

ORDINANCE NO. 83-2

AN ORDINANCE OF THE BOROUGH OF WEST KITTANNING, ARMSTRONG COUNTY, PENNSYLVANIA, RELATING TO THE EXCAVATION OF STREETS WITHIN THE BOROUGH PROVIDING FOR PERMITS FOR OPENING STREETS AND MAKING PAVEMENT CUTS, PROVIDING FOR PERMIT FEES, REVOCATIONS OF PERMITS, RIGHTS, DUTIES AND RESPONSIBILITIES OF PERMITEES, PROVIDING REGULATIONS REGARDING THE EXCAVATION OF STREETS, MAKING REQUIREMENTS FOR BACKFILLING AND RESTORING OF OPENINGS, PROVIDING FOR DEPOSITS IN CONNECTION WITH STREET OPENINGS, PROVIDING FOR LIABILITY INSURANCE AND BOND REQUIREMENTS IN CONNECTION WITH STREET OPENINGS ON THE STREETS, ROADS, ALLEYS AND RIGHTS-OF-WAYS OF THE BOROUGH OF WEST KITTANNING

BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of West Kittanning, County of Armstrong, Commonwealth of Pennsylvania, and it is hereby ordained and enacted by authority of the same as follows:

SECTION 1. As used in this Ordinance, the following words and phrases 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 West Kittanning, County of Armstrong, Commonwealth of Pennsylvania.
- (c) "Superintendent" shall mean the Chairman of the Maintenance Committee of the Borough Council or

a responsible agent or agency employed by the Council for purposes of enforcing the provisions of the Ordinance.

- (d) "Emergency" shall mean any unforeseen circumstances 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.
- (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.

SECTION 2. 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 Superintendent 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 Police Department shall be notified prior to such opening.

SECTION 3. 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 Superintendent additional work may be done under the provisions of the permit in such an amount as the Superintendent shall deem appropriate and necessary to complete the work. Any deposit and 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 4. 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 Superintendent 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 Superintendent may be renewed only upon the payment of an additional

permit fee as originally required.

SECTION 5. 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 6. 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 Superintendent a request for an extension of time, setting forth therein the reasons for the requested extension. If in the opinion of the Superintendent 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 7. All street openings required by utilities owned and/or operated by the Borough shall be made and restored under the direction and supervision of the Superintendent. The permit, fee, deposit, insurance and bond requirements of this ordinance shall not be applicable to any openings made by such municipally owned and/or operated utilities.

SECTION 8. 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 Armstrong.

SECTION 9. 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 10. Any permit may be revoked by the Superintendent, 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 Superintendent shall do such work as may be necessary to restore the street or part thereof as 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 11. It shall be the duty and responsibility of any applicant to:

- (a) Make written application for such permit with the Superintendent on such form as he shall prescribe. No work shall commence until the Superintendent 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 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 12. It shall be the duty and responsibility of any person receiving a permit to:

- (a) A permit fee shall not be charged.
- (b) Make a deposit to cover the cost of inspecting the work authorized by the permit, unless excepted from such requirements by other provisions contained herein.
- (c) Furnish a performance bond as required by this ordinance, unless excepted from such requirement.
- (d) Furnish a certificate of insurance as required by this ordinance, unless excepted from such requirement.

- (e) 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.
- (f) Provide adequate security for the protection of existing municipal water lines and other utility service lines to insure against any damage to lines occasioned by permittee's excavation for a period of five (5) years from the date of completion of the work.

SECTION 13.

- (a) Openings or excations in any street can extend beyond the center line of the street before being backfilled and the surface of the street temporarily restored.
- (b) No more than one hundred (100) feet measured longitudinally shall be opened in any street any one time.
- (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 Superintendent from the deposit pending determination of liability for the damage.

- (f) Monuments of concrete, iron or other lasting materials set for the purpose of locating or preserving the lines of any street or 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 Superintendent. 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 Superintendent.
- (h) When any earth, gravel or other excavating 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 Superintendent 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 Superintendent to be necessary for the protection of the public. Barricading shall be in compliance with the regulations 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 Edition), and any future revisions thereto. Additional safety requirements may be prescribed by the Superintendent. Whenever any person fails to provide or maintain the safety devices required by the Superintendent, such devices shall be

installed and maintained by the Borough, with the amount of the costs thereof being paid by the permittee. No person shall wilfully 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 trim so as to cause as little inconvenience as possible to public travel. 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 7:00 A.M. and 7:00 P.M., Monday through Saturday, unless the permittee obtains written consent from the Superintendent to do the work at an earlier or later hour.
- (m) In granting any permit, the Superintendent may attach such 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.

SECTION 14.

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

- (b) The superintendent must be notified by the permittee during the forty-eight (48) 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) After excavation is commenced the work of making and backfilling the same shall be prosecuted with due diligence.
- (e) The Superintendent shall make such inspections as he may deem necessary of all work authorized by a permit. The Superintendent is empowered to provide a full-time inspector if necessary to ensure compliance with the provisions of this ordinance.
- (f) The permittee shall notify the Superintendent in writing upon completion of all work accomplished under the provisions of the permit. A certificate of final inspection shall be issued by the Superintendent 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 Superintendent shall make a final inspection of the restoration to determine whether Borough specifications have been adhered to.
- (g) 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 Superintendent that the settlement was not due to defective backfilling.

- (h) In no case shall any opening made by the 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.

SECTION 15. The Superintendent, upon receipt of a properly completed application, shall determine the amount of the deposit to be made by the permittee in accordance with a schedule of charges hereinafter provided; provided however, that the minimum amount of the deposit shall be one hundred dollars (\$100.00). 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 connection with the work authorized by the permit, to cover all necessary inspections of said work, and for any other purpose set forth in this ordinance. The Borough may elect to waive this requirement insofar as it pertains to a public utility company or duly incorporated municipal or charity, if such company filed 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 or charity elects to file such a bond, the Borough shall bill such company monthly for such costs as they accrue. Deposit may be either in the form of a certified treasurers or cashiers check, or lawful money of

the United States, or by bond, as hereinabove set forth. 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 16. The Superintendent shall establish and maintain a schedule of charges for inspections, labor, materials and such other expenses as may be incurred by the Borough in meeting the requirements of this ordinance. In developing the schedule, the Superintendent shall be guided by the prevailing costs in the area for labor, materials and equipment. The Superintendent shall revise the schedule of charges periodically to reflect any increase or decrease in costs used to establish such charges.

SECTION 17. Upon notification by the permittee that all work authorized by the permit has been completed, and after restoration of the opening, and after issuance of the certificate of final inspection, the Superintendent 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 18. Each applicant, upon the receipt of a permit, shall provide the Borough with an acceptable corporate surety bond or, if the applicant so desires, a cash bond to guarantee faithful performance of the work authorized by a permit granted pursuant to this ordinance. The amount of the bond shall be one hundred percent (100%) of the estimated cost of restoring the street opening. The term of the bond shall begin upon the date of posting thereof, and shall terminate upon the receipt by the permittee of a certificate of final inspection from the Superintendent. Whenever the Superintendent shall find that a default has occurred in the performance of any term or condition of the permit, written notice thereof shall be given to the principal and to the surety on the bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the Superintendent to be reasonably necessary for the completion of the work. After receipt of such notice, the surety must, within the time therein specified, either cause the required work to be performed or, failing therein, indemnify the Borough for the cost of doing the work as set forth in the notice.

SECTION 19. 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 sub-contractor, 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. Such insurance shall further provide coverage for a period of five (5) years after the work is completed, insuring against damage resulting from the disturbance of other pipe lines and underground facilities. The amount of the insurance shall be prescribed by the Superintendent in accordance with the nature of the risk involved. 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 provisions for self-insurance, in accordance with the requirements of this Ordinance.

ORDAINED AND ENACTED into law by the Borough Council of West
Kittanning, lawful session assembled this _____ day of _____,
1983.

BOROUGH OF WEST KITTANNING

By Donald Morris
President

ATTEST:

Secretary

Approved this 6 day of June, 1983

John C Beech
Mayor

C E R T I F I C A T E

I, the undersigned, Secretary of the Borough of West Kittanning, Armstrong County, Pennsylvania, do hereby certify that the foregoing and attached is a true and correct copy of an Ordinance of said Borough which was duly enacted by the affirmative vote of a majority of a quorum of the members of the Governing Body of said Borough at a meeting thereof duly called and held on the _____ day of _____, 1983, that the same was duly recorded in the Ordinance Book of said Borough and said Ordinance has not been amended, modified, or rescinded and is still in full force and effect.

WITNESS MY HAND AND SEAL OF THE Borough of West Kittanning
this _____ day of _____, 1983.

BOROUGH OF WEST KITTANNING

By _____
Borough Secretary

(BOROUGH SEAL)