

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

ORDINANCE #2025-05

Title: **AN ORDINANCE AMENDING CHAPTER 583, STREETS AND SIDEWALKS, ARTICLE I, EXCAVATION OF STREETS, OF THE CODE OF THE TOWNSHIP OF LOWER**

WHEREAS, as outlined within Chapter 583, Streets and Sidewalks, Article I, Excavation of Streets, the Township has established regulations governing the excavation and repaving of streets and roadways under its jurisdiction; and

WHEREAS, pursuant to § 583-4B(8)(g) of the Township Code of the Township of Lower, any capital improvement, repaving, and/or reconstruction on any street or roadway within the Township of Lower is subject to a five (5) year road/street opening moratorium after the completion of construction, reconstruction, resurfacing, repaving or overlay; and

WHEREAS, pursuant to § 583-4B(8)(h) and (i) of the Township Code of the Township of Lower, the Township has established limited exceptions for which a street or roadway that is subject to the aforementioned five (5) year moratorium on street openings may be excavated/opened, primarily limited to emergencies or claimed hardships asserted by a property owner, which is subject to the review and approval of Township Council; and

WHEREAS, in accordance with § 583-4B(8)(h) and (i) of the Township Code of the Township of Lower, in the event a street or road opening is permitted in connection with an emergency or an approved hardship, individuals are required to repave the roadway, in accordance with the requirements of Chapter 583 of the Township Code, generally from intersection to intersection for the full width of the roadway (curbline to curbline); and

WHEREAS, given the distances that exist between various streets/roadways within the Township, and the limited amount of emergency and hardship road opening approvals that are requested and ultimately granted, the Township Council of the Township of Lower has determined that it is appropriate to revise the length of an excavated street or roadway that is required to be repaved and/or reconstructed;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township Council of the Township of Lower, County of Cape May, State of New Jersey that Chapter 583, Streets and Sidewalks, Article I, Excavation of Streets, be and hereby is amended as follows:

Section 1. Chapter 583, Streets and Sidewalks, Article I, Excavation of Streets, Subsection (h)[3], is hereby amended as follows:

583-4B(8)(h) Emergency opening.

- (3) In the event that an emergency street or road opening of a street or roadway subject to a five (5) moratorium is required/approved, a minimum restoration of the full width of the street or road, extending 50 linear feet in each direction from any road or street opening, from curbline to curbline, will be required on all streets constructed, reconstructed, resurfaced, repaved or overlaid by the Township within the previous five years of an opening necessitated by emergency or moratorium waiver opening. The restoration shall consist of six-inch-thick dense graded aggregate base course and a six-inch-thick bituminous stabilized base course, Mix 1-2, or equivalent as determined by the Director of Public Works or the Township Engineer, brought flush with existing grade, within the excavated area. A full width, curb-to-curb, milling two inches in depth to extend 50 feet beyond the limit of excavations shall be performed after proper settlement in the trench area. The allowable time for trench settlement shall be 45 days unless directed otherwise by the Director of

Public Works or the Township Engineer. The final surface course shall be a two-inch-thick bituminous concrete surface course, Mix I-5, or equivalent as determined by the Director of Public Works or the Township Engineer.

Section 2. Chapter 583, Streets and Sidewalks, Article I, Excavation of Streets, Subsection (I)[5], is hereby amended as follows:

583-4B(8)(i) In the event a property owner experiences a hardship condition which requires a street opening permit to be issued contrary to the sections contained in this article, the Township of Lower may grant relief if and only if the following conditions are satisfied:

[5] In the event Township Council grants a moratorium waiver request authorizing excavation of a street or roadway under a five (5) year moratorium necessitated by utility main improvements, final restoration will require a minimum restoration of the full width of the street or road, extending 50 linear feet in each direction from any road or street opening, from curbline to curbline. The applicant will be required to mill the existing roadway to a depth of two inches extending 50 linear feet in each direction from the road/street opening, from curbline to curbline, and install a two-inch-thick lift of bituminous concrete surface course, Mix I-5, for the entire length. All edges shall be coated with an asphalt tack coat prior to a two-inch lift of bituminous concrete surface course being placed on the roadway.

Section 3. Chapter 583, Streets and Sidewalks, Article I, Excavation of Streets, Subsection 5, Bonding Requirements, is hereby repealed and replaced as follows:

583-5 Bonding Requirements.

- A. A road opening permit shall not be issued until a satisfactory performance guaranty is posted with the Township Clerk. The amount of the guaranty shall be determined by the construction estimates prepared by the Township Engineer based on current estimates of the market value of the work. The performance guaranty shall be a certified check, performance bond or letter of credit or cash equivalent in an amount approved by the Township Engineer and in a form approved by the Township Solicitor. Performance bonds or letters of credit must be supplied by an institution authorized to do business in the State of New Jersey. The performance guaranty, whether performance bond or letter of credit, shall be a perpetual surety and shall not contain an expiration date. The applicant/permittee is responsible to ensure that these sureties will remain in effect until the Township Clerk receives a written release issued by the Township Engineer stating that all improvements are completed and acceptable to the Township.
- B. A public utility company or construction company, in lieu of giving a separate guaranty for each project, may annually once in January of each year post a guaranty for \$10,000 to cover the work performed by said company during the ensuing calendar year. In the event that construction, excavation or road openings exceed the posted guaranty amount, additional guaranties and/or cash security will be required.
- C. The purpose of depositing the performance guaranty, surety bond or cash is to guarantee to the Township of Lower that any construction,

excavation or road opening will be performed and completed in an acceptable fashion consistent with the provisions of this article. In the event that the Township Director of Public Works or Township Engineer determines that the excavation, construction or restoration and refilling has not been performed consistent with the requirements of this article, he shall be entitled, after reasonable notice to the applicant to correct such deficiencies, to take the performance guaranty, surety bond or cash posted by the applicant and utilize it to correct any deficiencies and/or to have the area restored to its proper condition.

Section 4. All other ordinances in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

Section 5. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provision of this Ordinance are hereby declared to be severable.

Section 6. This Ordinance shall become effective 20 days after final passage and publication according to law.

First Reading: February 3, 2025

Adopted: March 3, 2025
Attest: Julie A Picard
Julie A Picard, Township Clerk

Thomas Conrad

Thomas Conrad, Councilmember

Joseph Wareham

Joseph Wareham, Councilmember

Roland Roy, Jr.

Roland Roy, Jr., Councilmember

Kevin Coombs

Kevin Coombs, Deputy Mayor

Frank Sippel

Frank Sippel, Mayor