BOROUGH OF WOODCLIFF LAKE
Bergen County, New Jersey

ORDINANCE 17-03

AN ORDINANCE TO STRIKE ARTICLE II OF CHAPTER 326 IN FAVOR OF CREATING CHAPTER 327 OF THE BOROUGH TO GOVERN THE EXCAVATION AND CONSTRUCTION IN PUBLIC STREETS IN

BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF WOODCLIFF LAKE IN THE COUNTY OF BERGEN AND STATE OF NEW JERSEY, AS FOLLOWS:

WHEREAS, the Borough of Woodcliff Lake Code Chapter 326 Article II (§326-3 through §326-15) address the procedures necessary and practice of excavating in a public street; and

WHEREAS, that Mayor and Council wish to update such procedures and practices in order to secure the safe and proper condition of the Borough's roadways; and

WHEREAS, that Mayor and Council wish to create a new chapter of the Borough Code at Chapter 327 to contain such procedures and practices in order to secure the safe and proper condition of the Borough's roadways; and

WHEREAS, this newly created chapter of the Borough Code at Chapter 327 shall render the procedures and practices contained in Chapter 326 Article II moot. As such, the Mayor and Council wish to strike Chapter 326 Article II entitled "Excavation in Public Streets" (§ 326-3 through §326-15) from the Borough Code.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Woodcliff Lake, Bergen County, New Jersey, as follows:

Section 1. That Article II of Chapter 326 entitled "Excavation in Public Streets" (§ 326-3 through §326-15) is repealed in full.

Section 2. A new chapter of the Borough Code shall be created at Chapter 327. Chapter 327 of the Borough of Woodcliff Lake Code shall now read as:

Chapter Title: Chapter 327: Excavation and Construction in Public Streets

Article I. Title; Definitions

§ 327-1 Title.

This chapter shall be known as "Excavation and Construction in Public Streets."

§ 327-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

STREET - Any road, highway, public way, public alley, easement or other right-of-way accepted or maintained by the Borough of Woodcliff Lake as a public street, as well as any state or county road or highway over which the Borough has acquired jurisdiction by agreement.

SUPERINTENDENT - The Superintendent of Public Works of the Borough of Woodcliff Lake.

Article II. Permits, Deposits Required, Maintenance Guaranty, Bond, Insurance and Transferability

§ 327-3 Permit required; exceptions.

A. It shall be unlawful for any person, persons, firm or corporation to open, grade, tear up any of the road surfaces off, or make any excavation in, any of the public streets, avenues, highways or public places in the Borough, for the purpose of constructing surface or subsurface improvements or for the purpose of laying, examining, replacing or repairing of gas mains, water mains, sewers, sewer connections, telephone conduits, electrical outlets, or for any other purpose, except and until they have satisfied the provisions of this ordinance and received the proper consent, permission and approval of the Borough of Woodcliff Lake, in writing and with the necessary consultation and review by the Superintendent, Foreman or his designee, of the Department of Public Works and/or the Borough Engineer.

B. A tunnel or excavation may be commenced without a permit where an emergency has arisen which makes it necessary to start work immediately, provided that the application for a permit is made simultaneously with the commencement of the work or an application for a permit is filed with the Borough within twenty-four (24) hours of the Street opening or on the next business day, whichever is more practical. All fees and requirements for a permit shall apply.

   This subsection shall be strictly construed, and in any prosecution for a violation of this subsection, it shall be presumed, in the absence of evidence to the contrary, that no emergency existed.

C. When a tunnel or excavation is commenced without a permit due to an emergency, the Woodcliff Lake Police Department and Department of Public Works shall be notified of the nature of the emergency and the nature of the work to be done prior to the commencement of the work. The excavation shall be performed in accordance with the provisions of this section.

§ 327-4 Application for permit.

A. All applications for permits referred to in this section shall be made in writing

to the Borough Administrator, at least five (5) business days in advance of the proposed road opening, unless it is an emergency. The application shall:

1. Specify the name and address of the individual, firm, corporation or Utility for whose benefit the excavation is to be made.
2. Specify the name and address of the excavation, construction and/or restoration contractor(s)
3. Identify specific location of the proposed excavation and the width, length and depth thereof.
4. Confirm Borough jurisdiction of the work area and provide a list of all federal, state, local governmental/quasi governmental agencies having jurisdiction thereover, and if such agencies require approval, whether such approval has been obtained and provide copies thereof.
5. Identify the type of road surface.
6. Identify the location of any and all utilities, storm drains, sanitary sewers or sewer mains within ten (10') feet of the limits of the proposed opening.
7. Identify excavation start date and expected duration and method of repair.
8. A traffic detour plan shall be provided for all projects for review and approval by the Chief of Police.
9. Identify the applicable fees for the issuance of the Permit as hereinafter provided, together with the charges as hereinafter set forth.
10. Include a signed statement by the applicant agreeing to indemnify the Borough and hold it harmless from and against any claim, liability, damage and/or expense, including any attorney fees, arising out of the granting of the Permit or from any negligence or fault of such applicant, his servants or agents in connection with any of the excavation performed under or in connection with such Permit and signature of the applicant upon the Borough provided check list for compliance of this ordinance.

§327-5. Deposits Required.

A. The permit deposits shall be in the following amounts for each opening excavated, up to 100 square feet of area disturbed:
    1. For openings on any road paved with concrete: seven hundred fifty ($750.00) dollars, plus $7.50 per square foot over 100 square feet.
    2. For openings on any road paved with macadam: five hundred ($500) dollars plus $5.00 dollars per square foot over 100 square feet.
    3. For openings on any unimproved road or unpaved portion of improved roads: two hundred fifty ($250) dollars plus $2.50 per square foot over 100 square feet.
    4. Regulated utilities governed by the New Jersey Board of Public Utilities pursuant to N.J.S.A. Title 48 are exempted from this section.

B. No permit shall be granted unless the sums hereinafter set forth shall be paid to the Borough. These sums shall be held by the Borough until eighteen (18) months after the completion of each improvement, as a security deposit to guarantee the completion of the improvement and maintenance thereof for eighteen (18) months thereafter, pursuant to the terms of the application, in a good and workmanlike manner and in accordance with the specifications and standards of the Borough to the satisfaction of the Mayor and Council. Eighteen (18) months after such completion, the Borough shall return the deposit to the applicant provided the work has been properly complete and maintained. Upon failure to complete and maintain the improvement to the satisfaction of the Borough, the Borough may complete and maintain the improvement, using the moneys so deposited or so much thereof as is necessary for such purpose, returning the balance of the deposit, if any, to the applicant after eighteen (18) months from the date of completion. If the security deposit is insufficient to pay for the cost of remediating the work the person or entity responsible shall be obligated to reimburse the Borough for any excess costs which may be collected in accord with the Borough Code.
C. The original of each permit and accompanying documents shall remain on file with the Superintendent of Public Works.

§ 327-6 Issuance and term of permits.

Permits shall be issued under the authority of the Superintendent of Public Works and in accordance with the provisions of this chapter and any regulations which the Superintendent may establish. The Superintendent of Public Works shall determine the initial time period during which a permit shall be valid and any conditions of the permit after consulting with the Chief of Police concerning potential motor vehicle and pedestrian traffic problems which may be caused by the proposed work as per the traffic detour plan and, if necessary, with the Borough Engineer concerning any dangers to the public or abutting property owners which may be caused by the proposed work.

§327-7. Fees.

Fees must be paid when the application is made.

A. The applicant shall pay the fees as provided in Chapter 163, Fees.
B. At the discretion of the Chief of Police, if it is necessary for the municipality to station a police officer near the excavation to direct traffic, the applicant shall also be charged an amount sufficient to compensate the Borough for the expense of stationing a police officer at or near the excavation.
C. Should the Superintendent of Public works deem it necessary to refer the matter to the Borough Engineer the applicant shall be obligated to pay the Borough for the cost of the engineering fees, which fees shall be established with the consent of the Mayor and Council and shall be paid in advance for the engineering services.

D. All improvements made hereunder shall be inspected by such persons as may be designated by the Borough Superintendent of Public Works, Foreman or his designee, and the applicant shall pay in advance to the Borough, by certified check, the amount estimated by the Borough Engineer to cover the inspection fees. The charge shall be reasonable and established by the Mayor and Council. In the event the charge has been overestimated, at the completion of the work, the applicant shall receive a refund of the overpayment. If the charge has been underestimated, the applicant shall be required to make an additional deposit of money with the Borough to cover such underpayment.

§327-8. Performance Bond.

Before a permit is granted by the Mayor and Council, the applicant shall be required to furnish a performance bond with sufficient surety, conditioned upon the completion of such improvement or improvements to the satisfaction of, and within the time designated by the Mayor and Council, and further conditioned upon the furnishing of a maintenance bond with sufficient surety in an amount of one-fourth (1/4) of the sum of the performance bond, to maintain such improvement or improvements against defective workmanship and material and inherent defects due to faulty workmanship or material for a period of eighteen (18) months from the date of completion and acceptance of such improvement or improvements. The performance bond shall be in such amount as estimated by the Borough Engineer to cover the costs of the improvement or improvements, and all expenses incidental thereto, plus twenty-five (25%) percent over and above the amount. In lieu of bonds, the applicant may deposit cash in sums equal to the amounts, which would otherwise be secured by the bonds aforesaid; and upon failure of the applicant to complete or maintain such improvement or improvements to the satisfaction of the Borough, the Borough may complete or maintain said work, using the money so deposited or so much thereof as is necessary for such purpose, returning the balance of the deposit, if any, to the applicant. Fees for the examination and review of the aforementioned bonds shall be paid to the Borough Attorney by the applicant.

§ 327-9 Insurance.

No permit shall be issued until the applicant shall have filed a certificate of an insurance company authorized to do business in the State of New Jersey that the applicant has a comprehensive liability insurance policy insuring the applicant against any claim for personal injury and/or property damage arising out of or in connection with the work to be undertaken pursuant to said application with the minimum limits of protection against claims for personal injury to one person in the sum of $100,000 and for more than one person in one accident in the sum of $300,000 and against claims for property damage with the minimum limit of $100,000.

§ 327-10 Eighteen (18) month maintenance guaranty.

A. All work performed under the permit shall be guaranteed for a period of eighteen (18) months after completion from any defects in workmanship or materials. Eighteen (18) months after the excavation has been patched, the permittee shall arrange for an inspection of the work by the Superintendent of Public Works, who may approve or disapprove of the fill and patching work and so notify the permittee. In the event that the work is disapproved, the Superintendent shall specifically advise the permittee of the defects and provide the permittee with 30 days to correct them.
B. In the event that the permittee shall fail to correct said defects after the end of the thirty-day period, the Borough may use the cash bond posted with the Borough in accordance with § 327-8 herein to correct the work to the satisfaction of the Superintendent of Public Works.
C. After the Superintendent has approved of the work eighteen (18) months subsequent to the completion of the work in accordance with this section, or in the event that the Borough has performed corrective work under this section, any cash funds remaining with the Borough shall be returned to the permittee at its last known address.

§ 327-11 Transferability; commencement of work; possession of permit; revocation.

A. Transferability. Every permit shall apply only to the person to whom it is issued and shall not be transferable.
B. Commencement of work. Work under a permit shall commence within 45 days from the date of issuance of the permit. If work is not commenced within that time, the permit shall automatically terminate.
C. Possession of permit. A copy of the permit, together with a copy of the plan endorsed with the approval of the Superintendent of Public Works, shall be kept in possession of the person actually performing the work and shall be exhibited on demand to any municipal official, employee of the Superintendent of Public Works or any police officer of the municipality.
D. Revocation of permit. The Superintendent of Public Works may revoke a permit for any of the following reasons:
    1. Violation of any provision of this chapter or any other applicable law or ordinance.
    2. Violation of any condition of the permit issued.
    3. Carrying on work under the permit in such a manner which endangers life or property or which creates any condition which is unhealthy, unsanitary or declared by any law, ordinance or regulation to constitute a nuisance.

Article III. Opening, Grading and Improvements

§ 327-12 Rules and regulations.

All permits issued under this article shall be subject to the following rules and regulations:

A. All excavations shall be kept properly barricaded at all times and during the hours of darkness shall be provided with proper warning lights. This regulation shall not excuse the permittee from taking any other reasonably necessary precaution for protection of persons or property.
B. All work shall be done in such a manner as to cause a minimum of interference with travel on the street affected. Permittee shall abide by all regulations contained herein with regards to traffic and notice to the Borough of Woodcliff Lake police Department. Unless in an emergency, no street shall be closed to traffic unless the closing is approved by the Mayor and Council by resolution.
C. The Superintendent may, upon application by the permittee, extend the time limit during which the permit shall be valid.
D. No work shall be done in such a manner as to interfere with any water main or other utility or any connection with any utility from any building, unless that is the purpose of the excavation or permission has been obtained in advance from the appropriate officer or department of the municipality or the company having charge of the utility. No work shall be carried on in such a manner as to result in the destruction or damaging of any property in the Borough of Woodcliff Lake, unless this is necessary for the completion of the work and permission has been obtained in advance from the municipal department or agency having jurisdiction over such property.
E. Unless otherwise approved by the Township Engineer, all construction details shall comply with New Jersey Residential Site Improvement Standards.
F. All materials and methods of construction shall comply with the New Jersey Department of Transportation Standard Specification for Road and Bridge Construction, dated 2007, and all revisions and amendments thereto.
G. The permittee shall cut all pavement with saw or other like equipment prior to excavation.
H. Where the Superintendent of Public Works determines it is necessary, the permittee shall cut back existing pavements using a milling machine, or equal means, to produce straight and clean lines along the existing pavement prior to placing final pavement.
I. All excavations shall be completely backfilled by the permittee. As much as possible of the material excavated shall be replaced. Such material shall be compacted by tamping or other suitable means in a manner prescribed by the Superintendent of Public Works. Where the Superintendent of Public Works determines that the excavated material is unsuitable for backfill, the permittee shall fill the excavation with clean crushed stone or other suitable material, which shall be placed in layers not exceeding 10 inches in depth and thoroughly compacted in a manner prescribed by the Superintendent. Upon completion of the work, the permittee shall remove any excess material and leave the premises in a clear condition. If the Superintendent determines that any backfilled excavation has settled or caved in, he shall so notify the

permittee, who shall promptly continue backfilling until the Superintendent determines that settlement is complete.

J. If tunneling operations are required, the tunnels shall be backfilled with rammed concrete composed of one part portland cement to six parts of sand.

K. If blasting is required to be done in the course of any excavation, it shall be done in strict compliance with all applicable state laws and regulations. Any rock or other substance within five feet of any water main, storm drain or other facility which may be damaged by blasting shall be removed without blasting. Any blasting requires review by the Borough Engineer at the permittee's expense.

L. If the work is not completed within the time specified in the permit or any extension granted by the Superintendent of Public Works or is not performed in accordance with the regulations set forth in this section and any other regulation that may be established by the Superintendent of Public Works, then the municipality may complete the work and restore the surface of the street. The cost of completing the work and restoring the street shall be charged to the permittee from the permittee's performance bond or cash security or may be recovered in an action in any court of competent jurisdiction.

§327-13. Staging for Excavation.

Not more than one-half (1/2) of the trench shall be excavated at one time where the trench will run from one side of the pavement to the other, and the part so excavated shall immediately be backfilled under the supervision of and to the satisfaction of the Superintendent of Public Works or his/her designee.

§327-14. Manner of Backfilling and Restoration.

A. The backfilling of the trench shall proceed in the following manner, namely: earth, sand, gravel or broken stone removed from the trench shall be replaced in layers not exceeding twelve (12") inches in depth, and shall be properly compacted. The work of refilling shall continue in this manner until the material is brought up to within twenty-four (24") inches of the finished pavement, any rocks larger than six (6") inches in diameter shall be removed. The first layer shall be ¾ inch Quarry Processed (QP) rock. The backfilling shall be continued until the top thereof, after being thoroughly compacted, shall be one (1") inch higher than the pavement. No animal or vegetable matter or refuse shall be used or permitted in the backfill, and all refuse or surplus material from the trench shall be removed from the work area immediately after the trench has been excavated. After the fill has thoroughly settled, the road surface shall be restored to a like new condition.

B. The person or entity conducting this work shall remain responsible for the repair of the resurfaced repair work for a period of eighteen (18) months and

shall repair same, if required by the Superintendent of Public Works or his/her designee as provided herein.

C. Any restoration of macadam which is not milled and paved shall be completed using infrared paving to ensure a smooth transition from the adjoining surface.
D. Any excavation in excess of thirty five (35) square feet on a road that has not been paved within the last five (5) years shall be restored as curb to center line resurfacing for the full limits of the excavation perpendicular to the curb.
E. Any excavation in excess of thirty five (35) square feet on a road that has been paved within the last five (5) years shall be restored as curb to curb resurfacing for the full limits of the excavation perpendicular to the curb.
F. Residential home owners can request review and reduction of the restoration requirements. Same must be approved by the Borough Engineer. Cost of review from the Engineer shall be at the residential home owners' expense.

§327-15. Interference with Gutter Flow, Traffic; Permits.

It shall be unlawful for any person, firm or corporation to place any stones, earth, ashes, lumber, pipe or other materials of any description whatsoever upon any road or street so as to interfere with the flow of water along the gutters or so as to interfere with traffic on the road or street. Any unlawful exercise of this privilege shall be deemed a violation of this section and punishable by a fine as stated in **§327-17** of the Borough Code. Nothing herein shall apply to leaves or vegetative waste. The purpose of this subsection is to prevent construction related material from obstructing or interfering with the flow of water and or traffic.

§327-16. Enforcement.

It shall be the duty of the Borough Superintendent of Public Works, Building Code Official, Property Maintenance Official, Borough Police Department, or any other officer as the Mayor and Council may designate, to ascertain whether permits have been issued covering each operation, supervise all excavations, backfilling and restoration as provided herein.

§327-17 *through* ***§327-24*** *shall be reserved for future amendments.*

Article IV. Violations and Penalties.

§327-25. Violations and Penalties.

A. Any person, firm or corporation violating any of the provisions of this section, or neglecting or refusing to comply with any of the terms of conditions hereof, shall, upon conviction, be liable as follows:
   1. Any person, firm or corporation violating any of the provisions of this

section shall, upon conviction, be liable to the penalty stated in N.J.S.A. 40:49-5 including a fine not exceeding $2,000.00 for each violation.

2. Any person, firm or corporation failing to make the required deposit shall be subject to: The amount set forth in subsection §327-5 plus $1000.00. Failing to make the required deposit shall be a separate offence from any other violation of this section.
3. Any person, firm or corporation failing to deposit a performance bond shall be required to provide such bond or the cash equivalent pursuant to §327-8 as determined by the Borough Engineer plus a fine of $1000. Failing to deposit a performance bond shall be a separate offence from any other violation of this section.
4. Opening a roadway without a permit and/or failing to comply with the provisions for filing an application for emergency work within 24 hours of conducting the work or the first business day thereafter: The amount set forth in subsection 327-5 plus $1000.00. Failing to file a permit shall be a separate offence from any other violation of this section.
5. Failure to restore any roadway as required shall be a $1000.00 fine. Failing to restore a road way shall be a separate offence from any other violation of this section.

B. Each and every nonconformance of this section, or each day that any provision of this section shall have been violated, shall be construed as a separate and distinct violation thereof.

Article V. Power to make additional rules and regulations.

§ 327-26 Power to make additional rules and regulations.

The Superintendent of Public Works may make any rules and regulations which he considers necessary for the administration and enforcement of this article, but no regulation shall be inconsistent with, alter or amend any provision of this chapter or impose any requirement which is in addition to or greater than those expressly or by implication imposed by this chapter. No regulations shall be effective unless they have been approved by resolution of the Mayor and Council. Copies of all current regulations shall be furnished to each permittee at the time of the issuance of the permit.

Section 3. All prior ordinances that are inconsistent with this ordinance are repealed. All ordinances are hereby amended to be consistent with this ordinance and all ordinances, including this one, shall be construed consistent with the express purpose of this ordinance.

Section 4. This ordinance shall be construed consistent with the purpose stated in section 1 hereof. Any ambiguities in this ordinance shall be construed in accordance with the purpose of this ordinance. If any part of this ordinance is invalidated by a court of competent jurisdiction, the remainder of this ordinance shall be saved to the full extent possible. This ordinance repeals provisions of the Woodcliff Lake Code only where stated herein; otherwise

this ordinance is amendatory and supplementary to existing provision of the Woodcliff Lake Code.

Section 5. This ordinance shall take effect immediately upon approval and publication of notice of adoption as provided by law.

ROLL CALL:

Introduction:	Mr. Belgiovine
Second:	Mr. Piantino
Ayes:	Mr. Belgiovine, Mrs. Gadaleta, Mrs. Hayes, Mrs. Herrington, Mr. Piantino, Mr. Panso
Nays:	None
Abstain:	None
Absent:	None

DATE: May 15, 2017

Attest: **DEBORAH DAKIN, RMC, CMR**
BOROUGH CLERK