

ORDINANCE NO. 161

AN ORDINANCE OF THE BOROUGH OF PATTERSON HEIGHTS
REGULATING STREET OPENINGS, EXCAVATIONS, AND
PAVEMENT CUTS AND REPEALING CERTAIN BOROUGH
ORDINANCES.

Be it ordained and enacted by the Council of the Borough of Patterson Heights, County of Beaver, Pennsylvania, and it is hereby ordained and enacted by the authority of the same.

ARTICLE I - DEFINITION

Section 1.1 - Definitions

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

- A. "Applicant" shall mean any person who makes application for a permit.
- B. "Borough" shall mean the Borough of Patterson Heights, County of Beaver, Commonwealth of Pennsylvania.
- C. "Street Commissioner" shall mean the person in charge of the department of highways or the highway operations in the Borough, or his authorized deputy, representative, or inspector.
- D. "Emergency" shall mean any unforeseen circumstance or occurrence, the existence of which constitutes a clear and immediate danger to persons or properties.
- E. "Municipal Authority" shall mean any body corporate and politic created pursuant to the laws of the Commonwealth of Pennsylvania.

F. "Permittee" shall mean any person who has been issued a permit and has agreed to fulfill all the terms of this ordinance.

G. "Person" shall mean and include any natural person, partnership, firm, association, utility, corporation, or authority created pursuant to an act of the Pennsylvania General Assembly. Whenever used in any section prescribing and imposing a penalty, the term "Person" as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

H. "Public Utility Company" shall mean any company subject to the jurisdiction of and control by the Pennsylvania Public Utility Commission.

I. "Street" shall mean and include a public street, public easement, public right-of-way, public highway, public alley, public way, or public road accepted or maintained by the Borough.

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

ARTICLE II - STREET OPENINGS AND PAVEMENT CUTS

Section 2.1 - Permit Required

It shall be unlawful for any person to make any tunnel, opening, or excavation of any kind in or under the surface of any street without first securing a permit from the Borough for each separate undertaking; provided, however, any person maintaining pipes, lines, or other underground facilities in or under the surface of any street may proceed with an opening without a permit

when emergency circumstances demand the work to be done immediately, provided the permit could not reasonably and practically have been obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the Office of the Borough Secretary is open for business and said permit shall be retroactive to the date when the work was begun. In all cases where emergency openings are necessary, the Borough Street Commissioner shall be notified prior to such opening.

Section 2.2 - Street Openings Limited

No person to whom a permit has been granted shall perform any of the work authorized by such permit in any amount greater than that specified in the permit, except that upon approval by the Street Commissioner additional work may be done under the provisions of the permit in such an amount as the Street Commissioner shall deem appropriate and necessary to complete the work. Any deposit or bond posted in connection with the permit shall be deemed to cover any such additional work as may be approved pursuant to this section within the limit mentioned herein.

Section 2.3 - Commencement of Work

Work for which a permit has been issued shall commence within ten (10) days after the issuance of the permit therefor. If not so commenced, the permit shall be automatically terminated unless the permittee applies to the Street Commissioner for an extension of time within which to commence work. If such an extension is granted, the original permit shall remain in force for the period of time specified in the extension. Permits which terminate within ten (10) days after issuance or within any

extension of time granted by the Street Commissioner may be renewed only upon the payment of an additional permit fee as originally required.

Section 2.4 - Permits Non-transferable

Permits are not transferable from one person to another and the work shall not be made in any place other than the location specifically designated in the permit.

Section 2.5 - Expiration of Permits

Every permit shall expire at the time stated in the permit. If the permittee should not complete the work within the specified time, he shall, prior to expiration of the permit, present in writing to the Street Commissioner a request for an extension of time, setting forth therein the reasons for the requested extension. If in the opinion of the Street Commissioner such an extension is necessary and not contrary to the public interest, the permittee may be granted additional time for the completion of the work.

Section 2.6 - State and County Highways

The provisions of this ordinance shall not be applicable in those instances where the highway is maintained by the Commonwealth of Pennsylvania or by the County of Beaver.

Section 2.7 - Rights of Borough

Every permit shall be granted subject to the right of the Borough or of any other person to lawfully use the street for any purpose, not inconsistent with the permit.

SECTION 2.8 - REVOCATION OF PERMITS

Any permit may be revoked by the Street Commissioner, after notice to the permittee, for:

- A. Violation of any condition of the permit or of any provision of this ordinance;
- B. Violation of any provision of any other applicable ordinance or law relating to the work;
- C. Existence of any condition or the doing of any act constituting or creating a nuisance or endangering life or property.

A permittee shall be granted a period of three (3) days from the date of the notice to correct the violation and to proceed with the diligent prosecution of the work authorized by the permit before said permit is revoked.

Written notice of any such violation or condition shall be served upon the permittee or his agent engaged in the work. The notice shall contain a brief statement of the reasons for revoking the permit. Notice may be given either by personal delivery thereof to the person to be notified or by certified or registered United States mail addressed to the person to be notified.

When any permit has been revoked and the work authorized by the permit has not been completed, the Street Commissioner shall do such work as may be necessary to restore the street or part thereof to as good a condition as before the opening was made. All expenses thereby incurred by the Borough shall be recovered from the deposit or bond the permittee has made or filed with the Borough.

Section 3.1 - Duties and Responsibilities of Applicants

It shall be the duty and responsibility of any applicant to:

A. Make written application for such permit with the Borough Secretary on such form as he shall prescribe. No work shall commence until the ~~Engineer~~ ^{Street Commissioner} has approved the application and plan and issued a permit and until the permittee has paid and provided all fees, deposits, certificates, and bonds required by this ordinance.

B. Furnish in triplicate a plan, if required by the Engineer, showing the work to be performed under said permit. Two (2) copies of such plan shall be returned to the applicant at the time the permit is granted.

C. Agree to save the Borough, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under said permit. The acceptance of any permit under this ordinance shall constitute such an agreement by the applicant whether the same is expressed or not.

Section 3.2 - Duties and Responsibilities of Permittees

It shall be the duty and responsibility of any person receiving a permit to:

A. Pay a permit fee of five dollars (\$5.00); provided, however, that public utility companies and municipal authorities may, upon written notice to the Borough Secretary, elect to be billed monthly for such fees as they accrue.

B. Furnish a certificate of insurance as required by

ment by said Article.

C. Keep the original copy of the permit and an approved copy of the plan at all times while such work is in progress at the location for which said permit was granted and show such permit and/or plan upon demand by the Borough highway or police authorities.

ARTICLE IV - STREET OPENING REGULATIONS

Section 4.1 - Opening and Excavation Restrictions

A. No opening or excavation in any street shall extend beyond the center line of the street before being backfilled and the surface of the street temporarily restored.

B. No more than two hundred fifty (250) feet measured longitudinally shall be opened in any street at any one time, except by special permission of the Street Commissioner.

C. All utility facilities shall be located sufficiently ahead of trench excavation work to avoid damage to those facilities and to permit their relocation, if necessary.

D. Pipe drains, pipe culverts, or other facilities encountered shall be protected by the permittee.

E. Any person whose facilities are damaged or caused to be relocated by the permittee may make the necessary repairs or relocation and file a claim against the permittee with the Borough for the cost of such repairs or relocation. Public utility companies concerned shall be notified by the Borough in sufficient time to determine the validity of the damage or relocation claims. The cost of such repair or relocation work may be held by the Borough Secretary from the deposit pending determination of liability for the damage.

F. Monuments of concrete, iron, or other lasting material set for the purpose of locating or preserving the lines of any street or property sub-division, or a precise survey reference point or a permanent survey bench mark within the Borough shall not be removed or disturbed or caused to be removed or disturbed unless permission to do so is first obtained in writing from the Street Commissioner. Permission shall be granted only upon condition that the permittee shall pay all expenses incident to the proper replacement of the monument.

G. When work performed by the permittee interferes with the established drainage system of any street, provision shall be made by the permittee to provide proper drainage to the satisfaction of the Street Commissioner.

H. When any earth, gravel, or other excavated material is caused to roll, flow, or wash upon any street the permittee shall cause the same to be removed from the street within twenty-four (24) hours after deposit. In the event the earth, gravel or other excavated material so deposited is not removed, the Street Commissioner shall cause such removal and the cost incurred shall be paid by the permittee or deducted from his deposit.

I. Every permittee shall place around the project such barriers, barricades, lights, warning flags and danger signs as shall be determined by the Street Commissioner to be necessary for the protection of the public. Barricading shall be in compliance with the regulations as set forth in the Commonwealth of Pennsylvania, Department of Highways, Traffic Engineering Bureau's "Specifications for Control and Protection of Traffic

on Construction and Maintenance Projects," Bulletin 43 (1961 addition) and any future revisions thereto. Copies of this publication shall be made available in the Office of the Street Commissioner for inspection by the public.

Additional safety requirements may be prescribed by the Street Commissioner, and, where applicable, shall be in conformance with the requirements set forth in the United States Department of Army, Corps of Engineers, publication: Safety Requirements (1941 edition, revised 1951) and any future revisions thereto. Copies of this publication shall be made available in the Office of the Street Commissioner for inspection by the public.

Whenever any person fails to provide or maintain the safety devices required by the Street Commissioner, such devices shall be installed and maintained by the Borough. The amount of the cost incurred shall be paid by the permittee or deducted from his deposit.

No person shall willfully move, remove, injure, destroy, or extinguish any barrier, warning light, sign, or notice erected, placed or posted in accordance with the provisions of this ordinance

J. Access to private driveways shall be provided except during working hours when construction operations prohibit provision of such access. Free access must be provided at all times to fire hydrants.

K. Excavated materials shall be laid compactly along the side of the trench and kept trimmed up so as to cause as little inconvenience as possible to public travel. In order to expedite the flow of traffic or to abate a dirt or dust nuisance, the

Street Commissioner may require the permittee to provide toe boards or bins; and if the excavated area is muddy and causes inconveniences to pedestrians, temporary wooden plank walks shall be installed by the permittee as directed by the Street Commissioner. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, the permittee shall keep a passageway at least one-half the sidewalk width open along such sidewalk line.

L. Work authorized by a permit shall be performed between the hours of 7 A.M. and 7 P.M., Monday through Saturday, unless the permittee obtains written consent from the Street Commissioner to do the work at an earlier or later hour. Such permission shall be granted only in case of an emergency or in the event the work authorized by the permit is to be performed in traffic-congested areas.

M. In granting any permit, the Street Commissioner may attach such other conditions thereto as may be reasonably necessary to prevent damage to public or private property or to prevent the operation from being conducted in a manner hazardous to life or property or in a manner likely to create a nuisance. Such conditions may include but shall not be limited to: (1) limitations on the period of the year in which the work may be performed; (2) restrictions as to the size and type of equipment; (3) designation of routes upon which materials may be transported; (4) the place and manner of disposal of excavated materials; (5) requirements as to the laying of dust, the cleaning of streets, the prevention of noise, and other results offensive or injurious

to the neighborhood, the general public, or any portion thereof; and (6) regulations as to the use of streets in the course of the work.

Section 4.2 - Backfilling and Restoring Opening

A. All pavement cuts, openings, and excavations shall be properly made, backfilled and temporarily surfaced by the permittee according to Borough specifications.

B. The Street Commissioner must be notified by the permittee during the twenty-four (24) hour period preceding beginning of backfilling of the date and approximate time at which backfilling will be begun.

C. The work of the final restoration, including both paving surface and paving base, shall be performed by the permittee according to Borough specifications.

D. If the Street Commissioner finds that paving surfaces adjacent to the street opening may be damaged where trenches are made parallel to the street, or where a number of cross trenches are laid in close proximity to one another, or where the equipment used may cause such damage, he may require a negotiated contribution from the permittee for the resurfacing in place of patching of such street if the total area of the proposed patch or probably damaged area exceeds twenty-five (25) per cent of the total pavement surfacing between curb faces or between concrete gutter edges in any block. Such negotiations shall be carried on and contributions agreed upon prior to issuance of a permit.

E. After excavation is commenced, the work of making and backfilling the same shall be prosecuted with due diligence.

he may deem necessary of all work authorized by a permit. The Street Commissioner is empowered to provide a full time inspector if necessary to ensure compliance with the provisions of this ordinance.

G. All inspection costs shall be borne by the permittee. Such costs shall be based on a schedule of charges on file in the Office of the Borough Secretary.

H. The permittee shall notify the Street Commissioner in writing upon completion of all work accomplished under the provisions of the permit. A certificate of final inspection shall be issued by the Street Commissioner to each permittee no sooner than one (1) year after the permanent restoration of the excavation has been made, provided the work authorized by the permit has been performed according to Borough specifications. Prior to the issuance of a certificate, the Street Commissioner shall make a final inspection of the restoration to determine whether Borough specifications have been adhered to.

I. If any settlement in a restored area occurs within a period of one (1) year from date of completion of the permanent restoration, any expense incurred by the Borough in correcting such settlement shall be paid by the permittee or recovered from his bond, unless the permittee submits proof satisfactory to the Street Commissioner that the settlement was not due to defective backfilling.

J. In no case shall any opening made by a permittee be considered in the charge or care of the Borough, or any of its officers or employees, and no officer or employee is authorized in any way to take or assume any jurisdiction over any such opening,

except in the exercise of the police power, when it is necessary to protect life and property.

ARTICLE V - DEPOSITS

Section 5.1 - Deposit

The minimum amount of the deposit shall be the greater of the sum of one hundred dollars (\$100.00) or the current prevailing cost of repair or replacement as determined by the Borough Engineer. The deposit shall be paid at the time the permit is received, and the deposit shall be used to reimburse the Borough for the cost of any work and/or materials furnished by it in the event the permittee fails to restore the opening properly according to the specifications of this ordinance. The Borough shall waive this requirement insofar as it pertains to a public utility company if such company files with the Borough its corporate bond in a form satisfactory to the Borough Solicitor, conditioned upon the payment to the Borough of all costs which would otherwise be covered by and paid out of such a deposit. In the event any public utility company elects to file such a bond, the Borough shall bill such company monthly for such costs as they accrue or they shall be paid at the time of securing each permit.

Section 5.2 - Form of Deposit

The deposit may be either in the form of a certified, treasurer's, or cashier's check or in lawful money of the United States.

SECTION 5.3 - INSUFFICIENT DEPOSIT

If any deposit is less than sufficient to pay all costs, the permittee shall, upon demand, pay to the Borough an amount equal to the deficiency. If the permittee fails or refuses to pay such deficiency, the Borough may institute an action to recover the same in any court of competent jurisdiction. Until such deficiency is paid in full, no additional permits shall be issued to such permittee.

Section 5.4 - Yearly Deposit

Whenever any public utility, if it does not elect to file a corporate bond as provided in Section 5.1 of this Article, or municipal authority shall anticipate more than one street opening or excavation per calendar year, such public utility or municipal authority may post one deposit in an amount and form as provided above for the calendar year or part thereof to cover the cost of any and all work.

Section 5.5 - Refund of Deposit

Upon notification by the permittee that all work authorized by the permit has been completed, and after restoration of the opening, the Borough Secretary shall refund to the permittee his deposit less all costs incurred by the Borough in connection with said permit. In no event shall the permit fee be refunded.

SECTION VI - LIABILITY INSURANCE

Section 6/1 - Insurance Requirements

Each applicant, upon the receipt of a permit, shall provide the Borough with an acceptable certificate of insurance indicating that he is insured against claims for damages for personal injury

as well as against claims for property damage which may arise from or out of the performance of the work, whether such performance be by himself, his subcontractor, or anyone directly or indirectly employed by him. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from completed operations. The liability insurance for bodily injury in effect shall not be less than \$100,000 for each person and \$300,000 for each accident and for property damages not less than \$50,000, with an aggregate of \$100,000 for all accidents. A public utility company or municipal authority may be relieved of the obligation of submitting such a certificate if it submits satisfactory evidence that it is insured, or has adequate provision for self-insurance, in accordance with the requirements of this ordinance. Public utilities and authorities may submit annually such evidence of insurance coverage in lieu of individual submissions for each permit.

ARTICLE VII - OPENINGS IN NEW STREETS

Section 7.1 - Notices of Improvements

When the Borough shall improve or pave any street, the Borough shall give notice to all persons owning property abutting on the street about to be paved or improved, and to all public utilities and municipal authorities operating in the Borough, and all such persons, public utilities, and municipal authorities shall make all connections as well as any repairs thereto which would necessitate excavation of the street, within forty-five (45)

days from the giving of such notice. The time shall be extended if permission is requested in writing and approved by the Borough Council after consultation with the Borough Engineer.

Section 7.2 - Restrictions upon Opening New Streets

No permit shall be issued by the Street Commissioner which would allow an excavation or opening in a paved and improved street surface less than five (5) years old unless the applicant can clearly demonstrate that public health or safety require that the proposed work be permitted or unless an emergency condition exists.

Section 7.3 - Penalty for Opening New Streets

If by special action of the Street Commissioner, a permit is issued to open any paved and improved street surface less than five (5) years old, an additional charge of five dollars (\$5.00) shall be made for the opening.

ARTICLE VIII - GENERAL PROVISIONS

Section 8.1 - Street List Requirements

A. Every person owning, using, controlling, or having an interest in pipes, conduits, ducts, or other structures under the surface of any street used for the purpose of supplying or conveying gas, electricity, communication impulses, water or steam to or from the Borough, or to or from its inhabitants, or for any other purposes, shall file with the Borough Secretary, within one hundred twenty (120) days after the adoption of this ordinance, a set of maps showing the location of the aforementioned facilities owned by such a person.

B. Within ninety (90) days after the first day of January of each and every year, such person shall notify in writing the

list required Section 8.1A above.

Section 8.2 - Abandoned Facilities

A. Whenever any pipe, conduit, duct, tunnel, or other structure located under the surface of any street, or the use thereof, is abandoned, the person owing, using, controlling or having an interest therein shall, within thirty (30) days after such abandonment, file with the Borough Secretary a statement in writing giving in detail the location of the structure so abandoned.

B. Whenever there are manholes or tunnels associated with abandoned underground facilities, such manholes or tunnels shall be filled in at the time of abandonment and the Borough Secretary notified thereof in writing.

C. When the Borough plans to pave or improve streets in which there are abandoned facilities, the owners of such facilities shall be required to remove them if in the opinion of the Borough Council, their removal is in the best interest of the Borough. If the owner shall refuse to remove such facilities, the Borough shall remove the abandoned facilities and the owner shall reimburse the Borough for such removal.

Section 8.3 - Street Opening Permit Notices

A. If the work to be undertaken by the permittee is such that it will affect the use of properties abutting or adjoining the project, the Borough Secretary shall notify the affected property owners and/or tenants of the proposed work to be done.

B. If the work to be undertaken by a permittee will affect other sub-surface installations in the vicinity of the proposed opening, the permittee shall notify the owners of such facilities of the proposed work.

Section 8.5 - Penalty For violation

Any person violating any of the provisions of this ordinance or any regulations and specifications adopted thereunder shall, upon conviction thereof before the Mayor or a Justice of the Peace of the Borough, be sentenced to pay a fine of not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00) for each offense, and costs of prosecution, and in default of payment of said fine and costs, to be imprisoned in the Beaver County jail for a period not exceeding thirty (30) days. Each day that a violation is permitted to exist after notice in writing shall have been served by the Borough Secretary shall constitute a separate offense.

Section 8.6 - Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any 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 8.7 - Repeal of Existing Ordinances

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance and in particular Ordinance No. 70, are hereby repealed.

Ordained and enacted into a law this seventh day of

July, A.D., 1969.

Attest:

Joseph D. Williams
Secretary

Ernest W. Ramsey
President of Council

Approved this seventh day of July, 1969.