

ORDINANCE 2014:03

AN ORDINANCE AMENDING TITLE 12,  
CREATING CHAPTER 12.08 EXCAVATIONS

WHEREAS, it appears to the Mayor and Council of the Borough of Magnolia that a need has arisen to amend Title 12 entitled Streets, Sidewalks and Public Places,

NOW, THEREFORE, the Mayor and Borough Council of the Borough of Magnolia, County of Camden, State of New Jersey do ordain:

SECTION 1. To remove Chapter 228 entitled Streets and Sidewalks in its entirety including Article I and Article I.

SECTION 2. To create Chapter 12.08 as part of Title 12, and to be entitled Excavations (see attached document).

SECTION 3.

All ordinances and provisions there of inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4.

If any article, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision or invalidity shall not affect the remaining portions or provisions of this ordinance.

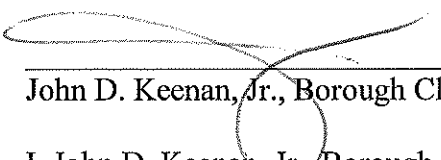
SECTION 5.

This Ordinance shall become effective immediately after final passage and publication as required by law.

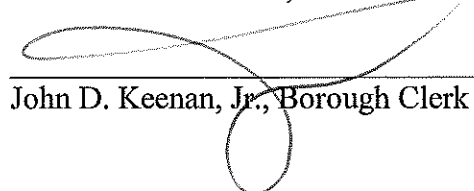
Introduced on January 16, 2014.

Public Hearing on February 05, 2014.

Final Adoption March 05, 2014.

  
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John D. Keenan, Jr., Borough Clerk

I, John D. Keenan, Jr., Borough Clerk, hereby certify the above ordinance was introduced on January 16, 2014 by the Borough Council of Magnolia. The Public Hearing was held on February 05, 2014 and final approval by Borough Council was given to Ordinance 2014:03 on March 05, 2014. This is a true copy of the original ordinance.

  
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John D. Keenan, Jr., Borough Clerk

## **Borough of Magnolia, New Jersey, Code of Ordinances**

### **Title 12 - STREETS, SIDEWALKS AND PUBLIC PLACES**

#### **Chapter 12.08 - EXCAVATIONS**

##### **Sections:**

- 12.228.1 - Definitions.
- 12.228.2 - Permit required.
- 12.228.3 - Application for permit.
- 12.228.4 - Deposits prior to issuance of permits.
- 12.228.5 - Permit fees.
- 12.228.6 - Guaranty bonds.
- 12.228.7 - Waiver of requirements for certain borough authorities.
- 12.228.8 - Waiver of requirements where suitable guaranties for construction exist.
- 12.228.9 - Work to be completed in an expeditious manner.
- 12.228.10 - Adequate warning and protection required.
- 12.228.11 - Protection of property during work.
- 12.228.12 - Time limit for commencement and completion of work.
- 12.228.13 - Openings restricting vehicular traffic.
- 12.228.14 - Restoration.
- 12.228.15 - Failure to properly excavate, backfill or restore.
- 12.228.16 - Digging of ditches—Approval of engineer.
- 12.228.17 - Street openings in emergencies.
- 12.228.18 - Insurance against claims.
- 12.228.19 - Violations and penalties.

##### **12.228.1 - Definitions.**

The following words, when used in this chapter, shall have the meanings ascribed to them in this section except in those instances where the context clearly indicates otherwise:

"Applicant" means any person who makes an application for a permit.

"Borough" means the Borough of Magnolia, County of Camden, State of New Jersey.

"Clerk" means the clerk of said municipality or his or her duly authorized deputy.

"Emergency" means any unforeseen circumstance or occurrence, the existence of which constitutes a clear and immediate danger to persons or properties.

"Engineer" means the person duly appointed borough engineer, his or her authorized deputy, representative or inspector.

"Permittee" means any person who has been issued a permit and is obligated to fulfill all the terms of this chapter.

"Person" means any natural person, partnership, firm, association, utility, corporation or authority created pursuant to statute. Whenever used in any section prescribing and imposing a penalty, the term "person" as applied to associations shall mean the partners and members thereof, and as applied to corporations, the officers thereof.

"Standard specifications" means the New Jersey State Highway Department Standard Specifications for Road and Bridge Construction, 2007.

"Street" means the public street, public easement, public right-of-way, public highway, public alley, public way or public road accepted or maintained by the borough, and any state or county road over which the borough may have acquired jurisdiction by agreement.

#### **12.228.2 - Permit required.**

It is unlawful for any person to tear up, dig into, break up, displace or excavate any of the streets, sidewalks, curbs or gutters in the borough without first obtaining a permit therefor from the borough clerk.

#### **12.228.3 - Application for permit.**

- A. The application for a permit to make an opening or excavation in any street shall be in writing, dated and signed by the applicant, and shall state the road or street proposed to be opened or excavated and the object and purposes thereof, and shall also indicate the exact location, by length, width and depth, of said intended excavation. The application for permit shall include a detailed Restoration Plan conforming to the requirements of section 12.228.14.
- B. In cases where the proposed opening involves construction of a longitudinal pipe main serving more than one (1) property, the borough may also require the applicant to submit plans showing the information required above and also the relationship of the proposed installation to the existing pavement, other utilities, the street right-of-way lines and any other physical features which might be affected by the proposed construction.
- C. In cases where an applicant proposes multiple road openings on the same street, the borough may require final restoration to be a complete mill and overlay if the aggregate of the openings exceeds ten percent (10%) of the roadway surface area.

#### **12.228.4 - Deposits prior to issuance of permits.**

- A. Before the issuance of any such permit, the applicant shall deposit with the clerk of the borough the following amounts:
1. A minimum deposit of one thousand dollars (\$1,000.00) in cash or certified check, which shall cover an excavation no larger than thirty (30) square feet in area.
  2. A minimum deposit of two thousand dollars (\$2,000.00) in cash or certified check, {current ordinance} which shall cover any excavations greater than thirty (30) square feet in area, but no larger than fifty (50) square feet in area.
  3. An additional amount for all street openings in excess of fifty (50) square feet, to be computed as follows:
    - a. Paved streets, including concrete pavement or bituminous concrete pavement on concrete or macadam base, one dollar (\$1.00) per square foot.
    - b. Paved streets, including bituminous concrete pavement on gravel base, seventy-five cents (\$0.75) per square foot.
    - c. Surface-treated streets, including bituminous surface treatment on gravel or macadam base, and also including bituminous mixed-in-place streets, fifty cents (\$0.50) per square foot.
    - d. Gravel streets with no treatment or pavement, twenty-five cents (\$0.25) per square foot.
  4. An additional amount, based on the unit prices in the preceding subsection, if the area actually excavated exceeds that estimated at the time application was made.
- B. The amount deposited shall be retained by the borough for a period of eighteen (18) {current ordinance} months from the date of the reconstruction of the road, to guarantee the proper performance of the work done by the applicant and the maintenance thereof in good condition by the applicant for said eighteen-month period.

#### **12.228.5 - Permit fees.**

In addition to the above deposit, the applicant shall pay a nonreturnable fee to be used to pay the cost of personnel employed to process the application and permit and to inspect the work performed as follows:

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|------------|---|
| Resident – | A nonreturnable fee in the in the amount of twenty-five dollars (\$25.00) {current ordinance is \$50.00} for the first twenty (20) square feet or part thereof of any opening and five dollars (\$5.00) for each additional ten (10) square feet or part thereof up to two hundred (200) square feet. |
| Business - | A nonreturnable fee in the in the amount of fifty dollars (\$50.00) for the first twenty (20) square feet or part thereof of any opening and ten dollars (\$10.00) for each additional ten (10) square feet or part thereof up to two hundred (200) square feet.                                      |

**Public Utilities-** The non returnable fee shall be calculated in accordance with section 12.228.6.

In the case of openings which exceed two hundred (200) square feet, if at any time it becomes evident that the fees are or will be insufficient to cover the costs, the permittee shall pay to the clerk such additional fees certified by the borough engineer as required to meet the costs of the processing and inspection.

If the roadway in which the street opening is being made is less than 5 years old since it was last paved and improved the fee will be \$5,000.00 paid by all applicants for any permit for each opening or excavation to any public street, roadway or highway in the Borough of Magnolia. The repair work for the closing of the street opening shall to allow for proper stabilization and surface to include the use of infrared technology on joints within the excavation. {language from Ordinance 2012:03}

**12.228.6 - Guaranty bonds.**

- A. Private applicants. When the amount of the deposit, as determined under section 12.228.4, would exceed two thousand dollars (\$2,000.00) the applicant may, at his or her option, furnish a guaranty bond with corporate surety for the full amount of such deposit instead of making the required deposit. Said bond shall unconditionally guarantee that the applicant will make the proposed street opening, backfill same and restore the pavement in accordance with requirements of the borough and maintain same for a period of eighteen (18) months from the date of the resurfacing of said road.
- B. Public utilities. When the applicant is a public utility as defined by the statutes of the State of New Jersey, the borough may accept in lieu of the required deposits and fees previously set forth herein, a guaranty bond to the borough in the sum of fifty thousand dollars (\$50,000.00). The Public Utility must also pay a nonreturnable fee to be used to pay the cost of personnel employed to process the application and permit and to inspect the work performed in the amount of one hundred dollars (\$100.00) for the first twenty (20) square feet or part thereof of any opening and fifty dollars (\$50.00) for each additional fifteen (15) square feet or part thereof up to two hundred (200) square feet. In those cases where the borough engineer, upon inspection, determines that the opening, based upon his or her experience and expertise, will be one out of the ordinary due to the underground conditions or work involved, or where the proposed opening involves construction of a longitudinal pipe main serving more than one (1) property, or in any case where the area to be opened exceeds five hundred (500) square feet, or where multiple openings exceed 10% of the roadway surface, applicant shall also pay the actual cost of inspection or inspections. Such bond shall guarantee payment of the amount that would have been deposited in the event of failure of the applicant to comply with this chapter. Such bond shall guarantee that the public utility will make the proposed street opening, backfill the same and restore the pavement in accordance with the requirements of the borough. Such bond shall also include a thirty six (36) month guaranty. The borough, at its option, may accept a corporate bond. Where the estimated cost of restoration exceeds fifty thousand dollars (\$50,000.00), the public utility shall supply an additional bond to cover such expenses. Said bond shall not be considered to be filed until it is approved and accepted by resolution of the borough council. In the event that, after proper filing of a bond by a public utility as aforesaid, said public utility shall fail to abide strictly by the provisions of this chapter, the borough council may, by resolution and without prior notice to the

public utility, revoke any privileges for street opening which may have previously been granted under its guaranty bond, and revoke said bond and return it to the public utility, and require cash deposits for all future street openings made by said public utility, as well as cash deposits for all openings not properly restored as of the date of revocation of said bond.

**12.228.7 - Waiver of requirements for certain borough authorities.**

Nothing contained herein shall pertain when the applicant is a contractor performing work for the borough or for the borough sewerage authority.

**12.228.8 - Waiver of requirements where suitable guaranties for construction exist.**

When the applicant is a subdivider or Site Plan Applicant, where escrow funds or other suitable guaranty for complete reconstruction of an existing road have been provided and where proper approvals for all proposed work have been obtained, the borough council may waive the requirements of this chapter.

**12.228.9 - Work to be completed in an expeditious manner.**

Any person making any opening or excavation in any street in the borough shall carry out the work as expeditiously as possible and in such manner as to cause the least possible public inconvenience and to permit the use of the sidewalk by pedestrians, the roadway by vehicles and the flow of water along the gutters.

**12.228.10 - Adequate warning and protection required.**

All openings, diggings, excavations, piles of material, equipment and barricades, including earth, dirt and stone or other materials removed from the excavation, shall be carefully guarded at all times to prevent accidents, and a sufficient number of lighted lanterns, flares or torches shall be maintained between sunset and sunrise by the contractor or persons to whom such permit has been granted, to designate such openings or obstruction during the hours of darkness. Where any excavation or trench is to extend across any road or street, only one-half of the same shall be made at one (1) time, and it shall be properly backfilled before the other one-half is excavated so as not to interfere with traffic.

**12.228.11 - Protection of property during work.**

All existing pavements, road surfaces, sidewalks, curbs, gutters, pipes, manholes, drains, conduits or other installations or fixtures and property likely to be injured, damaged or destroyed shall be properly protected by the person doing any work for which a permit has been granted, during the time when such work is being performed.

#### **12.228.12 - Time limit for commencement and completion of work.**

The work on any opening to be made under any such permit shall be commenced within ten (10) days from the date of such permit and the work prosecuted with due diligence to its completion. The permittee shall provide a 24 hour notification to the borough clerk prior to opening a road in order to schedule inspection personnel. If for any reason work is not commenced within said period of ten (10) days, the applicant shall present the permit to the borough clerk, who shall thereupon either return the deposit required under section 12.228.4 of this chapter above or extend the time for the beginning of the said work for another period of ten (10) days by endorsement on the permit, and no permit so extended shall be valid unless the work thereunder is commenced within ten (10) days from the date of such endorsement. If work is not commenced within the extended period of time, the deposit required under section 12.228.4 of this chapter shall be returned to the applicant.

#### **12.228.13 - Openings restricting vehicular traffic.**

In the case of any opening which restricts vehicular traffic to less than two (2), ten-foot wide travel lanes, excavation and backfill shall be made within a single eight-hour period, except under special occasions or circumstances where underground conditions or structures warrant a longer period of time. In other cases, it shall be made within one (1) week's time, except where underground conditions or structures warrant a longer period of time. Street openings shall be resurfaced within the period of time designated by the borough engineer at the time he or she inspects the backfilling operation, having due regard to the type of street involved and the volume of vehicular traffic which uses the same. Prior to resurfacing, the backfill shall be maintained in order to prevent depressions or bumps in the street surfaces and suitable material shall be applied thereto to keep down dust.

#### **12.228.14 - Restoration.**

- A. Whenever any sidewalk, curb or gutter is broken up or excavated, it shall be restored to its proper condition as soon as practicable by the person having broken up or excavated it, at his or her own expense, to the satisfaction of the borough engineer.
- B. Any person making any opening or excavation shall resurface all such openings and backfill them in accordance with the following procedure, so the roadway or surface is replaced in a condition as near as possible as it was prior to the opening or excavation:
  - 1. All fill material shall be deposited in layers not exceeding twelve (12) inches and each layer shall be rammed or tamped with pneumatic or power-driven mechanical tampers approved by the borough engineer or his/her designee.
  - 2. Broken or crushed stone to be used in replacing the stone base shall be cast in separate piles and kept clean and separate from other excavation material and shall be carefully replaced to a minimum thickness of eight (8) inches. The stone base shall be tamped and keyed with mineral filler.

3. When filled, the trench shall be level and flush with the finished grade of the street adjacent to the opening. A temporary patch shall be constructed by the permittee, consisting of two (2) inches' compacted thickness of cold patch material, Grade A or Grade B, as defined in the standard specifications. The temporary patch shall be constructed within twenty-four (24) hours after tamping of the backfill. Permittee shall, to the satisfaction of the borough engineer or his/her designee, maintain the surface of the trench until permanent restoration is made.
4. No permittee shall commence permanent surface restoration of any street until the engineer, his or her representative or the borough road foreman has deemed that settlement of the subsurface is complete and the area properly prepared for restoration. All foundations shall be restored to a width six (6) inches wider than the width of the excavation and six (6) inches longer than the length of the excavation. The street surface shall be restored to a width six (6) inches wider than the width of the restored foundation and six (6) inches longer than the length of the restored foundation. All foundations and surfaces shall be restored with the same type of material and to the same depth as existed prior to making the excavation, in accordance with the requirements of the standard specifications. The permittee shall furnish all materials, equipment, tools and labor to properly construct a permanent pavement to match the existing pavement in thickness or a six (6") inch (compacted thickness) Permanent Pavement Course whichever is greater in those areas of the paved roadways or shoulders where the original pavement has been removed, disturbed or destroyed by the construction activity. The work shall consist of preparation of the subgrade, retrimming the edge of trench and placement of the permanent pavement course, using:
  - a. The materials and composition of mixture shall conform to the requirements of Section 903 and 904 of the New Jersey Department of Transportation Standard Specifications of 1989.
  - b. The permanent pavement restoration shall consist of bituminous base course to match existing in thickness, or four (4") inches (compacted thickness) of Bituminous Stabilized Base Course, mix I-2. Top course shall be two (2") inches compacted thickness of Bituminous Concrete Surface Course Mix No. I-5 or I-4.
5. Permanent Restoration with a Concrete Street or Alley:
  - a. In a street or alley that has concrete sub-base, the trench or excavation shall be restored with gravel to match existing gravel subbase and four thousand (4,000) psi concrete with one-half (1/2") inch stone and fibermesh admixture to a depth to match existing concrete subbase, as specified in Section 305.
  - b. When the trench or excavation is within a street or alley that is constructed entirely of concrete, the trench or excavation shall be restored using four thousand (4,000) psi Class B grey concrete with one-half (1/2") inch stone and fibermesh admixture to a grade to match existing concrete surface. In the event the ambient temperature warrants, the mix may include a one (1%) percent or two (2%) percent high-early admixture.



6. In cases where an applicant proposes multiple road openings on the same street, the borough may require final restoration of the surface course to include a complete mill and overlay if the aggregate of the openings exceeds ten percent (10%) of the roadway surface area. Restoration of the foundation and base course shall meet the requirements of this section.

**12.228.15 - Failure to properly excavate, backfill or restore.**

In the event that the permittee shall fail to properly excavate, backfill or restore the street, sidewalk, curb or gutter involved to its proper condition as soon as practicable and within three (3) days after the service or mailing of a notice from the borough engineer so to do, then the borough engineer may cause such restoration to be made and pay the cost thereof from said deposit, or, in case a bond has been filed in lieu of a cash deposit, the borough shall collect the cost of such restoration from the permittee. If, during such period of eighteen (18) months or, in the case of a public utility filing a guaranty bond, three (3) year, the filling of the opening shall require repairing and the permittee shall fail to make such repairs as are required within three (3) days after the service or mailing of a notice from the borough engineer so to do, then the borough engineer may cause such repairs to be made and pay the cost thereof from said deposit, or, in case a bond has been filed in lieu of a cash deposit, the borough shall collect the cost of such repairs from the permittee. When the work has been completed in accordance with the requirements and regulations as contained herein and as may from time to time be adopted by the borough to implement this chapter, the deposit, or such portion of the deposit which may remain, will be refunded to the permittee.

**12.228.16 - Digging of ditches—Approval of engineer.**

- A. No ditch shall be dug within ten (10) feet of any street without first obtaining the approval of the engineer, which approval shall not be given unless, in his or her opinion, the ditch will not endanger the construction of the road which it will adjoin.
- B. No existing ditch adjoining a street and within ten (10) feet thereof shall be excavated to a depth lower than that now existing without first obtaining the approval of the engineer, which approval shall not be given unless, in his or her opinion, the lowering of the depth of the ditch will not endanger the construction of the road which it adjoins.

**12.228.17 - Street openings in emergencies.**

In the event of an emergency where circumstances will not warrant delay to first secure a street opening permit, a street may be opened without a permit; provided, however, that such opening shall be confined in size to the area necessary to take care of the emergency. A street opening permit for said emergency opening, plus any additional area that it may be necessary to open, shall be secured before the close of business on the next business day of the borough following the opening. Each day's delay in securing the


street opening permit following an emergency street opening shall be deemed a distinct and separate violation of this chapter.

**12.228.18 - Insurance against claims.**

- A. The applicant shall maintain such insurance as will protect the applicant and the borough from claims under the Workmen's Compensation Acts and from claims for damage to property and injury or death to persons. Such property damage insurance shall be written for not less than twenty-five thousand dollars (\$25,000.00), and for personal injuries or death, not less than one hundred thousand dollars (\$100,000.00) per person and three hundred thousand dollars (\$300,000.00) per occurrence.
- B. The applicant shall agree by acceptance and receipt of the permit to save and indemnify and keep harmless the borough against all liability claims from accidents to persons or property arising from the road opening or reconstruction of the road, and to defend any suit that may be brought against the borough relating to the opening of the road or resurfacing of same.

**12.228.19 - Violations and penalties.**

Any person who shall violate any provisions of this chapter or any rule, regulation or standard promulgated hereunder shall, upon conviction, be liable to a penalty of not more than One Thousand (\$1,000.00) Dollars or imprisonment in the county jail for a term not exceeding ninety (90) days, or both, in the discretion of the court.

  
Adopted 2-5-2015