

ORDINANCE NO. 436

AN ORDINANCE REGULATING STREET OPENINGS (EXCAVATIONS), SETTING FORTH REQUIREMENTS FOR PERMITS, AND PROVIDING FOR EMERGENCY WORK AND PENALTIES FOR INCOMPLETE OR SUBSTANDARD WORK.

THE FOREST CITY BOROUGH HEREBY ORDAINS:

1. Definitions and Interpretation:

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:

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 Forest City and established for the use of vehicles, but shall not include State highways.

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

DESIGNATED OFFICER - any person appointed or authorized by Borough Council to issue and/or monitor excavation permits.

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 of Forest City without first securing a permit therefor, as hereinafter provided.

3. Application for Permit:

Any person who shall desire to make any opening or excavation in any of the streets in the Borough of Forest City shall make application to the designated official in writing for that purpose. Such application shall be made upon blanks to be furnished by the Borough of Forest City and shall set forth the name of the applicant, the exact depth thereof, and 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 of Forest City and the laws of the Commonwealth in relation thereto, and that the applicant shall well and truly save, defend and keep harmless the Borough of Forest City from and indemnify it against any and allegations, 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.

4. Validity Period:

Each excavation permit shall be valid for and only during the period of time indicated on the permit by the designated official.

5. Winter Applications:

No permits for excavation will be issued from November 1 through April 15 except in the case of an emergency or unless special endorsement is secured from a majority of the Borough Street Committee, which consists of two members and the President of Council.

6. Permit Fee:

The following charges are hereby imposed for each cut, opening and/or excavating upon or under the Borough Street:

a. Paved Streets

- (1) \$3.00 for each test boring.
- (2) \$10.00 for any cut up to five (5) square feet.
- (3) \$15.00 for any cut between five (5) and twelve (12) square feet and \$3.00 for each additional five (5) square feet thereafter.

b. All Other Streets

- (1) \$1.00 for each test boring.
- (2) \$10.00 for each cut up to twenty (20) square feet and \$3.00 for each additional twenty (20) square feet thereafter.

The Borough may hire on an as-needed hourly basis, an inspector to protect the Borough's interest on excavation jobs which involve road or street cuts in excess of ten (10) lineal feet. The hourly cost of the inspector and his estimate of fees shall be given to the applicant prior to his granting the permit. At that time the applicant shall submit payment equal to the inspector's billing estimate plus 25% to cover any unforeseen time. Once the job has been completed and after the inspector has been paid for his/her services, any monies paid by applicant in excess of the inspector's fee shall be refunded to the applicant, less \$25 administrative fee.

7. Issuance of Permits Restricted:

Permits shall be issued only to persons 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.

8. Information Contained on Application/Permit:

The application for a permit and the permit hereunder shall specify the exact location where the opening or excavation is to be

made, the approximate permitted size or depth thereof and the time within which the work for which the permit is granted to be completed and any other information which the Borough Council may, from time to time, direct by motion, resolution or ordinance.

9. Permit Approval/Disapproval:

A permit may be issued to the applicant after all the requirements therefor have been filed. If the application is disapproved, written notice of disapproval together with reasons therefor shall be given to the applicant. The permit may contain provisions which limit, restrict or further regulate the job.

10. 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 permittee'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 of Forest City and their office addresses may be obtained from the County Recorder of Deeds.

11. Refilling of Opening or Excavation; Restoration of Surface; Responsibility for Defects Occurring Within 2 Years:

Any person who shall open or excavate any street in the Borough of Forest City 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 Department of Transportation of the Commonwealth of Pennsylvania which are hereby adopted as specifications of the Borough for restoration of surfaces of streets in the Borough of Forest City, 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 the defective backfilling by the applicant, the applicant shall reimburse the Borough of Forest City for the cost of all necessary repairs to the permanent paving.

12. Responsibility of Permit Holder for Certain Work; Right of the Borough of Forest City to do Certain Work; Charges Therefor:

All other work in connection with openings in any street, including excavation, protection, refilling and temporary paving, shall be done by or for the person to whom or which the permit has been issued at his or its expense, and all such work shall be subject to the provisions of this ordinance and to the supervision and approval of the designated official, provided that the designated official may, if he deems it necessary to the proper performance of the work, require that cutting of the surface of streets and the backfilling of all excavations therein shall be done by the

Borough of Forest City, in which event the applicant shall pay the actual cost of the work performed by the Borough of Forest City.

13. Requirements for Work; Correction of Unsatisfactory Work; Completion of Incomplete Work:

- a. No opening or excavation in any street shall extend from the curb line into the highway a distance greater than one (1) foot 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.
- b. No more than 350 feet longitudinally shall be opened in any street at any one time.
- c. The work of excavation shall be so conducted as not to interfere with the water mains, sewers or their 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.
- d. No tunneling shall be allowed without the express approval of the designated official and permission therefor shall be made only in the presence of the designated official or an inspector designated by him, and shall be done only in a method approved by him.
- e. All openings or excavations shall be backfilled promptly with modified 2A stones and thoroughly compacted in layers, each of which layers shall not exceed eight (8) inches in depth. Backfilling shall be placed to within ten (10) inches of the surface.
- f. 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 of thirty (30) days.
- g. On concrete base streets, such base shall be replaced with concrete and the minimum size of the opening or excavation shall be 25 square feet.
- h. During the making of any excavation in the street, every necessary and 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 of Forest City 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 injury from any pipe, apparatus, conduit, or any other matter placed in the said excavation.

- i. The applicant shall notify the designated official when the opening or excavation is ready for backfilling 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.
- j. In the event that any work performed by or for a permit holder shall, in the opinion of the designated official 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 designated official, the Borough of Forest City may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost thereof, plus twenty percent (20%) to the applicant.

14. Emergency Openings:

In the case of any leak, explosion or other accident in any sub-surface pipe, line, construction or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, construction or apparatus, to commence an excavation to remedy such condition before securing a permit, provided that the application for a permit shall be made immediately and not later than the next business day thereafter, and that all other provisions of this ordinance are fully 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 apparatus, the designated official, after such notice as he 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%) to such owner or person.

15. Restrictions Regarding Trees and Shrubbery:

The permission herein granted does not confer upon the permittee 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 of Forest City may prescribe.

16. Work Necessitating Opening or Excavation to be Done Prior to Street Improvement and Not Until 5 Years Thereafter; Exception:

The designated official shall give timely notice to all persons owning property abutting on any street within the Borough of Forest City about to be paved or improved, and to all public utility companies operating in the Borough of Forest City, 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 said street within thirty (30) days from the giving of such notice, unless such time is extended in writing for cause shown by the designated official. New paving shall

not be opened or excavated 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 or excavating of such paving to be determined by the designated official. If it is sought to excavate upon or open a sewer within five (5) years after the completion of the paving applicant shall make written application to the Borough of Forest City, and a permit for such opening shall be issued only after express approval of the Borough of Forest City.

17. Permitee Responsible for Future Relocation of Work:

If at any time in the future the roadway is widened, reconstructed or the alignment or grades are changed, the permittee further agrees to change or relocate all or any part of the structures covered by this permit which interfere with the improvement of the roadway at its own cost and expense.

18. Conditions for Laying and Extending Utility Lines:

No new water, sewer, steam or gas main or electric, telephone or other utility line shall be laid or constructed and no such existing main or line shall be extended in any of the streets of the Borough of Forest City until the application therefor shall have been first filed with the designated official and such plan, and the exact location of such main or line, approved by him. The designated official shall not approve the locating of any such main or line at a depth of less than thirty (30) inches from the surface of the street unless he shall be convinced that locating the same at a depth of more than thirty (30) inches from the surface is impossible or impractical.

19. Bond Required:

No public utility shall dig up any street or alley without first giving to the Borough of Forest City a bond with some acceptable trust or surety company as surety in the sum of one hundred thousand dollars (\$100,000.00), conditioned for the faithful performance of these provisions and also for any and all damages, claims, demands, suits, costs and counsel fees occasioned or arising from the digging up, opening or closing of said streets and alleys.

20. Payment For Work Done By the Borough of Forest City:

Payment for all work done by the Borough of Forest City under the provisions hereof shall be made by the person made liable therefor under the provisions hereof within thirty (30) days after a bill therefor is sent to such person by the Borough of Forest City. Upon failure to pay such charges within such time, the same shall be collectible by the Borough of Forest City by an action in assumpsit or in the manner provided by law for the collection of municipal claims.

21. 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 Three Hundred Dollars (\$300.00); and/or 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.

22. Applicability:

The provisions of this ordinance shall not apply to laying sidewalks or curbs.

23. Repealer:

All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed. The following ordinances or parts thereof are specifically repealed:

24. Severability:

If any sentence, clause, section or part of the 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 of Forest City that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

25. Effective Date:

This ordinance shall become effective immediately.

1999. ENACTED AND ORDAINED THIS _____ DAY OF _____,

Borough Council
Borough of Forest City

BY _____
Council President

Attest:

Secretary

APPROVED THIS _____ DAY OF _____, 1999.

Mayor