

GORDON BOROUGH, SCHUYLKILL COUNTY
COMMONWEALTH OF PENNSYLVANIA

ORDINANCE NO. 07122016

AN ORDINANCE OF THE BOROUGH OF GORDON, SCHUYLKILL COUNTY, COMMONWEALTH OF PENNSYLVANIA, DEFINING AND REGULATING STREET EXCAVATIONS, SETTING FORTH REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS, SETTING FORTH REQUIREMENTS FOR REFILLING EXCAVATIONS, ALLOWING FOR EMERGENCY EXCAVATIONS, REQUIRING POSTING OF BONDS AND CARRYING OF INSURANCE, AND PRESCRIBING PENALTIES FOR VIOLATIONS.

The Borough Council of the Borough of Gordon hereby ordains:

Section 1. Name.

This Ordinance shall be called the Gordon Borough Street Excavation Ordinance.

Section 2. Definitions.

The following words when used in this Ordinance shall have the following meanings unless the context clearly indicates otherwise. In this Ordinance the singular shall include the plural and the masculine shall include the feminine and neuter.

Applicant - any person who has applied for a permit pursuant to this Ordinance.

Borough - Gordon Borough, Schuylkill County, Commonwealth of Pennsylvania.

Excavate or Excavation - any activity within the right-of-way of any Borough street which involves opening, cutting, breaking or disturbing the surface thereof.

Permit holder - any person who has received a permit pursuant to this Ordinance.

Person - any natural person, partnership, firm, association, corporation, municipal authority or any other legal entity.

Street - any public street, avenue, road, drive, square, alley, highway, cartway or other public place located in Gordon Borough and within the control of Gordon Borough, which is improved by surfacing with permanent or semi-permanent material, and is intended and established for the use of motor vehicles.

Section 3. Permit Required.

No person shall make any excavation on or in any street of the Borough without first securing a permit therefore.

Section 4. Emergency Excavation.

Any person maintaining facilities in, under or above the surface of any street may proceed with an excavation without complying with Section 3 of this Ordinance when emergency circumstances exist which demand the excavation be done immediately to prevent harm to the public, and the permit could not reasonably or practically be obtained beforehand. Any person proceeding under this Section of this Ordinance shall apply for a permit on the first business day following the excavation, which permit if issued shall be retroactive to the day when the emergency work was begun.

Section 5. Compliance with State Law.

Any excavation work authorized to be done by a permit issued pursuant to this Ordinance is subject to all requirements of all laws of the Commonwealth of Pennsylvania, including but not limited to all laws requiring the contacting of utilities.

Section 6. Permit Application, Fees, and Grant/Denial.

A. Any applicant for a permit shall apply on a form obtainable from the Borough, which form must be completed and complied with in its entirety. A copy of the permit form is attached to this Ordinance as Exhibit A, but such form is amendable from time to time by Resolution.

B. Any applicant for a permit shall pay a permit application fee at the time of the application. The application fee shall be \$25.00, plus either \$50.00 for an excavation of 10 lineal feet or less, or \$50.00 per every 10 lineal feet as rounded up to the closest 10 foot increment for an excavation in excess of 10 lineal feet. This fee may be amended by the Borough from time to time by Resolution.

C. The permit application shall be submitted to the Borough's permit officer or such other person as determined from time to time by Resolution. Following receipt of a completed permit application and payment of the required fee, the permit officer shall decide whether to grant or deny the permit. The permit officer shall inform the applicant whether the permit is being granted or denied by indicating such in a letter or document to the applicant at the address listed on the application. If granted, any such letter or document shall act as the permit. Any letter or document granting the permit may place any conditions on the permit deemed reasonable by the permit officer. If no letter or document granting or denying the permit is mailed to the applicant within thirty (30) days of the date the permit application is received by the Borough the permit application shall be deemed denied.

D. The applicant shall submit with the permit application, in addition to items required by Sections 13 and 14 of this Ordinance, a list of all contractor or subcontractors who will be taking part in the excavation work, and must supplement this list if the permit is granted and additional contractors or subcontractors become known.

Section 7. General Requirements

Unless the provisions of the permit specifically allow otherwise, the following general conditions shall apply to all permits.

A. No excavation in any street shall extend beyond the center line of the street before being backfilled and the surface of the street restored to a condition safe for vehicle travel.

B. Every permit holder shall place around the excavation such barriers, barricades, lights or warning signs necessary for the protection of the public, and no person shall remove said barriers, barricades, lights or warning signs until the excavation is refilled and restored.

C. Access to private driveways, parking lots or businesses shall be provided by permit holders except when excavation operations reasonably prohibit such access. Permit holders shall notify property owners in advance whenever a driveway, parking lot or business is going to be blocked. Free access must be provided at all times to fire hydrants.

D. Permit holders shall clear or clean any earth, gravel or other material caused by the excavation or the refilling or restoring of same which may roll, flow, gather or wash upon any street of the Borough, any public property or any private property.

E. Permit holders shall protect and prevent damage to all pipe drains, pipe culverts, sewer connections and other facilities and utilities during an excavation.

F. When an excavation will interfere with the established drainage system of any street, the permit holder shall insure the provision of proper drainage. During the progress of the work, gutters or waterways shall remain open or other provision made for the removal of storm water.

G. No survey markers or monuments set for the purpose of locating or preserving the lines of any street or property shall be removed or disturbed without specific permission from the Borough, and if such permission is granted the markers or monuments shall be reset following the refilling or restoration of the excavation by a surveyor licensed to practice in the Commonwealth of Pennsylvania and such resetting shall be completed at the permit holder's expense.

H. Excavated materials shall be laid or stored in such a way as to cause as little interference and inconvenience to public travel as is reasonable.

I. Excavation work authorized by a permit shall be performed between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.

J. All excavations which could reasonably lead to collapse of the surrounding material, whether as a result of the depth of the excavation or the instability of the surrounding material, shall be shored.

Section 8. Refilling of Excavation.

Any person who shall excavate any street in the Borough shall refill or restore the excavation immediately following completion of the project or order of the Borough in such manner as to restore the surface of the street to the same condition and grade as it was before the excavation, and in such manner as to prevent any settling thereafter. If within two (2) years after refilling or restoration of the excavation, defects as to condition, grade or settling appear in the area of the excavation, the permit holder is responsible for the cost in curing said defects, and if the Borough undertakes to cure them, then the Borough may recover the costs of curing from the permit holder or the bond posted by the permit holder.

Section 9. Limitations of Permits.

Permits issued pursuant to this Ordinance are not transferable from one person to another. Work done pursuant to a permit issued pursuant to this Ordinance shall not be done in any place or to any extent other than as specifically stated in the permit application.

Section 10. Inspections.

The Borough may perform inspections as it deems necessary of all excavation work, both during the excavation and following refilling or restoration, authorized by a permit.

Section 11. Revocation of Permit.

Any permit issued pursuant to this Ordinance may be revoked by the Borough upon oral or written notice to the permit holder for any violation of the terms of the permit, any violation of this Ordinance, or any violation of other laws of the Borough or the Commonwealth of Pennsylvania. If the permit is revoked, the Borough may give the permit holder the opportunity to cure the violation and if the Borough is satisfied any violation is cured may restore the permit by the same oral or written notice which lead to the revocation. If the permit is revoked and not restored the permit holder shall immediately refill or restore the excavation as required by this Ordinance.

Section 12. Borough Work.

Any requirements of any Section, subsection or part of this Ordinance to be performed by the permit holder may, if the permit holder fails to perform said requirements, be performed by the Borough which may in turn recover the costs thereby incurred from the permit holder or against the permit holder's bond required by this Ordinance.

Section 13. Bonds.

Applicants for permits shall submit with any application for a permit a performance bond issued by a company licensed by the Commonwealth of Pennsylvania with the Borough as beneficiary in the amount of Twenty-Five Thousand (\$25,000.00) Dollars, or in such other amount deemed reasonable based on the estimated project by the Borough Engineer. The performance bond shall be written as to cover each excavation made. The performance bond shall guarantee the work performed by the applicant/permit holder for a period of two (2) years from the prospective date of the refilling and restoration of the excavation as stated on the permit application, and shall cover any damages which may occur as a result of any violation of this Ordinance. The Borough shall retain the bond for the two (2) years from the prospective date of refilling and restoration, releasing it or returning it thereafter unless costs were paid by the Borough to refill or restore the excavation, or to remedy any other violation of this Ordinance, which costs shall be paid out of the bond, due to the permit holder's failure to properly refill or restore pursuant to or otherwise comply with the requirements of this Ordinance.

Section 14. Insurance.

Applicants shall submit with any application for a permit a certificate establishing the existence of insurance against claims for damage which may arise from or out of the excavation, including but not limited to personal injury or property damage to third parties, and workers' compensation liability to employees or statutory employees. Liability insurance in the amount of \$500,000.00 for each occurrence and aggregate for bodily injury, and \$250,000.00 for each occurrence and aggregate for property damage is required to obtain a permit, but said amounts may be adjusted if deemed reasonable based on the estimated project by the Borough Engineer.

Section 15. Certification

The person executing the permit application on behalf of the applicant/permit holder is, by executing same, certifying that all provisions of this Ordinance have been and will be complied with, and is responsible to insure that all provisions of this Ordinance are complied with.

Section 16. Penalties.

A. Enforcement of this Ordinance shall be by action brought before a Magisterial District Justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. Any person violating any Section or part of this Ordinance shall, upon conviction thereof, be sentenced to pay a fine of not less than \$100.00 nor more than \$600.00, and/or be sentenced to a term of imprisonment either upon conviction or for failure to pay a fine not exceeding 30 days, per violation. Each day on which a violation of this Ordinance exists shall be considered a separate violation.

B. The Borough may in its discretion enforce any provisions of this Ordinance in equity.

Section 17. Repealer.

All prior Ordinances inconsistent with any provisions of this Ordinance are repealed to the extent necessary to give effect to the provisions of this Ordinance.

Section 18. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is found to be unconstitutional, illegal or unenforceable, such section, subsection, sentence, clause, phrase or portion of this Ordinance shall be deemed separate, distinct and independent from the remainder of this Ordinance, and such finding shall not affect the enforceability of the remainder of this Ordinance.

Section 19. Effective Date.

This Ordinance shall be effective upon enactment or on the first date allowed by law thereafter, whichever occurs first.

ORDAINED and ENACTED this 12 day of July, 2016.

BOROUGH OF GORDON
Schuylkill County, Pennsylvania

BY: Valerie M. Stutz
Council President Vice President

ATTEST:

R. L. S. [Signature]

APPROVED:

[Signature]
Mayor

EXHIBIT “A”
TO
GORDON BOROUGH
ORDINANCE NO. 07122016

GORDON BOROUGH STREET EXCAVATION PERMIT APPLICATION

Date _____

Name of applicant _____

Address of applicant _____

Phone number of applicant _____

Contact person for applicant _____

Exact location of proposed street excavation _____

Approximate size and depth of excavation _____

Description of reason for excavation and work to be done as part of excavation

Proposed date of excavation _____

Proposed date of refilling and restoration of excavation _____

I, the undersigned, have attached with this application the insurance certificate and performance bond required by the Gordon Borough Street Excavation Ordinance. I further have provided a list of all contractors or subcontractors who will be taking part in the excavation work on this project, and will supplement this list with the names of all contractors and subcontractors not yet retained who will take part in the excavation work on this project. Additionally, I agree to conform to all laws and Ordinances of Gordon Borough.

I, the undersigned, represent that I have authority to bind the applicant listed above with my signature, and am making this representation subject to the penalties located at 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Signature

Printed name

Position with applicant