

**YORK HAVEN BOROUGH
YORK COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2005-01

AN ORDINANCE OF THE BOROUGH OF YORK HAVEN, YORK COUNTY, 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 THEREFROM; ESTABLISHING REQUIREMENTS AND SPECIFICATIONS FOR WORK UNDER PERMIT; AUTHORIZING EMERGENCY WORK; PROHIBITING REMOVAL OR DESTRUCTION OF TREES OR SHRUBBERY; ESTABLISHING LIMITATIONS UPON EXCAVATIONS AFTER STREET IMPROVEMENTS AND CONDITIONS FOR LAYING AND EXTENDING UTILITY LINES; AUTHORIZING THE BOROUGH TO DO WORK AND COLLECT COSTS; REQUIRING POSTING OF BONDS; AND PRESCRIBING PENALTIES FOR VIOLATION.

WHEREAS, the Borough Council of York Haven Borough desires to regulate street excavations and openings;

WHEREAS, the Borough Council of York Haven intends to set forth requirements, specifications, and limitations for the excavation and opening of its streets;

WHEREAS, the Borough Council of York Haven deems it is in the best interest of the Borough to regulate street excavations and openings.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, and it is hereby enacted and ordained by the Council of the Borough of York Haven, York County, Pennsylvania under authority of law as follows:

SECTION 1: Definitions and Interpretation. 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 within the Borough of York Haven 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 York Haven, York County, Pennsylvania.

BOROUGH ENGINEER – C. S. Davidson, or the currently appointed Engineer of Record.

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 make any excavation of any kind in any of the streets in the Borough without first securing a permit therefor, as hereinafter provided.

SECTION 3: Application for Permit. Any person who shall desire to make any Opening or Excavation of any kind in any Street shall make application to the Borough Engineer in writing for that purpose. Such application shall be made upon forms to be 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. In addition the application shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Borough and the laws of the Commonwealth in relation thereto, and that the applicant shall well and truly save, defend and hold harmless the Borough 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 occurring in the prosecution of the work connected therewith, or from any other matter, cause or thing relating thereto.

SECTION 4: Permit Fee. Before any permit shall be issued to open or excavate any Street, the applicant shall pay a permit fee in the amount of **\$50.00** or an amount as established by resolutions of the Borough.

SECTION 5: Issuance Of Permits Restricted. Permits shall be issued only to the person furnishing public utility services or the owner or owners of the real property adjoining the location where such Opening or Excavation is to be made.

SECTION 6: Information Contained On Permit. Any permit issued hereunder shall specify the exact location where the Opening or Excavation is to be made, the approximate size and depth thereof and the time within which the work for which the permit is granted to be completed.

SECTION 7: Permit Approval/Disapproval. A permit may be issued to the applicant after all the requirements therefor have been satisfied. If the application is disapproved, written notice of disapproval together with reasons therefor shall be given to the applicant.

SECTION 8: Responsibility To Contact Utilities. The work authorized by the permit is subject to all the provisions of the Act of December 10, 1974, P.L. 852, No. 287, 1 *et seq.*, as amended or supplemented from time to time. It shall be the applicant's responsibility to contact the utilities that have recorded their facilities in compliance with said Act. A partial list of utilities providing services in the Borough and their office addresses may be obtained from the County Recorder of Deeds. **The applicant shall also be responsible for providing the serial number from the Pennsylvania One Call System to the Borough.**

SECTION 9: Refilling Of Opening Or Excavation; Restoration Of Surface; Responsibility For Defects Occurring Within 2 Years. Any person who shall open or excavate any Street 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 in accordance with the specifications of the Borough for the restoration of surfaces of the Street, 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.

SECTION 10: Responsibility Of Permit Holder For Certain Work; Right Of Borough To Do Certain Work; Charges Therefor. All other work in connection with the Opening in any Street, including Excavation, protection, refilling and temporary paving, shall be done by or for the person to whom the permit has been issued at his, her or its expense, and all such work shall be subject to the provisions of this Ordinance and to the supervision and approval of the Borough Engineer, provided that the Borough Engineer may if he deems it necessary for the proper performance of the work, require that cutting of the surface of any Street and the backfilling of all Excavation thereon shall be performed by the Borough, and at the cost of the applicant.

SECTION 11: 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 center line of the street before being refilled and the surface of the highway restored to a condition safe and convenient for travel.
2. No more than five hundred feet (500') longitudinally shall be opened in any Street at any one time.
3. The Excavation shall be so conducted as not to interfere with the water mains, sewer or their connections with the houses, or any other subsurface lines or constructions until permission of the proper authorities in connection with such subsurface line shall have been obtained.
4. No tunneling shall be allowed without the express approval of the Borough Engineer and permission therefor endorsed upon the permit.

5. All openings or excavations shall be back filled promptly with modified 2A stones and thoroughly compacted in layers, each of which layers shall not exceed eight inches (8") in depth. Backfilling shall be placed to within ten inches (10") of the surface.
6. A temporary paving of coldpatch premix, thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving and maintained for a period no longer than ninety (90) days. Unpaved trenches shall not remain unpaved longer than five (5) working days after backfilling, nor over weekends and holidays.
7. Permanent paving courses consisting of five inches (5") thick BCBC and one and a half inches (1-1/2') thick ID-2 bituminous wearing surface shall be installed flush with the adjoining paving no longer than ten (10) working days after receiving authorization from the Borough Engineer. All joints shall be sealed with AC-20. Saw cutting of existing pavement shall be in accordance with PENNDOT Publication RR-459, and all bituminous paving construction shall be in accordance with PENNDOT Publication 408 Specifications. All temporary paving material shall be removed from the trench before placement of the permanent base course.
8. During the making of any Excavation in the Street, every necessary reasonable precaution shall be taken by the applicant and the parties making the same to keep the Street in a safe and passable condition both day and night by guards, barriers, lanterns 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 Excavation, or by any leak, explosion or other injury form any pipe, apparatus, conduit, or any other matter placed in the Excavation.
9. The applicant shall notify the Borough Engineer when the Opening or Excavation is ready for backfill before any backfilling is done, when backfilling work is completed, when the temporary paving has been installed and when the Street has been permanently restored so that inspections may be made.
10. In the event that any work performed by or for a permit holder shall, in the opinion of the Borough Engineer 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 Borough Engineer, the Borough may proceed to correct such unsatisfactory work, the cost of this shall be reimbursed by the applicant.
11. Monuments of concrete, iron or other lasting material set for the purpose of locating or preserving the lines of any Street of property subdivision, 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 Borough Engineer. Permission shall be granted only upon condition that the applicant shall pay all expenses incident to the proper replacement of the monument.
12. When the work performed by the applicant interferes with the established drainage system of any Street, provision shall be made by the applicant to provide proper drainage to the satisfaction of the Borough Engineer.
13. When any earth, gravel, or other excavated material is caused to roll, flow, or wash upon any Street, the applicant 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 Borough shall cause the removal and the cost incurred shall be paid by the applicant.

14. 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.

SECTION 12: 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 pipe, line, construction apparatus, to commence Excavation to remedy such condition before securing a permit, provided that application for a permit shall 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 Engineer, after such notice as he shall deem necessary under the circumstance of the particular case, shall proceed to cause the work to be done as necessary and required by such emergency by the Borough, the cost of which shall be reimbursed by the responsible party.

SECTION 13: Restrictions Regarding Trees And Shrubbery. The permission herein granted does not confer upon the applicant or its contractors the right to cut, remove or destroy trees or shrubbery within the legal right-of-way except under specifications, regulations and conditions as the Borough may prescribe.

SECTION 14: Work Necessitating Opening Or Excavation To Be Done Prior To Street Improvement and Not Until 5 Years Thereafter; Exception. The Borough Engineer shall give timely notice to all persons owning property abutting on any Street about to be paved or improved, and to all public utility companies operating within the Borough, and all such persons and utility companies shall make all water, gas or sewer connections, as well as any repairs thereto which would necessitate Excavation of the Street within thirty (30) days from the giving of such notice, unless such time is extended in writing for cause shown by the Borough Engineer. New paving shall not be opened or excavated for a period of five (5) years after the completion thereof, except in case of emergency and the necessity for the Opening or Excavation of such paving to be determined by the Borough Engineer.

SECTION 15: Conditions For Laying And Extending Utility Lines. No new water, sewer, steam or gas main or electric, or telephone or other utility line shall hereafter be laid or constructed, and no other such existing main or line shall be extended in any Street until the plan therefor shall have been first filed with the Borough Engineer and such plan, and exact location of such main or line approved by him. The Borough Engineer shall not approve the locating of any such main or line at a depth less than thirty inches (30") from the surface of the street unless he shall be convinced that locating the same at a depth more than thirty inches (30") from the surface is impossible or impractical.

SECTION 16: Payment For Work Done By Borough. Payment for all work done by the Borough under the provision of this Ordinance shall be made by the person made liable for such work by the terms of this Ordinance. The Borough shall send a bill for any such work to

the person liable to pay for such work by certified mail to the last known mailing address of such person. The person liable for payment of such bill shall make payment to the Borough within THIRTY (30) DAYS of that person's receipt of the bill. In the event the person fails to make full payment of the bill within THIRTY (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 17: Bond. Prior to any construction, the applicant, if required by the Borough Engineer, must post a bond equal to the amount as determined by the Borough Engineer. The bond must be issued prior to the granting of a permit.

SECTION 18: Penalties. Any person, firm or corporation who shall violate any provision of this Ordinance shall, upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars (\$600.00); and in default of payment, to imprisonment for a term not to exceed ninety (90) days. Every day that a violation of this Ordinance continues shall constitute a separate offense.

SECTION 19: Applicability. The provisions of this Ordinance shall not apply to laying sidewalks or curbs.

SECTION 20: Repealer. All ordinances or parts of ordinances which are not consistent herewith are hereby repealed.

SECTION 21: 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 22: Effective Date: This Ordinance shall become effective five (5) days after the date of its enactment as provided by law.

ENACTED AND ORDAINED into an Ordinance this 7th day of March 2005, by the Borough Council of the Borough of York Haven, in lawful session duly assembled.

Attest:

**BOROUGH OF YORK HAVEN
YORK COUNTY, PENNSYLVANIA**

Pamela Bellet
Secretary

By: Margaret E. Malcher
President of Council

Approved by the Mayor this 7th day of March 2005.

Keith D. Rode
Mayor