ORDINANCE NO. 2026-27

AN ORDINANCE AMENDING CHAPTER 16, "STREETS, SIDEWALKS, AND SANITATION" TO AMEND THE REGULATORY REQUIREMENTS FOR ROAD OPENINGS OF THE CODE OF THE BOROUGH OF KEYPORT

WHEREAS, the Borough of Keyport, the County of Monmouth, State of New Jersey, (hereinafter the "Borough") is a public body corporate and politic of the State of New Jersey; and

WHEREAS, N.J.S.A. 40:48-2 authorizes the Borough to make, amend, repeal and enforce ordinances it may deem necessary and proper for the good government, 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, upon the recommendation of the Borough Engineer to modernize the provision to clearly address commercial general liability, automobile liability, worker's compensation/employer liability and the applicable additional insurance requirements; and

WHEREAS, the Borough desires to amend several sub-chapters within Chapter 16, Streets, Sidewalks and Sanitation of the Borough Code; and

WHEREAS, the Borough desires to amend the Code in accordance with the terms provided for herein; and

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the Borough of Keyport, in the County of Monmouth, State of New Jersey, as follows:

Deletions are indicated by ~~strikethroughs~~
Additions are indicated in **bold underline**
Language that remains unchanged is not highlighted in anyway

SECTION I. Subsection 16-1.2 in Chapter XVI, Streets, Sidewalks and Sanitation, of the Code is hereby amended as follows:

§ 16-1.2. Definitions and word usage

For the purposes of this section, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include singular, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

APPLICANT

Any person making written application to the Borough Clerk for an excavation permit hereunder. In the event that the applicant is a corporation or partnership, the applicant shall be the individual authorized to make said application on behalf of the corporation or business entity.

EMERGENCY

Any unforeseen circumstance or occurrence, the existence of which constitutes a clear and immediate danger or hazard to person or property.

EXCAVATION WORK

The excavation, removal, replacement, repair, construction, water, ~~and~~ sewer, **gas, electric, or telecommunications mains or** connections or other disturbance of any portion of the public improvements within a public street or drainage right-of-way. These public improvements include, but are not limited to, curbs, sidewalks, driveways and driveway aprons, drainage structures and conduits, pavements, base courses, gutters, retaining walls, channels, headwalls, railings, guardrails or any other public improvements existing within the public right-of-way, and retention/detention basins. For the purposes of this section, that work which is being performed outside of the public right-of-way, but which requires the storage of materials or the operation of equipment within the public right- of-way, in such a manner as may cause damage, will also be deemed "excavation work." The term "excavation work" shall also include the construction, addition, installation or other disturbance of the whole or portions of the improvements within a public street, drainage right-of-way or other public grounds by persons other than those exempted from the provisions of this section, including privately sponsored construction of curbing, sidewalks, pavement extensions, aprons, drainage or any other portions of the public improvements.

* * *

SECTION II. Subsection 16-1.8 in Chapter XVI, Streets, Sidewalks and Sanitation, of the Code is hereby amended as follows:

§ 16-1.8. Surety

a. If an individual cash repair deposit required by subsection 16-1.7 exceeds $1,000 or if the aggregate of the cash repair deposits which any applicant expects to be required to provide within a period of one year exceeds $5,000 or if the applicant is a public utility regulated by the Federal government and/or the State of New Jersey, then the Borough Council may allow the provisions of all or, at the Borough Council's discretion, a portion of the required cash repair deposits in the form of a surety bond. If a surety bond is to be provided in accordance with the requirement of this subsection, the applicant shall deposit it with the Borough Clerk in accordance with paragraph b. of this subsection, made payable to the Borough of Keyport. The required bond must be:

1. With good sufficient surety.

2. By a surety company authorized to transact business in the State of New Jersey.

3. Satisfactory to the Borough Attorney in form and substance.

4. Conditioned upon the permittee's compliance with this section and to secure and hold the Borough and its officers harmless against any and all claims, judgments or other costs arising from the excavations and other work covered by the excavation permit or for which the Borough, the Borough Council or any Borough Officer may be made liable by reason of any accident or injury to person or property through the fault of the permittee either in not properly guarding the excavation or for any other injury resulting from the negligence of the permittee, and shall be further conditioned to fill up, restore

and place in good and safe condition as near as may be to its original condition all openings and excavations made in streets to the satisfaction of the Borough.

b. The amount of the performance bond to be submitted to the Borough Clerk shall be a minimum of double the amount of the cash repair deposit required pursuant to subsection 16-1.7 of this section. In the event that the Borough Engineer or Superintendent of Public Works or his designee determines that the cost of proper restoration of the excavation work will exceed the amount of the calculation, the additional bond for the particular job in question may be required by the Department of Public Works in a sum determined by the Borough Engineer.

c. In lieu of a performance bond per job, any utility regulated by the Board of ~~Regulatory Commissioners~~ **Public Utilities,** or any contractor expecting to request multiple permits per year, may post a blanket performance guarantee in the minimum sum of $10,000 with the Borough on an annual basis. In the event the Borough Engineer or Superintendent of Public Works or his designee determines that the cost of proper restoration of the area disturbed and pavement surface will exceed the amount of the blanket bond, an additional bond for that particular job, in an amount to be determined by the Borough Engineer, shall be posted by the permittee prior to the issuance of any permit(s).

SECTION III. Subsection 16-1.25 in Chapter XVI, Streets, Sidewalks and Sanitation, of the Code is hereby amended as follows:

§ 16-1.25 Restoration of the surface.

a. Restoration

1. Once the restoration work area has been properly saw cut, and the back fill tamped and compacted, the permittee shall install no less than ~~eight~~ **six** inches of ~~bituminous stabilized~~ **hot mix asphalt 19M64** base course to the trench surface **in lifts conforming to the latest edition of the NJDOT Standard Specifications for Road and Bridge Construction**. If the distance from the edge of the excavation work area to the existing curb is less than two feet, the permittee shall be required to excavate the curb and evenly install ~~eight~~ **six** inches of ~~bituminous stabilized~~ **hot mix asphalt 19M64** base course in the entire area.

2. **For excavation conducted on roads constructed of concrete base with an asphalt overlay, excavations which leaves slabs of concrete based measuring less than four feet in length or width on the perimeter of the excavation, the permittee shall be required to excavate the concrete base to the nearest existing joint and install six inches of hot asphalt 19M64 base course or an equivalent concrete pavement in the entire area.**

3. The partially restored pavement shall be allowed to settle for no less than 90 and no more than 180 days. At the end of the period of time of settlement required by the Superintendent of the Department of Public Works or his designee, an inspection shall be performed by the Superintendent of Public Works or his designee. **The permittee shall immediately repair any settlement, potholes, depressions, or failures occurring prior to acceptance.**

4. At this time, unless ~~the~~ **otherwise approved by the Borough Engineer or** Superintendent of the Department of Public Works, ~~using a standard of reasonableness, authorizes a less stringent action,~~ the permittee shall be required to mill and restore the ~~excavation~~ work area ~~surface extending from the curb to the centerline of the road or a minimum of one foot beyond the outer edges of the excavation, whichever is greater, and install no less than two inches of FABC surface course. The permittee shall also be required to provide a tack coat on all existing bituminous and concrete surfaces and a hot-poured rubber asphalt joint sealer (per section 908 of DOT Standard Specifications for Roads and Bridges). If the excavation work area will be within two feet or less of a previous excavation made within one year (by the same permittee along the same side of the road), the permittee shall be required to mill and restore between the outermost excavation from the centerline of the roadway to the curb.~~ **as follows**:

    a. **Minor Openings: Where less than 20% of the existing paved roadway width and a distance parallel or longitudinal to the roadway centerline of less than 25 feet has been disturbed, the permittee shall sawcut the existing surface course 2 inches deep at a location 12 inches beyond the trench surface and remove the existing pavement to the same depth. Where the limits of the proposed pavement restoration are within two (2) feet of the face of curb, edge of pavement, or roadway centerline, the restoration limits shall be extended to meet the curb, edge of pavement, or roadway centerline, as applicable. Pavement removal shall be done by milling or another method as approved by the Borough Engineer or Superintendent of the Department of Public Works. The permittee shall clean and sweep the milled surface and apply tack coat for immediate paving. The permittee shall then pave the area with 2 inches of Hot Mix Asphalt 9.5M64 surface course in accordance with the latest edition of the NJDOT Standard Specifications for Road and Bridge Construction. Terminal ends of the paving shall be keyed and cut vertical to provide a smooth transition to the existing asphalt surface. Feathering will not be allowed. Joints along existing asphalt surfaces shall be sealed with hot-applied polymeric joint adhesive**.

    b. **Major Openings: Where 20% or more of the existing paved roadway width and/or a distance parallel or longitudinal to the roadway centerline of 25 feet or more has been disturbed, the permittee shall mill the entire pavement surface from edge to edge or curb to curb and the full length of the trench plus five (5) feet on each terminal end at a minimum depth of 2 inches. The permittee shall clean and sweep the milled surface and apply**

tack coat for immediate paving. The permittee shall then pave the area with 2 inches of Hot Mix Asphalt 9.5M64 surface course in accordance with the latest edition of the NJDOT Standard Specifications for Road and Bridge Construction. Terminal ends of the paving shall be keyed and cut vertical to provide a smooth transition to the existing asphalt surface. Feathering will not be allowed. Joints along existing asphalt surfaces shall be sealed with hot-applied polymeric joint adhesive

~~5. If the distance from the edge of the excavation work area to the existing curb is greater than two feet and less than four feet, permittee shall be required to mill this area, as well as the surface of the excavation work area. In the event that the excavation work area opening is smaller than 10 square yards, the Superintendent of the Department of Public Works, or his designee, may determine that milling and/or other trench repair methods be used.~~

6. **For excavations conducted on roads constructed of concrete base with an asphalt overlay, milling will be required to the full depth of the overlay to the limits determined by the Borough Engineer.**
7. **For excavations on roads paved within the preceding five (5) years, the Borough Engineer or Superintendent of the Department of Public Works, at their discretion, may require half-width or full-width milling on all excavations as deemed appropriate to maintain the integrity of the pavement.**
8. **With the approval of the Borough Engineer, the centerline milling limit may be offset as necessary to avoid disturbing existing pavement markings or raised pavement markers.**
9. **Striping and pavement markings affected by excavations or pavement restoration shall be restored with thermoplastic material in accordance with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD).**
10. **The Borough Engineer may require larger restoration limits whenever existing pavement condition, trench configuration, roadway classification, drainage, traffic loading, or adjacent pavement deterioration warrant**
11. The permittee will be required to replace any structures including, but not limited to, curb, pavement and sidewalk, that had been undermined by the adjacent trench excavation and restoration work, at his or its expense. Such work shall be performed according to Borough standards.
12. Rules and Regulations. Applicant shall comply with all ~~BOCA Codes~~, **New Jersey Uniform Construction Code**, **American with Disabilities Act (ADA),** Ordinances of Borough of Keyport, resolutions or conditions of the Mayor and Council, or any duly constituted Board and any regulations which the Superintendent of Public Works or the Borough Engineer may establish.

b. Maintenance procedures.

1. When final pavement restoration is approved, as required in paragraph a above, the Superintendent of Public Works or his designee, shall notify the Borough Clerk in writing that the portion of the cash repair deposit or performance guarantee pertaining to the street opening permit posted by the permittee at the onset of the project may be released subject to the retainage requested herein below. Such release shall be subject to the permittee agreeing to maintain the restored excavation work area for a period of two years from the date of final approval of the work and posting a maintenance bond to guarantee same. The permittee shall also agree to repair any adjacent structures including but not limited to curb, pavement and sidewalk that are damaged as a result of any excavation work area settlement during this period of time. In furtherance of these agreements, the Borough Clerk shall retain as a cash retainage, 50% of the cash repair deposit and/or performance guarantee during the two year maintenance period.

2. If an inspection reveals that the restored excavation work area becomes unacceptable, the Superintendent of the Department of Public Works, or his designee shall notify the permittee that he must repair the area in accordance with the aforementioned procedure within 30 days from the date of notification or sooner if safety on public conveyances is involved. If the permittee fails to repair the trench within this time, the Superintendent of the Department of Public Works, or his designee shall notify the Borough Clerk and he shall allow the Borough to utilize the permittee's cash retainage and maintenance bond to pay for the cost of repairing the excavation work area. If the restoration costs exceed the maintenance bond, the permittee shall be liable for said additional costs.

3. Upon the termination of the two-year maintenance period, any remaining portion of said maintenance bond that has not been expended shall be returned to the permittee without interest.

c. The permittee may be required to place a temporary surface over openings made in paved traffic lanes. Except when the permanent replacement pavement is to be replaced before the opening of the cut to traffic, the fill above the bottom of the existing pavement shall be tamped into place, properly graded and topped with a minimum of two inches of bituminous patch material which is suitable to maintain the opening in good condition until permanent restoration can be made. The crown of the temporary restoration shall not exceed one inch above the adjoining pavement. The permittee shall exercise special care in making such temporary restorations and must maintain such restorations in safe traveling condition until such time as permanent restorations are made. If, in the judgment of the Borough Engineer, it is not expedient to replace the pavement over any cut or excavation made in the street upon completion of the work allowed under such permit by reason of the looseness of the earth or weather conditions or any other reason, he may direct the permittee to lay a temporary pavement of steel plate or other suitable material designated by him over such cut or excavation, to remain until such time as the repair of the original pavement may be properly made.

d. Acceptance or approval of any excavation work by the Superintendent of the Department of Public Works, his designee, or the Borough Engineer shall not prevent the Borough from asserting a claim against the permittee and his or its surety under the surety bond required hereunder for incomplete or defective work if discovered within 24 months from the completion of the excavation work. The presence of a representative of the Department of Public Works or the Borough Engineer during the performance of any excavation work shall not relieve the permittee of its responsibilities hereunder.

e. Openings in newer paved streets; additional fee.

1. No permit shall be issued by the Superintendent of Public Works of the Borough of Keyport which would allow an excavation or opening of a paved or improved street surface less than five years old unless the applicant can clearly demonstrate that public health or safety requires that the proposed work be permitted or unless an emergency condition exists.

2. If by special permission of the Superintendent of Public Works a permit is issued to open any paved or improved street surface less than five years old, an additional fee shall be charged for the opening, except that the additional fee shall be waived in the event the work is of an emergency nature. ~~The additional fee shall be equal to the sum of $300 for the first two years and $150 for years three through five.~~ **The surcharge shall be on a sliding scale and shall be equal to 2% of the cost of restoring the opening for each unelapsed month or fraction thereof of the five-year restricted period, but in no event shall the surcharge be less than $500.**

3. **Where such work is authorized, the Borough Engineer or Superintendent of the Department of Public Works may require enhanced restoration measures, including but not limited to full-width resurfacing, extended restoration limits, and an extended maintenance guarantee, as deemed necessary to protect the integrity of the roadway.**

SECTION IV. Subsection 16-1.36 in Chapter XVI, Streets, Sidewalks and Sanitation, of the Code is hereby amended as follows:

§ 16-1.36 Insurance

a. A permittee, prior to the issuance of the permit to do the work hereunder, shall furnish to the Borough Clerk satisfactory certificates of insurance indicating that the permittee has in force and will maintain in force, during the performance of the excavation work and the period of the excavation permit, public liability insurance ~~of not less than $300,000 for any one person and $1,000,000 for any one accident, and property damage insurance of not less than $500,000,~~ duly issued by an insurance company authorized to do business in this State~~.~~ **as follows:**

1. **Commercial General Liability: $2,000,000 Each Occurrence / $3,000,000 Aggregate**
    a. **Liquor Liability, Sexual Abuse / Molestation and Athletic Activities must be included**
    b. **Completed Operations must be included**
2. **Business Automobile Liability: $1,000,000 combined single limit any one accident**
    a. **All owned, hired or non-owned automobiles used in connection with this agreement**
3. **Professional Liability/Errors & Omissions Liability: $1,000,000 each claim / $1,000,000 annual aggregate**
    a. **Must not contain cyber, privacy or network-related exclusions**
4. **Workers' Compensation: Statutory**
5. **Employers' Liability: $1,000,000**
6. **Crime: $1,000,000**
    a. **Must include Employee Theft and Client Coverage**
7. **Cyber Liability: $1,000,000 Each Claim / $1,000,000 Aggregate**

The Borough shall be named as an additional insured on the permittee's insurance policy. In cases where the character or nature of the proposed excavation work is such as to present an unusual hazard or a higher than normal risk of damage or injury, the Borough Council may require the provision of increased amounts of liability and property damage insurance. Any permits which occasion such increased hazard or liability shall be referred, by the Superintendent of the Department of Public Works, for the consideration of the Council prior to the issuance of a permit.

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SECTION V. Subsection 16-1.39 in Chapter XVI, Streets, Sidewalks and Sanitation, of the Code is hereby amended as follows:

For the violation of the provisions herein contained, the Superintendent of the Department of Public Works or the Borough Engineer may revoke the permit and the excavation or opening and pavements may be restored by the Borough of Keyport at the expense of the permittee. In addition, any person, firm or corporation violating any provision of this section shall, upon conviction thereof, be subject to the penalties stated in Chapter I, Section 1-5, General Penalty, except that the minimum penalty shall not be less than ~~$300~~ **$500** for a first offense and for a second or subsequent offense shall not be less than ~~$500~~ **$1,000**.

SECTION VI. It is the intent of the Municipal Council to incorporate the additions, amendments and/or supplements contained in this Ordinance in to the Code. All of the remaining provisions in Chapter XVI of the Code shall remain unchanged and have full force and legal effect. All other resolutions and ordinances governing regulations for road openings enacted and inconsistent herewith are hereby modified pursuant to the terms of this Ordinance.

SECTION VII. The codifier is authorized to renumber, reletter, redesignate, and make such non-substantive formatting, cross-reference, and organizational changes as are necessary to give

effect to the amendments adopted by this Ordinance. Any list, subsection, paragraph, subparagraph, table, or other provision whose numbering or lettering has been altered by the deletion, addition, or relocation of provisions shall be adjusted accordingly to maintain a logical and sequential order. Such renumbering, relettering, redesignation, and related editorial changes shall not be construed as substantive amendments to the Code.

SECTION VIII. This Ordinance shall take effect after twenty (20) days of its final passage by the Municipal Council, upon approval by the Mayor and publication as required by law.

Introduced: October 6, 2026
Public Hearing: October 20, 2026
Adopted: October 20, 2026

_____	_____
Michele Clark, RMC	Mayor Rose P. Araneo
Borough Clerk	Borough of Keyport