

**ORDINANCE 2023-09**

**AN ORDINANCE OF THE BOROUGH OF BAY HEAD, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING CHAPTER 209 OF THE BOROUGH CODE OF THE BOROUGH OF BAY HEAD, ENTITLED “STREETS AND SIDEWALKS”**

**NOW, THEREFORE, BE IT ORDAINED**, by the governing body of the Borough of Bay Head, County of Ocean, State of New Jersey, as follows:

**SECTION 1.** The Borough Code of the Borough of Bay Head is hereby amended and supplemented so as to amend Chapter 209, entitled “Streets and Sidewalks” so as to amend Article I entitled “Excavations” in its entirety so that it shall read as follows:

§ 209-1 Intent.

The intent of this article shall be to require municipal consent to open, excavate, dig in or disturb any roadways or streets or other municipally owned or controlled public place within the Borough and to require security or a deposit to ensure that the road, street, highway or other public place shall be restored to the condition they were in prior to the opening, excavation, digging or disturbance. The Borough shall protect the public safety and welfare in the use of said streets, roadways or places under the police power of the Borough by appropriate regulation.

§ 209-2 Permit required.

No person, firm or corporation shall excavate or open or dig in or upon or otherwise disturb the surface, soil or materials of any public street, easement, rights-of-way or other public place for the purpose of making connections to any water pipe, sewer pipe, gas pipe or other utility installation or to replace any sidewalks or curbs, or for any other purpose whatsoever, unless a permit so to do shall have first been obtained from the Public Works Supervisor.

§ 209-3 Application requirements.

No permit to open or excavate a public street or public place shall be issued except upon written application being made therefor. The application shall set forth the following information:

- A. The name, address 24/7 telephone number and email address of the applicant.
- B. The name, address 24/7 telephone number, email address and registration number of the contractor, if different from the applicant.

- C. The name, address, 24/7 telephone number and email address of the person under whose supervision the work will be performed, if different from the applicant.
- D. The name of the street or streets or public place to be involved by the opening.
- E. Length, width and depth expressed to the nearest foot; the area in square feet of the proposed opening or excavation; the area in square feet of the opening
- F. Description of any proposed utilities that might be affected by the proposed excavation.
- G. Purpose of the opening or excavation.
- H. The amount of the fee accompanying the application in accordance with the provisions of this section.
- I. The signature of or for the applicant.
- J. The applicant shall support the application with one of the following:
  - 1) A copy of the plan for the project.
  - 2) A sketch of sufficient detail to enable the official issuing the permit to act upon the application.
- K. Amount of cash deposit, if required, that accompanies the application.
- L. Deliver to the Borough satisfactory proof of insurance in the minimum amount of \$1,000,000 per person, and \$3,000,000 per occurrence, insuring the Permittee and the Borough against liability for injury or loss sustained by any person or persons as a result of the acts of commission or omission of the Permittee, or any servants, agents or employees of the Permittee.

§ 209-4 Permit restrictions.

- A. No opening shall be commenced on a Saturday, Sunday or holiday except in case of emergency.
- B. Working hours shall be between hours of 8:00 am to 6:00 pm.
- C. Openings greater than 25 square feet shall not be permitted between Memorial Day and Labor Day.
- D. No permit shall be issued for opening or excavation which was paved than five years prior to the date of the application, unless an emergency condition exists. Unless otherwise permitted as an emergency, a request for a waiver of this permit moratorium may only be authorized Borough Council.
- E. The maximum area to be covered by any one permit issued pursuant to the provisions of this chapter shall be 100 square yards, except in the case of an applicant who has complied with the provisions, in which case the maximum area to be covered by any one permit shall be 500 square yards.
- F. Permit shall be enforced by the Public Works Supervisor or their designee to permit the opening or excavation of a larger area than the maximum area herein specified when-public safety and welfare shall not be jeopardized and the flow of traffic shall not be unduly impeded. The appropriate fee as specified in § 209-5 shall accompany the application when endorsement is sought, as well as the deposit specified in § 209-6A.
- G. When, in the opinion of the Public Works Supervisor, the nature of the opening or excavation is such that existing water mains, sewer lines, gas mains or the laterals of any of these shall be or become exposed to any great extent, he may

require, as a condition for the issuance of the permit, continuous inspection by the Borough Engineer during working hours of the work of the Permittee. Inspection shall be by the Borough Engineer or his designee and shall be at the expense of the Permittee. When continuous inspection is required, the Borough Engineer shall estimate the amount of the fees required for such inspection. Those fees shall be deposited with the Public Works Supervisor prior to the issuance of the permit. The inspector shall have the power to interrupt any work in progress until all shoring or repairing has been accomplished.

#### § 209-5 Permit fee.

The appropriate nonrefundable application fee shall accompany the written application to defray the cost of the administration of the provisions of this chapter and the cost entailed in making the necessary inspections.

- A. A fee, as set forth in the fee schedule on file at the office of the Municipal Clerk, shall be retained by the Borough, regardless of whether the street opening permit is granted or not.
- B. If the opening or excavation is to be of a larger area than 500 square yards, a fee for each additional 50 square yards or fraction thereof shall be charged as set forth in the fee schedule on file at the office of the Municipal Clerk.
- C. If the contractors are employed by the Borough, no fee shall be required for a permit to open or excavate a public street or public place in connection with the performance of a contract granted by the Borough.

#### § 209-6 Performance bond and deposits.

- A. Each applicant for a permit shall post cash or approved surety company bond or other satisfactory bond with the Borough Clerk to cover the estimated costs of work, including but not limited to excavating, backfilling, compaction, repaving, engineering, observation and testing, in each instance. Not less than twenty (20%) percent of the required surety shall be by cash or certified check paid to the Borough. The balance of the estimate shall be cash, letter of credit or approved bond with a company licensed to do business in New Jersey. The total amount shall be determined for each square yard of existing paved road, a fee as set forth in the fee schedule on file at the office of the Municipal Clerk. For five square yards or larger, a fee as set forth in the fee schedule on file at the office of the Municipal Clerk.
- B. This deposit shall be required in addition to the permit application fee as required by § 209-5 and shall be retained by the Borough until the Permittee until the Public Works Supervisor has issued his final approval indicating that the opening complied with permit requirements and that final restoration has been completed to his satisfaction.
- C. Excavation by public utility, Borough corporation or franchise.
  - 1) Any corporation which is a public utility, subject to the regulation of the Board of Public Utility Commissioners of the State of New Jersey; or a municipal corporation or any department thereof; or any person operating any franchise granted by the Borough which desires to obtain an opening permit from the Public Works Supervisor under the provisions of this

section, may, in lieu of the provisions requiring deposits as set forth in Subsection A of this section, post a surety bond for a given calendar year in the amount equal to 100% of the estimated costs of work, including but not limited to excavating, backfilling, compaction, repaving, engineering, observation and testing for the upcoming year, plus 100% of the estimated cost of work required to complete unfinished work from the prior calendar year\_ with the Municipal Clerk. This bond shall ensure compliance with applicable provisions hereof in respect to each opening. The bond shall remain with the Borough throughout the duration of the operations in the Borough and until the Public Works Supervisor has issued his final approval indicating that the opening complied with permit requirements and that final restoration has been completed to his satisfaction or until the requirement for the deposit ceases or is replaced with a new bond

- 2) In the event the restoration of any opening is not performed according to these regulations and cannot be approved by the Public Works Supervisor the Borough shall, after 10 days notice, complete the restoration and the cost of all labor, equipment and materials be charged against the surety bond. Thereafter, the party posting the bond shall not be permitted to make any openings in any street or public place in the Borough until such party deposits a sum of cash or its equivalent equal to the amount charged against the surety bond to reimburse the Borough for its cost in effecting restoration.

## § 209-7 Rules and regulations; excavation and opening standards.

### A. General

- 1) Unless otherwise stated herein, all construction shall conform with the NJDOT Standard Specifications for Road and Bridge Construction, latest edition as amended or supplemented and the Manual on Uniform Traffic Control Devices (MUTCD)
- 2) At least 72 hours' written notice to the Public Works Supervisor shall be given prior to the commencement of any work.
- 3) Assume responsibility for notifying all utility companies or other jurisdictional authorities which may have underground facilities in the project area and which may be affected by the proposed work. Prior to beginning any excavation, utility markouts shall have been completed and permittee shall possess the markout reference number onsite. All existing subsurface structures which may be affected by or interfere with the proposed construction shall be located.
- 4) Photographs of the area to be disturbed to document existing conditions of the street, sidewalks, driveways and driveway aprons that may be impacted shall be taken by the Permittee.
- 5) All work shall be performed and completed in such a manner as to cause a minimum of interference with travel on the street affected, to avoid unnecessary interference with the public use of the right of way in question

- and to protect children and other members of the public from any hazardous equipment or situations while on the site of permittee's activity.
- 6) No street shall be closed to traffic unless the closing is approved by the Chief of Police. Permission to close a street or utilize a detour shall not be granted unless it is necessary to reasonably complete the work and will not substantially or unnecessarily impair the public safety and convenience. The Police Department shall be informed in writing of all street closings at least 48 hours in advance, except where the work is of an emergency nature, in which case notice shall be given to the Police Department when work commences. Street and/or traffic lanes approved for closure to traffic must be appropriately detoured, closed and then reopened at the times specified in the application, with no deviations permitted. If permission to detour is granted, such fact shall be communicated in writing to the Fire Department and local First Aid Squads at least twelve (12) hours prior to closing. No road which had been closed shall be reopened without prior approval of Public Works Supervisor and the Police Department.
  - 7) Prior to any excavation, Permittee shall erect and maintain such signs, lights, barricades and other protective devices in accordance with details of the most current editions of the New Jersey Department of Transportation (NJDOT) Standard Specifications and the Manual of Uniform Traffic Control Devices (MUTCD) as may be necessary for the public safety and as may be required by the Borough Police Department. In the event that the permittee shall fail to provide the protective devices to the satisfaction of the Borough, the Borough may, upon twelve (12) hours notice to the permittee, erect and maintain the necessary devices and charge the permittee for the cost thereof. In the event that any failure to act by the permittee may have an immediate adverse effect on the public safety, the Borough may erect the necessary protective devices without prior notice to the permittee and the permittee shall be responsible for the reasonable cost thereof.
  - 8) In the event that any permitted opening or excavation is not backfilled, temporarily paved, patched, final paved, or restored in accordance with these regulations or to the satisfaction of the Public Works Supervisor, the Borough shall issue notice to the Permittee stating the defect and requiring said defect be remedied immediately. This notice may be served in-person, by digital communication or by ordinary mail to the Permittee name and address on the Permit. Should the Permittee fail to remedy said defect within 12 hours following service of the notice, the Borough shall complete the repairs and the cost incurred shall be paid by the Permittee or deducted from the deposit.
  - 9) Size of Opening Restricted. Notwithstanding any other provisions hereof, no Permittee shall open any street or public place where the length exceeds 250 linear feet or horizontal area of the opening will exceed 500 square yards, whichever is less. Where it is contemplated that the horizontal area of an opening shall exceed 250 linear feet or 500 square yards, a written consent shall be obtained prior to making such opening and all fees and

surety specified in § 209-6A shall have been provided to the Borough Clerk.

- 10) Every opening and all excavations, backfilling or grading shall be performed by the Permittee. The Permittee shall not assign any street opening excavation, backfilling or grading to any other person or entity, unless said other person or entity shall have been named on the Excavation Permit application and their contact and 24/7 emergency information provided.
- 11) Construction work shall be permitted only during the hours and times specified on the application and in accordance with municipal ordinances which regulate the times of construction work. The Public Works Supervisor must approve emergency situations or work required beyond the permitted time.
- 12) Permittee shall be responsible for the removal, storage and in-kind replacement, as necessary, of mailboxes, street and road signs, street lights, traffic control devices, etc. If street and road signs are to be removed even for a short time, the Police, and/or appropriate public authority having jurisdiction shall be notified in advance.
- 13) Right-of-way or property monuments and/or markers, traffic control devices and other public devices on the right-of-way shall not be removed or disturbed unless permission to do so is first obtained in writing from the Municipal Engineer. Permission shall be granted only upon the condition that the Permittee shall pay all expenses incident to their replacement. Property corner markers may only be replaced by a Professional Land Surveyor licensed by the State of New Jersey.
- 14) Maintain all streets and other property affected by the project on a continuing basis in a clean condition; free from all rubbish, dust, excess earth, rubble and other debris. The permittee shall also be liable for any damage to the Borough roads caused by the operator of equipment over said roads. In the event the permittee fails to act as provided herein, the Borough may, upon twelve (12) hours notice to the permittee, clean and remove all rubbish, dust, excess earth, rocks, debris and unused material and/or repair any roads in the Borough damaged by the operation of equipment by the permittee over said roads, and charge the permittee the cost thereof. In the event that any failure by the permittee may have an immediate adverse effect upon the public safety, the Borough may clean, repair or protect the area in question prior to notice to the permittee and the permittee shall be responsible for the costs thereof.
- 15) Assume responsibility for securing all other necessary permits from regulatory agencies including, but not limited to, Soil Erosion Permit from Soil Conservation Service, Dewatering Permit from the New Jersey Department of Environmental Protection, etc. The Borough shall have no liability for applicant's failure to obtain other permits or to comply with the provisions of any other regulatory authority of any nature whatsoever. Any interruption of the project by order of the Borough or any other authority shall not extend the time for completion as set forth in the permit.

- 16) The permittee shall insure that the noise generated by the construction operation is controlled and equipment shall be equipped with properly maintained mufflers, pneumatic exhaust silencers, and the like. Construction equipment shall be operated only during those hours permitted by Borough regulations. Properly silenced dewatering pumps may, with the approval of the Borough, be operated as necessary.
- 17) The permittee shall insure that dust control is maintained during construction. Work shall be performed to minimize the creation and dispersion of dust. Water shall be used to control dust. The use of chemicals for dust control is prohibited.

#### B. Excavation

- 1) Prior to beginning any excavation, a utility markout shall have been completed. The Permittee shall possess the markout reference number onsite. All existing subsurface structures which may be affected by or interfere with the proposed construction shall be located.
- 2) If directed by the Public Works Supervisor, the Permittee shall perform test pits to obtain the required information. Test pits shall be backfilled in accordance with the following specifications.
- 3) Excavations shall be shored, braced and sheathed as conditions warrant and shall conform with OSHA trench safety requirements. If the top of the excavation falls within 5 feet of existing sidewalks, curbs, pipes, railroads or structures of any kind, the excavation shall be secured by sheet piling or other methods so that such facilities and structures will be protected.
- 4) Boulders, logs and other debris encountered in the excavation shall be removed and disposed of according to law.
- 5) Subsurface structures or bedding material shall not be placed until the depth of excavation and the character of the material at the bottom of the excavation has been approved. When the material at the bottom of the excavation is unstable, it shall be removed and disposed of according to law and the space backfilled with 3/4" clean crushed stone unless other material is approved by the Public Works Supervisor.
- 6) Pavement removal within 5 feet of structures within the street shall be performed by saw-cutting ONLY. Jackhammering shall NOT BE PERMITTED without specific approval by the Public Works Supervisor.
- 7) All utility facilities shall be located sufficiently in advance of any excavation to avoid damage of those facilities and to permit their relocation, if necessary. Any utility that is encountered during the excavation shall be protected by the Permittee to the satisfaction of the utility owner. The Permittee shall provide proper bypass and or temporary drainage during construction and shall restore operation to the satisfaction of the utility owner.
- 8) No opening or excavation of a cross trench shall extend beyond the centerline of the road before being backfilled, compacted and the surface of the roadway temporarily restored.

- 9) All excavated materials shall be removed from the Borough and disposed of according to law.

#### C. Bedding for Pipes, Culverts and Structures

- 1) All hard or unstable material under the pipe shall be over-excavated and removed to a depth necessary to achieve stability. The over-excavation shall be backfilled with 3/4" clean crushed stone.
- 2) Pipe bedding includes all stone under the pipe and to the springline of the pipe. There shall be a minimum of 6" of 3/4" clean crushed stone under all pipe unless otherwise required herein.
- 3) Bedding stone shall also be placed on each side of the pipe to a depth of one-half the diameter of the pipe (springline).
- 4) For all public utility construction (electric, gas, cable, fiber, water, etc.) pipe bedding and trench backfill to 12 inches above the utility shall comply with the requirements of the public utility. All trench backfill from 12 inches above the utility to the pavement surface shall be as specified herein.

#### D. Backfill

- 1) Backfill shall not be placed against newly constructed masonry or concrete for 72 hours unless authorized by the Public Works Supervisor.
- 2) Backfill shall be placed in layers not more than 6 inches thick and each layer shall be compacted with flat-face mechanical tampers.
- 3) All backfill from the pipe springline to the pavement base shall be Dense Graded Aggregate compacted to 95% (modified proctor) in 10-inch layers by flat-faced mechanical tampers unless use of other types of compaction equipment is dictated by the site conditions and only then with approval of the Public Works Supervisor.
- 4) For all public utility construction (electric, gas, cable, fiber, water, etc.) all pipe bedding and trench backfill to 12 inches above the utility shall comply with the requirements of the public utility. All trench backfill from 12 inches above the utility to the pavement surface shall be as specified herein.
- 5) Shoring, bracing and sheathing shall be withdrawn as the backfilling proceeds.

#### E. Dewatering.

- 1) No dewatering equipment, wells, well points, or piping shall occupy the traveled portion of roadways or sidewalks unless specifically approved and adequately protected to the satisfaction of the Public Works Supervisor.
- 2) Effluent from any dewatering system shall be discharged in such a manner that erodible soils are not adversely affected. All silt and sediments being carried in the dewatering effluent must be intercepted prior to discharge into any drainage system through use of a sedimentation basin or device specifically designed to allow retention of discharge with sufficient time to render such waters free of suspended silt and sediments. The use of



screening devices in lieu of sedimentation basin must receive specific approval and be employed only for minor flows. Should any dewatering discharge be malodorous in the opinion of the Public Works Supervisor, the discharge shall be ceased until such time as appropriate filtration can be provided to mitigate the odor.

#### F. Permanent Pavement Restoration

- 1) All public streets and rights-of-way shall be permanently restored by the Permittee to the satisfaction of the Public Works Supervisor. Pavement surface shall be smooth and shall meet NJDOT smoothness criteria.
- 2) Prior to Permanent Pavement Restoration, all excavations in roadway or driveway pavement shall receive Temporarily Pavement Restoration that shall remain in place for a period of 90 days in accordance as specified herein.
- 3) All other public places excavated shall be restored to as good as or a better condition as existed in the area excavated prior to excavation, having due regard to the type of surface that existed prior to excavation.
- 4) Where the average width of the excavation exceeds 25 percent of the existing pavement width (curb to curb) along the length of the excavation, the pavement base section shall be 4 inches compacted Bituminous Concrete Type HMA19M64 Base Course. The pavement surface section shall be 2-inches compacted thickness overlay of the entire pavement surface, curb to curb, along the length of the excavation using compacted Bituminous Concrete Type HMA9.5M64 Surface Course.
- 5) Where the excavation is less than 25 percent of the existing pavement width (curb to curb) along the length of the excavation, the existing pavement shall be saw-cut back to a straight clean line approximately 12 inches away from each side of the Trench and all excavated material shall be removed and disposed of according to law. The pavement base section shall be 4 inches compacted thickness Bituminous Concrete Type HMA19M64 Base Course. The pavement surface section shall be 2 inches compacted thickness Bituminous Concrete Type HMA9.5M64.
- 6) Restoration around all manholes and similar structures shall have a feathered approach, not to exceed a 5 percent slope.
- 7) All pavement joints and edges of all feathering shall be sealed.
- 8) Restoration of all vegetated areas shall be backfilled with four (4) inches of topsoil and both the trench and the area disturbed by work under this permit shall be seeded with fertilizer, seed and mulch. Restoration areas shall be watered by the Permittee and shall not be deemed acceptable until new vegetation has covered the entire restored area.
- 9) All openings in gravel roadways, driveways and parking areas shall be backfilled and compacted as heretofore noted. The top eight inches shall be backfilled with eight inches of compacted Dense Graded Aggregate. Driveways constructed of decorative materials shall be restored in-kind.
- 10) Temporary Pavement Restoration.

- i. All roadway excavation shall have temporary pavement restoration. All temporary pavement surfaces shall all remain in place for ninety (90) calendar days from the date of acceptance of the temporary pavement installation by the Public Works Supervisor.
  - ii. Temporary pavement restoration shall be 6 inches compacted thickness to the existing pavement surface using Bituminous Concrete Type HMA19M64 Base Course placed upon the compacted Dense Graded Aggregate trench backfill. Prior to permanent pavement restoration, the top 2 inches of the temporarily restored pavement shall be milled and removed to permit permanent restoration surface pavement to be installed.
  - iii. All temporary pavement surfaces shall be smooth and free of depressions, bumps or other imperfections that can cause ride roughness.
  - iv. All driveways that are asphalt or concrete shall have temporary pavement restoration. Temporary pavement for asphalt or concrete shall receive 3" Bituminous Concrete Type HMA19M64 Base Course which shall remain in place for 90 days.
- 11) All excavations with Portland cement concrete roadways or sidewalks shall be backfilled and compacted, foundation prepared, reinforcement restored and the concrete pavement equal in thickness to that place in the roadway and reinforcing replaced with concrete in accordance with standard construction details on file with the Borough Clerk.
  - 12) Road openings and/or trenches involving unusual or special conditions including attachment to structures shall be restored in accordance with and pursuant to the direction of the Borough Engineer.

#### G. Maintenance of Excavations and Openings

- 1) The Permittee shall maintain all temporary pavement surfaces to a smooth and level surface. In the event that any permitted excavation or opening is not being properly maintained to the satisfaction of the Public Works Supervisor shall issue a notice to remedy of all defects and requiring said defects to be remedied. This notice may be served in-person, by email or by ordinary mail. Upon the failure of the Permittee for 10 calendar days after the service of the notice to remedy said defect, the Borough shall complete the repairs and the cost incurred shall be paid by the Permittee or deducted from the deposit.
- 2) Any gravel, earth or other excavated material which is caused to roll, flow or wash upon any municipal road shall be removed from the roadway within twenty-four hours after deposit, unless such material creates a hazard and then the material shall be removed immediately. In the event the earth, gravel or other excavated material so deposited is not removed, the Borough of Bay Head shall remove the material and the cost incurred shall be paid by the Permittee or deducted from his deposit. Permittees are put on notice that Bay Head may elect to perform the work using its Public Works Department of by contract and it will be necessary to make such

repairs after normal working hours. The Permittee shall employ construction methods and means that will keep dust to the minimum to the satisfaction of the Public Works Supervisor.

- 3) In the event of a snow or ice storm, the Permittee will be required to take whatever steps the Public Works Supervisor deems necessary to secure the traveled way for snow removal operations. At the first sign of precipitation, all work on the shoulders and traveled way shall stop and they shall be cleared of all dirt, etc. and the area backfilled so as not to interfere with Municipal snow operations until the weather permits resumption of work.

#### § 209-8 Emergency openings.

- A. No person, firm, partnership, corporation or other entity shall direct or cause any employee, agent or contractor of such person, firm, partnership, corporation or entity to open or dig a trench in any public street, right-of-way or other public place until a written permit for such opening or trench has been issued by the Borough, except that openings may be made without the necessity of a previously issued permit in the case of emergencies which would immediately endanger the health, safety or property; subject, however, to the condition that prior notice thereof shall be given verbally to the Police Department and Public Works Supervisor and thereafter a written application in accordance with the provisions of this section is made within twelve (12) hours after such emergency opening is commenced. The person or entity acting under this emergency procedure shall, in all respects, be bound by all other requirements of this section. No opening shall be finally repaved without the written approval of the Public Works Supervisor
- B. The term "emergency street opening" as used in this section shall include those openings which must of necessity be made after office hours of the municipal official who issues street opening permits, including weekends, and which are necessary to repair broken or damaged lines, pipes, mains or conduits which, if not repaired, would constitute a direct threat to the health, safety and welfare of residents of the community or which would constitute further harm or damage to a person or property. The foregoing specifically excludes street openings for original installation or hookup to any structure be it residential, commercial or industrial.

#### § 209-9 Size of opening restricted.

Notwithstanding any other provisions hereof, no person who has posted a surety bond shall open any street or public place where the horizontal area of the opening will exceed 250 linear feet or 500 square yards, whichever is less. Where it is contemplated that the horizontal area of an opening shall exceed 250 linear feet or 500 square yards, the fees provided for in § 209-6A hereof shall be paid and a permit obtained prior to making such opening.

#### § 209-10 Supervision of opening.

No person who opens or excavates any public street or public place under authority of a permit issued pursuant to this section shall permit the opening or excavation operation to be conducted by any person other than the Permittee or his immediate employees, unless in those cases where it is contemplated that the Permittee will engage the service of some other person to conduct the opening or excavation operation, in which case the application for the permit shall designate the name of the person other than the Permittee who shall actually be conducting the opening or excavation operation.

§ 209-11. Opening of resurfaced roads.

- A. No public utility may take any action to open any roadway by removing any surface or portion of the roadbed on any roadway within five years after a roadway has been resurfaced or repaved, unless such public utility demonstrates that an emergency exists which endangers the health and welfare of any person or property.
- B. Where it appears that such emergency exists requiring the breaking or removing of the roadway, the public utility must submit an application before any work may be started. The application for the opening of the roadway must:
  - 1) Be submitted in writing.
  - 2) State and explain in full the emergent circumstances.
  - 3) Be submitted to the Borough of Bay Head governing body for approval.

§ 209-12 Borough Held Harmless

The Permittee shall indemnify and save harmless the Borough, its officers, agents and employees from any loss, injury or damage resulting from any negligence or fault of the Permittee, its agents, servants or employees or contractors in connection with the performance of any of the work covered by the permit. The terms and provisions of this article shall be deemed a covenant by such Permittee to so indemnify and save harmless the Borough of Bay Head while performing any work related to this permit.

§ 209-13. Violations and penalties.

For a violation of any provision of this article, the maximum penalty, upon conviction thereof, shall be a fine not exceeding \$3,000 or imprisonment for up to 90 days or a period of community service not exceeding 90 days, or any combination thereof.

**SECTION 2.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 3.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent

jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 4.** This ordinance shall take effect after second reading and publication as required by law.

**NOTICE**

**NOTICE IS HEREBY GIVEN** that the foregoing ordinance was introduced and passed by the Borough Council on first reading at a meeting of the Borough Council of the Borough of Bay Head held on the July 10, 2023, and will be considered for second reading and final passage at a regular meeting of the Borough Council to be held on the August 7, 2023 at 7:00 p.m. at the Bay Head Municipal Building, located at 83 Bridge Avenue, Bay Head, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

**NOTICE OF ADOPTION**

**PUBLIC NOTICE IS HEREBY GIVEN** that the foregoing ordinance published herewith has been finally adopted by the Borough Council of the Borough of Bay Head, in the County of Ocean, New Jersey on August 7, 2023.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Antoinette Jones, Deputy Municipal Clerk**

\_\_\_\_\_  
**William W. Curtis, Mayor**