

ORDINANCE NO. 274-16

AN ORDINANCE REGULATING ACCESS TO AND THE OPENING AND EXCAVATION OF ANY AREA LOCATED WITHIN THE STREET OR ROAD RIGHTS-OF-WAY OWNED AND MAINTAINED BY THE BOROUGH OF APOLLO, AND THE PROTECTION, BACKFILLING, RESURFACING AND REPAVING OF THE SAME, PROVIDING PROCEDURES FOR THE ISSUANCE OF PERMITS FOR SUCH WORK, AND PENALTIES FOR VIOLATION.

WHEREAS, the Borough of Apollo considers improved rights-of-way an essential asset to the safety and welfare of its residents and businesses; and

WHEREAS, it is necessary to access, open or otherwise excavate areas within Borough owned and maintained rights-of-way for vehicle circulation and to place, maintain or repair components of the underground utility infrastructure within the Borough; and

WHEREAS, the Borough of Apollo has invested significant resources to provide its residents and businesses with a safe and passable transportation network; and

WHEREAS, the monitoring of such construction activity through the issuance of permits requiring inspection and restoration is deemed to be in the Borough's best interest;

NOW, THEREFORE, be it ordained and enacted by the Council of the Borough of Apollo, and it is hereby ordained and enacted by the authority of the same, as follows:

**SECTION 1:** The following words, when used in this Ordinance shall have the meanings ascribed to them in this Section, except in those instances where the contest clearly indicates otherwise:

- A. STREET: Any public street, avenue, road, square, alley, highway or other public placed located in the Borough of Apollo and established for the use of vehicles including the sidewalks adjacent thereto.
- B. PERSON: Any natural person, partnership, firm, association, corporation, or utility.
- C. STREET OPENING PERMIT: Authorization from the Borough of Apollo for vehicular access to a Borough street from an abutting property, or for opening of a portion of pavement and backfilling and resurfacing the same.
- D. EMERGENCY: A condition arising from actual or imminent failure and resulting in a health or safety hazard which requires immediate action.

**SECTION 2:** It shall be unlawful for any person to access, open or to make any excavation of any kind in any street in the Borough of Apollo except in and upon those portions established for the use of vehicles, including the cutting of curbs or sidewalks abutting such street.

**SECTION 3:** It shall be unlawful for any person to access, open or to make any excavation of any kind in any of the streets in the Borough of Apollo without first securing a permit for such access or excavation, as hereinafter provided, including where an emergency requires immediate action.

**SECTION 4:** Any person who proposes to access or make any opening or excavation in any of the streets in the Borough of Apollo shall make application to the Borough Manager, in writing, for that purpose. Such application shall be made upon blanks to be furnished by the Borough and shall set forth the name of the applicant, the exact location of the proposed opening or excavation, the approximate size or depth thereof, the time when said opening or excavation may remain open and such other information as the Borough Council may require. Issuance of a street opening permit, shall constitute an agreement between the applicant and the Borough that the work shall be done in full compliance with all applicable Ordinances of the Borough and the laws of the Commonwealth in relation thereto, and that the applicant shall hold 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 access, opening or excavation, and all damages to persons or property resulting in any manner therefrom, or occurring in the performance of the work connected therewith, or from any other matter, or cause relating thereto, by providing the Borough a bond in such sum, and with such sureties as recommended by the Borough Engineer and as may be approved by the President of Council and the Borough Solicitor.

**SECTION 5:** Prior to January 1<sup>st</sup> of each year, all municipal authorities and public or private utilities which own and/or maintain facilities, equipment or transmission lines located within any Borough owned and maintained

right-of-way, shall apply for and receive three (3) Street Opening Permits for use in emergency situations. Said permits shall be considered active for one calendar year and if unused, shall be renewed for one additional calendar year whereupon they shall expire and three (3) additional Street Opening Permits shall be secured with fees for unused permits credited to new permit fees. Where all three (3) initial Street Opening Permits are utilized for activities regulated by this Ordinance, within a single calendar year, three (3) additional Street Opening Permits shall be secured by the original applicant or duly authorized representative of the original applicant.

**SECTION 6:** Before any permit shall be issued to access, open or excavate any portion of any street in the Borough, the applicant shall pay to the Borough a permit fee as set from time to time by resolution of Borough Council to cover the cost of processing an application for such permit and other incidental services in connection therewith. When application is made to access, open or excavate any longitudinal opening or excavation in excess of twenty linear feet (20'), as a scheduled line extension or replacement, before any permit shall be issued to access, open or excavate, the applicant shall deposit, in addition to paying such permit fee, an amount commensurate with inspection costs during such work and upon completion, during the restoration, backfilling and repaving. The amount of the deposit shall be based on the Borough Engineer's estimate of costs for inspection services and the Borough Solicitor shall approve the form of the deposit.

**SECTION 7:** Any person who shall access, open or excavate any improved street in the Borough shall thoroughly and completely backfill the opening or excavation, using accepted materials and compaction techniques so as to prevent any settling thereafter; and shall restore the surface to the same condition as it was before the access, opening or excavation. Such restoration shall be in accordance with the specifications of the Department of Highways of the Commonwealth of Pennsylvania Form 408 which are hereby adopted as specifications of the Borough for restoration of surfaces of streets in the Borough. The surface shall conform to the existing grade and curb elevations, and be of the same surface materials and treatment as the part of the thoroughfare immediately adjoining the access, opening or excavation. If within one (1) year after the restoration of the street surface as herein provided is

completed, defects shall appear therein resulting from defective backfilling or restoration by the applicant, the applicant shall reimburse the Borough for the cost of all necessary repairs to the permanent cartway pavement as determined by the Borough Engineer.

**SECTION 8:** All other work in connection with access, opening or excavation of any street, including emergency excavation, protection of vehicular and pedestrian traffic, backfilling and temporary pavement, shall be done by the applicant at his expense, and all such work shall be subject to the provisions of this Ordinance and to the supervision and approval of the Borough, provided that the Borough Council may require that the cutting of the surface of improved streets and the backfilling of all excavation therein shall be done by the Borough, and the charge therefore shall be paid by the applicant on the basis of actual cost of the work plus twenty percent (20%) for inspection, design and administrative services.

**SECTION 9:**

- A. No access, opening or excavation of any street shall extend from the curb line into the street a distance greater than one foot (1') beyond the centerline of the paved portion of the street before being backfilled and the surface of the street restored to a condition safe and convenient for vehicular and pedestrian travel.
- B. No more than four hundred and fifty linear feet (450') shall be opened in any street at any one time, unless otherwise specified by agreement or contract.
- C. The work of excavation and restoration shall be so conducted as not to interfere with the water mains, sanitary and storm sewers, or their connections with structures, or any other subsurface lines or facilities, until permission is authorized by the utility, agency or person owning and maintaining such lines.
- D. No tunneling or boring shall be allowed without the express approval of the Borough Council and permission therefore is indicated upon the street opening permit. The backfilling of a tunnel excavation or bore shall be made only in the presence of the Borough Engineer or representative thereof where Commonwealth or Borough owned facilities are involved.

- E. All openings or excavation shall be backfilled promptly with approved materials and thoroughly compacted in layers with an approved mechanical back tamper, each of which shall not exceed six inches (6") in depth. On improved streets, the backfill material shall be placed to within ten inches (10") of the surface.
- F. On improved streets, a temporary paving of approved material thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving. Permanent paving shall be completed at such time as the Borough Engineer so directs. All wearing course pavement restoration shall extend from curb to curb transversely and a minimum of one (1) foot beyond trenching longitudinally. All edges of the opening shall be sawed, in a neat straight line.
- G. During excavation in any street, every necessary and reasonable precaution shall be taken by the applicant and/or the applicant's contractor to keep the street in a safe and passable condition both day and night by guards, barriers, warning signs, safety lights, lanterns and other devices, and all excavating permits are granted under and subject to the express condition that the person to whom the same is issued shall indemnify, and hold harmless the Borough, from any loss in damages, or otherwise, which may occur at any time by reason of said excavation, or by any leak, explosion or other injury from any pipe, apparatus, conduit, or any other material placed in the said excavation.
- H. The applicant shall notify the Borough Manager when the opening or excavation is ready for backfilling and before any backfilling is done, in order for inspection to occur while the work is being completed by approved backfilling and compaction in the case of unimproved streets and by restoration of temporary or permanent paving in the case of improved streets.
- I. 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 the Engineer's instructions within the time fixed by the Borough Engineer, or in the event that the work for which the permit was issued is not completed within the time fixed by the street opening permit, the Borough may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the actual cost thereof, plus twenty percent (20%) for inspection services, to the applicant.

**SECTION 10:** In the case of any emergency involving a leak, explosion or other accident in any subsurface pipe, line, construction or facility, it shall be lawful for the person owning or responsible for such pipe, line, construction or facility to commence an excavation to remedy such condition utilizing one of the three (3) street opening permits required to be secured for such situation. All other provisions of this Ordinance shall be complied with. If any such emergency condition shall not be immediately attended to by the owner or person responsible for such pipe, line, construction or facility, the Borough Council, after such notice to affected property owners as it shall deem necessary under the circumstances of the particular case, shall proceed to do the work necessary and required by such emergency, and charge the same on the basis of cost plus twenty percent (20%) for inspection services to such owner, operator or person.

**SECTION 11:** The Borough Council shall give timely notice to all persons 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 and all such persons and utility companies shall make all water, gas, storm or sanitary sewer connections, as well as any repairs thereto which would necessitate excavation of the said street within thirty (30) days from the issuance of such notice, unless such time is extended in writing for cause shown by the Borough Council. New paving shall not be opened for a period of five (5) years after the completion thereof, except in case of emergency, the existence of which emergency and the necessity for the opening of such paving to be determined by the Borough Engineer. If it is sought to excavate or open a street within five (5) years after the completion of the paving thereof for any other reason than an emergency as herein stated, the applicant shall make written application to Borough Council, and a permit for such opening shall only be issued after review by the Borough Engineer and the express approval of Borough Council.

When 4 or more emergency openings have been made by the same permittee within 100 linear feet of pavement within five (5) years of paving, the permittee shall overlay the Borough Street in which the openings were made, for the entire length of highway between the openings, in a manner authorized by the Borough Engineer.

**SECTION 12:** No new underground waterline, sanitary sewer, storm sewer, electric, cable TV, internet, or gas main shall hereafter be laid or constructed and no existing underground transmission or collection facility line shall be extended in any of the streets of the Borough until the exact location has been identified and the plan therefore shall have been first reviewed by the Borough Engineer and approved by the Borough Council.

**SECTION 13:** Payment for all work done by the Borough under the specific provisions of this Ordinance shall be made by the person responsible or liable therefore under these provisions within thirty (30) days after an itemized bill is sent to such person by the Borough. Upon failure to pay such charges within such time, the same shall be collectible by the Borough in the manner provided by law for the collection of municipal claims.

**SECTION 14:** Any person, whether as principal, agent or employee, violating or assisting in the violation of any of the provisions of this Ordinance shall, upon conviction thereof before the District Magistrate, pay a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) for each day the violation is in occurrence, and in default of the payment of such fine and costs of prosecution, shall be imprisoned for not more than ten (10) days.

**SECTION 15:** The provisions of this Ordinance shall be severable and if any provision herein shall be declared unconstitutional, illegal or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as a legislative intent of the Borough Council that this Ordinance would have been enacted if such unconstitutional, illegal or invalid provision had not been included herein.

ENACTED AND ORDAINED THIS 8<sup>th</sup> DAY OF December, 2016.

by: John Q. Kasity  
Resident of Council

ATTEST:

Cynthia McDermott  
Secretary