

ORDINANCE # 340

AN ORDINANCE OF THE BOROUGH OF FREEPORT, COUNTY OF ARMSTRONG, COMMONWEALTH OF PENNSYLVANIA, DEFINING AND REGULATING STREET EXCAVATIONS AND OPENINGS; SETTING FORTH REQUIREMENTS FOR PERMIT APPLICATIONS, FORMS AND FEES AND THE APPROVAL AND ISSUANCE OR DISAPPROVAL THEREOF; REQUIRING NOTIFICATION OF UTILITIES; FIXING RESPONSIBILITY FOR RESTORATION OF OPENINGS AND SURFACES AND DEFECTS THEREOF; ESTABLISHING REQUIREMENTS AND SPECIFICATIONS FOR WORK UNDER PERMIT; AUTHORIZING EMERGENCY WORK; ESTABLISHING LIMITATIONS UPON EXCAVATIONS AFTER STREET IMPROVEMENTS AND CONDITIONS FOR LYING AND EXTENDING UTILITY LINES; AUTHORIZING THE BOROUGH TO DO WORK AND COLLECT COSTS; REQUIRING AGREEMENT OR SECURITIES; AND PRESCRIBING PENALTIES FOR VIOLATIONS.

THE BOROUGH COUNCIL OF THE BOROUGH OF FREEPORT HEREBY ORDAINS:

SECTION 1. DEFINITIONS AND INTERPRETATIONS.

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

EXCAVATION – any activity within the right-of-way of any street, alley or cartway which involves cutting, breaking, or disturbing the surface thereof. In this ordinance, the term OPENING shall have essentially the same meaning as excavation.

STREET – any public street, avenue, road, square, alley, highway, or other public place located in the Borough of Freeport and established for the use of vehicles, but shall not include state highways.

PERSON – any natural person, partnership, firm, association, corporation or municipal authority

BOROUGH – the Borough of Freeport, Armstrong County, Pennsylvania.

In this ordinance, the singular shall include the plural and the masculine shall include the feminine and the neuter.

SECTION 2. PERMIT REQUIRED TO MAKE OPENING OR EXCAVATION.

It shall be unlawful for any person to open or to make any excavation of any kind in any of the streets in the Borough without first securing a permit thereof, as hereinafter provided.

SECTION 3. APPLICATION FOR PERMIT.

Any person who shall desire to make any opening or excavation in any of the streets in the Borough shall make application to the Borough Secretary in writing for that purpose. Such application shall be made upon forms furnished by the Borough and shall set forth the name of the applicant, the exact location of the proposed opening or excavation, and the approximate size and depth thereof, and shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinance of the Borough and the laws of the Commonwealth in relationship thereto, and that the applicant shall well and truly save, defend and keep harmless the Borough from and indemnify it against any and all actions, suits, demands, payments, costs and charges for or by reason of the proposed opening or excavation, and all damages to persons or property resulting in any manner therefrom, or from any other matter, cause or thing relating thereto.

SECTION 4. PERMIT FEES.

Before any permit shall be issued to open or excavate any street in the Borough, the applicant shall pay to the Borough Secretary a permit fee in the minimum amount of fifty dollars (\$50.00) for the first two (2) square yards of opening or excavation. When application shall be made to open or excavate in excess of two square yards, the applicant shall pay, in addition to the minimum fee, an additional \$2.00 per each square yard or fraction thereof to be opened or excavated upon such street.

SECTION 5. RESTORATION OF SURFACES.

Any person who shall open or excavate any street in the Borough shall thoroughly and completely refill the opening or excavation in such a manner as to prevent any settling thereafter and shall restore the surface to the same condition as it was before the opening or excavation, and such restoration shall be accordance with the specifications of the Borough for the restoration of surfaces of streets in the Borough, as restored the surface shall conform to the proper grade and be of the same surface covering as the part of the thoroughfare immediately adjoining the opening. If within two (2) years after the restoration of the surface as herein provided, defects shall appear therein resulting from defective backfilling by the applicant, the applicant shall reimburse the Borough for the cost of all necessary repairs to the permanent paving. If more than 100 linear feet of longitudinal openings are made in any street in the Borough, the Borough Council may require the permittee to overlay the street where the openings were made, for the entire length of street that was opened, if the Borough Council determines that the rideability or structural integrity of the pavement has been impaired by the openings.

SECTION 6. PERFORMANCE OF WORK.

All other work in connection with openings to any street, including excavations, protection, refilling and temporary paving, shall be done by the applicant at his expense, and all such work shall be subject to the provisions of this article and to the supervision and approval of the Streets Committee, provided that the Streets Committee may require that cutting of the surface of improved streets and the backfilling of all excavations therein shall be actual costs of the work performed by the Borough.

SECTION 7. REQUIREMENTS FOR WORK; CORRECTION OF UNSATISFACTORY WORK; COMPLETION OF INCOMPLETE WORK.

1. No opening or excavation in any street shall extend from the curb line into the street a distance greater than one foot (1') beyond the centerline of the street before being refilled and the surface of the street restored to a condition safe and convenient for travel.
2. No more than 500 feet longitudinally shall be opened in any street at any time.
3. The work of excavation shall be so conducted as not to interfere with the water mains, sewers or other connections with the houses, or any other subsurface lines or constructions, until permission of the proper authorities in connection with such subsurface lines or constructions shall have been obtained.
4. No tunneling shall be allowed without the express approval of the Street Committee therefor endorsed upon the permit.
5. All openings or excavations shall be backfilled promptly with modified 2A stones and shall be mechanically backtamped in 6 inch (6") layers from the bottom of the trench to within 10" of top of trench under the supervision of the Borough Street Commissioner. The replaced excavation shall be covered by eight inches of Penn -Dot approved BCBC asphalt binder, which will be placed over the trench with a twelve inch (12") overlap on the undisturbed material on all sides of the excavation. The asphalt will be coated with an asphalt tack coat, over which will be placed two inches (2") ID-2 asphalt top of the Penn-Dot specifications. In the case of unimproved streets only the backtamping will be required.

6. A temporary paving of coldpatch premix mechanically compacted may be used for a period of not more than ninety (90) day prior to permanent repairs.
7. During the making of any excavation in the street, every necessary and reasonable precaution shall be taken by the applicant to keep the street in a safe and passable condition both day and night, by guards, barriers, signs, and other devices, and all excavating permits granted hereunder are granted under and subject to the express condition that the person to whom the same is issued shall indemnify, save, and keep harmless the Borough from any loss in damages, or otherwise whatsoever, which may or shall be occasioned at any time by the said excavation, or by any leak, explosion or other matter placed in the said excavation.
8. The applicant shall notify the Borough Secretary when the opening or excavation is ready for backfill before backfilling is done, when backfilling work is completed and when temporary paving has been installed and when the street has been permanently restored so that an inspection can be made. In the event that any work performed by the applicant shall, in the opinion of the Street Commissioner be unsatisfactory and the same shall not be corrected in accordance with his instructions within the time fixed by him, or in the event that the work for which the permit was granted is not completed within the time fixed by the Street Commissioner, the borough may proceed to correct such unsatisfactory work and collect the cost thereof, plus twenty (20) percent from the applicant.
9. When any earth, gravel, or other excavated material is caused to roll, flow, or wash upon any street or yard the applicant shall remove the same from the street or yard within twenty-four (24) hours after deposit. In the event that such deposits are not removed within the time fixed, the Borough shall cause such removal and the applicant shall pay the costs incurred.

SECTION 8. EMERGENCY OPENINGS.

In the case of any leak, explosion or other accident in any subsurface pipe, line, construction, or apparatus, it shall be lawful for the person owning or responsible for such, to commence an excavation to remedy such condition before securing a permit, provided that application for a permit be made immediately and not later than the next business day thereafter, and that such person comply with all other provisions of this ordinance. If any such emergency condition shall not be immediately attended to by the owner or person responsible for such pipe, line, construction, or apparatus, the Borough Street Commissioner after such notice as he deems necessary and required by under the circumstance of the particular case, shall proceed to cause to be done the work necessary and required by such emergency, and charge the same on the basis of cost plus twenty (20) percent to such owner or person.

SECTION 9. WORK NECESSITATING OPENING OR EXCAVATION TO BE DONE PRIOR TO STREET IMPROVEMENT AND FOR 5 YEARS THEREAFTER;

The Borough shall give timely notice to all person owning property abutting on any street within the Borough about to be paved or improved, and to all public utility companies operating in the Borough that all such persons and utility companies make all water, gas, and sewer connections, as well as any repairs thereto which would necessitate excavation of the said street within thirty (30) days from the giving of such notice, unless such time is extended in writing for cause shown by the Street Commissioner.

If the permittee opens pavement having a bituminous concrete surface and the Borough's wearing course is less than 5 years old, the permittee shall, in addition to the restoration conditions outlined in this ordinance, overlay the pavement in accordance with the following conditions:

1. When a longitudinal opening longer than 100 linear feet has been made in the pavement, the permittee shall overlay the street, for the entire length of street that was opened, in a manner authorized by the Borough Council.
2. When 4 or more emergency openings have been made by the same permittee within 100 linear feet of pavement, the permittee shall overlay the street, for the entire length of street that was opened.

SECTION 10. CONDITIONS FOR LAYING AND REPLACING UTILITY LINES.

No new water, sewer, steam or gas main or electricity, telephone or other utility line shall hereafter be laid or constructed, and no such existing main or line shall be extended, in any of the streets of the Borough until the plan therefor shall have been first filed with the Borough Council and such plan, and the exact location of such main or line, is approved by the council.

SECTION 11. AGREEMENT / SECURITY REQUIRED

If the permittee will be authorized to perform a substantial amount of work within the right-of-way, the Borough Council may require the applicant to execute an agreement or provide security, or both, as a prerequisite to issuance of the permit. If security is required, it shall be delivered to the Borough in a form and amount acceptable to the Borough Council and shall guarantee restoration and maintenance of the street for a period of at least 2 years after the acknowledged completion of the permitted work. If the Borough Council requires the security, the following documents are acceptable forms of security:

- (1) An individual or blanket bond, executed by the permittee and naming Freeport Borough as obligee.
- (2) An irrevocable letter of credit, signed by a bank officer and naming Freeport Borough as sole beneficiary, to be honored on presentment.
- (3) An escrow account in a form acceptable to the Borough Council.

SECTION 12. PAYMENT FOR WORK DONE BY BOROUGH.

The person made liable for such work by the terms of this Ordinance shall make payment for all work done by the Borough under the provisions of this Ordinance. The Borough shall send a bill for any such work to the person liable for such work by certified mail to the last known mailing address of such person. Payment shall be made within 30 days of that person's receipt of the bill. In the event that person fails to make full payment of the bill within 30 days, the Borough may proceed to collect the amount due in the manner provided by the terms of this Ordinance or other applicable law.

SECTION 13. PENALTIES.

Any person, firm or corporation who shall violate any provisions of this Ordinance shall, upon conviction thereof, be sentenced to pay a fine of not more than \$600.00, and in default of payment, to imprisonment for a term not to exceed 90 days. Every day that a violation of this Ordinance continues shall constitute a separate offense.

SECTION 14. SEVERABILITY.

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section or part thereof not have been included herein.

SECTION 15. PRIOR ORDINANCES REPEALED,

This Ordinance repeals the original Ordinance No. 148 adopted on May 12, 1958 as well as any and all ordinances or amendments of ordinances pertaining to street opening and excavation.

SECTION 16. EFFECTIVE DATES.

This Ordinance shall become effective on

Ordained and enacted as an Ordinance of the Borough of Freeport this 3rd day of April 2000

BOROUGH COUNCIL OF THE FREEPORT BOROUGH

BY:

PRESIDENT, JAMES SEAGRIFF

James M. Seagriff

ATTEST:

SECRETARY, GRACE RAVOTTI

Grace Ravotti

APPROVED THIS 3rd DAY OF April 2000

Robert Ravotti
MAYOR, ROBERT RAVOTTI