letter or credit or bond, which shall be held for a period of one year following the completion of the work thereunder so as to ensure that the work to be performed has been satisfactorily completed and the road adequately restored.
- H. Notwithstanding the foregoing, in the case of a development requiring the execution of a Developer's Agreement between the developer and the Borough of Hawthorne, the bond requirement set forth hereunder and all inspection work attendant to the installation of improvements may be incorporated into said Developer's Agreement and governed thereby.

§ 444-8. Emergency Street Opening or Excavation.

In the event of an emergency, as defined herein, the person or entity performing a street opening or excavation shall notify the Director of Public Works or his designee of such street opening or excavation not later than the next business day after such emergency street opening or excavation has taken place. Notwithstanding such requirement, no work shall be undertaken without first reporting the emergency condition requiring such work to the Hawthorne Police Department. Upon report to the Director or his designee, the person or entity performing the work shall promptly complete a street opening permit application for each such emergency and shall pay the permit application fee and engineering inspection escrow payment associated with the same. The Director shall notify the Municipal Engineer that an emergency street opening or excavation has taken place, and the Municipal Engineer shall assume supervision of such street opening or excavation including restoration of the same. The term "emergency" shall mean that such street opening or excavation was necessary in order to restore water, gas, electric, sewer or other utility service to property previously receiving such service prior to an unforeseen interruption thereof.

§ 444-9. Supervision of Work.

Prior to actual commencement of any work, including but not limited to, test borings, excavations, new installations or emergency openings, the person or entity wishing to perform same shall notify the Department of Public Works or, in cases of emergency, the Hawthorne Police Department, of the work to be done, its location and when it will be performed. The Department of Public Works shall, except in the case of Minor work, notify the Municipal Engineer of the commencement of such work, and the Municipal Engineer shall assume supervision of all work performed and to be performed. The Director or the Municipal Engineer shall have the authority, in addition to any other authority granted, to suspend work authorized by any permit issued to the applicant, in their discretion, in order to protect or preserve life, health or safety.

#### § 444-10.1 Performance Standards.

##### A. Backfilling and Temporary Street Restoration.

The Director, his designee, or the Municipal Engineer shall inspect all emergent and nonemergent street openings and excavations to confirm that same has been backfilled with dense-graded or recycled concrete in such manner as shall be satisfactory to the inspector. In the event that the person performing the inspection determines that such backfilling is substandard, he shall notify such person or entity performing the street opening or excavation and shall require a return to the site for replacement backfilling in accordance with the specifications set forth herein and subject to the Director or Municipal Engineer's inspection and approval. All temporary pavement shall likewise be subject to inspection and approval of the Director, his designee or the Municipal Engineer. To the extent more detailed backfilling requirements are set forth in the application form provided to the applicant or any additional material associated with the same, the applicant shall adhere to such standard at all times.

##### B. Permanent Pavement Restoration.

Permanent pavement restoration shall be subject to the inspection and approval of the Director, his designee, or the Municipal Engineer and shall comply with the following specifications:

- A. Permanent restoration of pavement surface over the street opening shall be completed no later than three months from the date of the installation of the temporary pavement, weather permitting, or within the same construction season if so required on the permit. This shall apply to trenches less than five feet in depth. For trenches greater than five feet, the Director or the Municipal Engineer shall determine when permanent restoration of pavement surface shall occur.
- B. Prior to the installation of the permanent pavement, the subgrade shall be properly prepared and the existing pavement neatly cut back a minimum of six inches from the edge of the trench or pavement damage in a straight line with vertical faces free of foreign matter. A tack coat shall be applied to the vertical faces of the existing pavement prior to the placement of the patch material. In lieu of cutting the pavement prior to the installation of permanent pavement, milling shall be permitted. For trenches greater than two feet from the edge of road and in excess of 100 feet, milling shall be required.
- C. The permanent material shall consist of a bottom course of bituminous stabilized base, Mix 1-2, placed at a compacted thickness of six inches installed in two three-inch lifts and a surface course of bituminous concrete, Mix 1-5, placed at a compacted thickness of 2 inches.

- D. All pavement restoration, both temporary and permanent, shall be constructed in accordance with the applicable specification of the New Jersey State Highway Standards and Specifications.
- E. The surface course shall be level with the grade of the surrounding pavement when it is compacted. The joint between the patch and the existing pavement shall be sealed with an asphalt emulsion.
- F. The following shall govern the extent of repavement.
  - 1. For trenches located more than 2 feet from the center line of the roadway, resurfacing or repaving shall be from one foot of the far side of the trench to the road edge or curb.
  - 2. For trenches within 2 feet of the roadway centerline, resurfacing or repaving shall be from the centerline of the road to the road edge or curb, or in the case where the trench crosses the roadway centerline, the repaving shall be from one foot of the far side of the trench to the road edge or curb.
  - 3. For trenches 10 feet or greater in width or in excess of 50% of the roadway width, whichever being the lesser, resurfacing or repaving shall be from the road edge or curb to the road edge or curb.
- G. Milling shall be performed in accordance with the requirements of the Municipal Engineer based upon conditions and elevations of the existing surface of the street, curb face, drainage characteristics and bonding with the permanent pavement such that unraveling of new permanent pavement will not occur. Millings shall be disposed of by the permittee or recycled and tonnage thereof shall be reported to the Municipal Recycling Coordinator.
- H. The Municipal Engineer shall be authorized to make field adjustments to permanent pavement restoration based upon site conditions and considerations. In addition, the applicant shall be required to adhere to any standard set forth in the application provided to the applicant including any attachments included therewith.

§ 444-10.2. Seasonal Limitations; Work in Recently Repaved Streets.

A. Work in cutting trenches, backfilling and restoration of surface of trenches in roads, streets or thoroughfares shall not be permitted during the period from November 15 to April 1, except at the discretion of the Director or his designee, which may permit the same in cases of emergency, hardship or unusual circumstances. Backfilling and restoration of surfaces shall be performed in accordance with specifications set forth in this article. Nothing herein shall prevent emergency work from being undertaken in accordance with this Article.

B. No road, street or thoroughfare improved by paving with macadam or bituminous concrete surface may be opened for a period of five years from the time of acceptance of said work by the Borough without the approval of the Director or his designee, upon recommendation of the Municipal Engineer, except in the case of an emergency. Any road opening made on an emergency basis, or as may be permitted by the Director, in any road paved within five years from the date of the incursion therein, shall be repaired or repaved on a curb-to-curb basis, or by means of infrared repair, as determined by the Municipal Engineer in his sole and absolute discretion.

§ 444-10.3. Safety Requirements.

The permittee shall provide, erect and maintain barricades, suitable and sufficient warning lights, danger signals and signs. If, in the opinion of the Municipal Engineer or Chief of Police or his designee, the work shall so require, additional measures shall be taken to protect said work and to protect the safety of the public. This may include the hiring of off-duty police officers as provided for by Ordinance. Highways, streets or thoroughfares closed to traffic shall be protected by effective barricades on which shall be placed warning signs. The permittee shall provide and maintain warning and detour signs at all closures, intersections and along the detour routes, directing the traffic around the closed portions of the street, highway or thoroughfare so that the temporary detour route or routes shall be indicated clearly throughout the entire length. All barricades and obstructions shall be illuminated at night and all lights shall be kept burning from sunset to sunrise.

#### § 444-10.4. Entry Upon Private Property.

The permittee shall not enter upon or make use of any private property along the line of work, except when permission is secured in writing therefor from the owner of said property. He will be held responsible for damages or injury done by those in his employ to any private or public property of any character during the prosecution of the work.

#### § 444-10.5. Insurance Requirements.

Any permittee performing any work under the provisions of this article shall be required to furnish proof of insurance, naming the Borough of Hawthorne as additional insured, for bodily injury and property damaged in an amount of not less than \$1,000,000 as to each such coverage. The permittee shall also provide proof of motor vehicle insurance for all vehicles used in undertaking such work as well as worker's compensation insurance as required by law. The Director, in his discretion, may waive such requirement in the case of Minor Work, however the applicant shall nevertheless be required to indemnify, defend and hold the Borough of Hawthorne harmless with regard to any work undertaken by the applicant, its agents, servants and employees.

#### § 444-10.6. Performance and Completion of Work

No work shall be performed by the permittee between the hours of 6:00 p.m. and 8:00 a.m. nor on Sundays nor on legal holidays, except in cases of emergency. Work once commenced shall be diligently pursued and completed expeditiously. All work shall be fully completed within 30 days from the initial construction start unless such time is extended by the Director of the Department of Public Works, upon recommendation from the Municipal Engineer. In the event the work has not been completed in such time frame, the same shall constitute a default in performance by the permittee, allowing the Borough of Hawthorne, among other remedies, to retain the services of a separate contractor to complete the work and charge the cost of the same to the performance guarantee posted by the permittee.

#### § 444-10.7. Excavation and Preparation of the Trench

- A. The permittee shall proceed with caution in the excavation and preparation of the trench so that the exact location of underground structures, both known and unknown, may be determined. The trench shall be dug so that the pipe can be laid to the alignment and depth required. Minimum depth of cover from surface of ground to top of pipe barrel shall be shown on the drawings. No trench shall be

excavated more than 100 linear feet in advance of pipe laying unless authorized by the Municipal Engineer. The trench shall be braced and drained so that the workmen may work therein safely and efficiently. Bracing shall adhere to 29 CFR 1926.652 or any modification thereto. It is essential that the discharge of the trench dewatering pumps be conducted to natural drainage channels or drains.

- B. The trench shall be excavated to the depth required so as to provide a uniform and continuous bearing and support for the pipe on solid and undisturbed ground. Any part of the bottom of the trench excavated below the specified grade shall be corrected with approved material and thoroughly compacted.
- C. Where the bottom of the trench at subgrade is found to be unstable or to include ashes, cinders, all types of refuse, vegetable or other organic material or large pieces of fragments of inorganic material, the permittee shall excavate and remove such unsuitable material.
- D. Hand methods of excavation shall be employed in locations shown on the drawings. In other locations, the permittee may use trench-digging machinery or employ hand methods. The permittee shall be held responsible for the protection of adjacent piping or other utilities and any damage shall be repaired at his expense.

#### § 444-10.8. Clean-up

- A. As the work progresses, the permittee shall clean up the streets and rights-of-way and the backfill shall be rounded within the limits of the excavation. Soft trenches shall be marked and protected with adequate lights and subsequent settlement shall be promptly refilled.
- B. Upon completion of the work, all dirt, rubbish and excess earth from the excavation shall be hauled to a dump provided by the permittee and the construction site left clean. All surplus materials furnished by the permittee and all tools and temporary structures shall be removed from the site by the permittee.

#### § 444-10.9. Borough work and contracts.

Nothing contained in this article shall be construed as requiring the issuance of a permit for the performance of any opening made by the Borough or under a contract with the Borough.

#### § 444-10.10. Violations and Penalties.

The provisions of this Chapter shall be enforceable by any law enforcement officer in the Borough of Hawthorne as well as the Director of the Department Works, the Construction Official and the Land Use Officer. Any person violating any provision of this Chapter shall, which may include the land owner undertaking such work or any contractor employed for such purpose, upon conviction, in addition to any other penalty or remedy authorized, be subject to payment of a fine not to exceed \$2,000 for each offense, which may be deemed a recurring offense, or imprisonment of a term not to exceed 90 days or the requirement to perform community service for not more than 90 days or any combination thereof.

Section 2. Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

Section 3. This Ordinance shall be in full force and effect from and after its adoption and any publication as required by law.

FRANK E. MATTHEWS  
Council President

Attest:

Lori Fernandez, RMC, CMC  
Borough Clerk

#### NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed upon first reading at a meeting of the Municipal Council of the Borough of Hawthorne, in the County of Passaic, New Jersey, held on August 16, 2021. It will be further considered for final passage after public hearing thereon, at a meeting of said Municipal Council to be held in the Municipal Building, 445 Lafayette Avenue, in said Borough, on September 1, 2021, at 7:00 p.m., at which time and place all interested members of the public who desire will be given an opportunity to be heard in connection with said Ordinance, and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available on the borough website, [www.hawthornenj.org](http://www.hawthornenj.org), and at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

Lori Fernandez, RMC, CMC  
Borough Clerk

**THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF AN ORDINANCE ADOPTED BY THE MUNICIPAL COUNCIL OF THE BOROUGH OF HAWTHORNE AT A REGULAR MEETING ON SEPTEMBER 1, 2021.**