

## CHAPTER 13

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## CHAPTER 13

### GRADING AND EXCAVATING

#### Part 1

#### Control of Soil Erosion, Sedimentation and Grading

**§101. Short Title.** This Ordinance shall be known and may be cited as the “Soil Erosion, Sedimentation and Grading Control Ordinance”, implementing Title 25, Rules and Regulations, Pt. 1, Commonwealth of Pennsylvania, Department of Environmental Protection, Sub-pat C, Protection of Natural Resources, Article II, Water Resources, Chapter 102 – Erosion Control.

**§102. Purposes.** The purposes of this Ordinance is to regulate the modification of the natural terrain, the alteration of drainage, and to provide for certain erosion and sediment control measures within the Borough. To assure and safeguard health, safety, ecology and general welfare in the Borough.

**§103. Scope.** From and after the effective date of this Ordinance, any subdivision and/or land development approved under the subdivision and land development or zoning ordinances, or activity qualified under sections 105 and 106 herein shall be in conformity with this Ordinance. In the event of a conflict between this Ordinance and flood plain regulations, the flood plain regulations shall take precedence. In the event of a conflict between this Ordinance and the Stormwater Ordinance, the Stormwater Ordinance shall prevail.

**§104. Definitions.** As used in this ordinance, the following terms shall have the meanings indicated unless a different meaning clearly appears from the context:

(a) Alluvial Soils – means an agonal great group of soils, developed from transported and relatively recent deposited material (alluvium), characterized by a weak modification (or none) of the original material by soil-forming processes.

(b) Cut and/or Fill – means the process of earthmoving by excavating part of an area and/or using excavated material for embankments of fill areas.

(c) Erosion means:

(1) The wearing away of the land surface by running water, wind, ice, chemical or other geological agents; or

(2) Detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(d) Runoff (Hydraulics) – means that portion of the precipitation on a drainage area or watershed that is discharged from the area in stream channels; types include surface runoff, ground water runoff, or seepage.

(e) Slope – means degree of deviation of a surface from the horizontal usually expressed in percentages or degrees.

**§105. General Requirements.** Whenever the landscape is to be permanently disturbed as to either contours, soil or slope characteristics, or vegetations or any ground cover is to be permanently removed, a plan is required showing how resulting erosion and sediment shall be controlled. This plan shall include the following:

- (a) The amount of site alteration proposed;
- (b) A development schedule; and
- (c) Erosion and sediment control practices (both temporary and permanent) and the operation and maintenance arrangements.

**§106. Activities Requiring Grading Permit.** The following activities require a grading permit:

- (a) Modifying, disturbing, blocking, diverting, or otherwise adversely affecting the natural overland or subsurface flow of storm water;
- (b) Construction, erection, or installation of any drainage dam, ditch, culvert, drain pipe, bridge or any other structure or obstruction affecting the drainage of any premises;
- (d) Paving, filling, stripping, excavating, grading or regrading of any land; or
- (e) Disturbing the landscape, vegetation or any ground cover by any proposal involving an area in excess of five thousand (5,000) square feet.

**§107. Activities Not Requiring A Grading Permit.** The following activities require no grading permit:

- (a) Improvements, such as erection of retaining walls, driveway paving, minor regrading activities on a property which do not adversely affect the natural overland or subsurface flow of storm water, drainage of any premises, or adversely disturb the landscape, in a gross area of up to twenty-five (25) acres on any one property.
- (b) Farming, gardening, or lawn restoration, but not including sod farming.

**§108. Application for Permit.**

(a) Any person, firm or corporation proposing to engage in an activity requiring a grading permit hereunder shall apply by the submission of a plan.

(b) The applicant should, before submitting a preliminary plan for review, consult the Zoning Ordinance, the Floodplain Regulations and the Subdivision and Land Development Ordinance, which regulate the development of land in the Borough.

(c) A separate plan shall be required for each grading permit.

(d) Five (5) copies of the proposed plan, including specifications and development schedules shall be submitted to the Borough Engineer for a grading permit. The Borough Engineer shall forward one copy of the plan to the Planning Commission, one copy to Borough Council, one copy to the Zoning Officer, and one copy to the Code Enforcement Officer.

(e) The plan for a grading permit shall be accompanied by a fee established in the Borough's schedule of fees and collection procedure for all applications and other matters pertaining to the subdivision and land development ordinance and this ordinance.

**§109. Data required on Plan.** The plan for a grading permit shall include:

(a) A valid boundary line survey of the site on which the work is to be performed;

(b) A description of the features, existing and proposed, surrounding the site which are of importance to the proposed development;

(c) A plan of the general topography (including drainage) and soil conditions on the site (the later available through the Luzerne County Conservation District);

(d) The location and a description of existing and future man-made features of importance to the proposed development (i.e., cuts and/or fills, buildings, roads, and driveways);

(e) Plans and specifications of soil erosion and sediment control measures in accordance with standards and specifications of the Borough of White Haven and the Luzerne County Conservation District; and

(f) A development schedule indicating the anticipated starting and completion dates of the development sequence and the time of exposure of each area prior to the completion of effective erosion and sediment control measures.

**§110. Special Requirements.** In addition to the requirements of Section 109, and where deemed necessary by the Borough Engineer and the Planning Commission, or the

Borough Council, the applicant shall submit with the plan a detailed drainage study prepared by a registered professional engineer qualified in hydrology in the Commonwealth of Pennsylvania. This study shall include:

(a) A plan of the property showing the location of all present and proposed ditches, streams, pipes and other drainage structures, and proposed cuts and/or fills. In addition to showing present elevations and dimensions, and location and extent of all proposed grading and/or drainage, the plan shall clearly indicate all woodlands, buildings, parking areas, and driveways. Further, the plan shall indicate the present and proposed sources, storage and disposition of water being channeled through or across the premises, together with elevations, gradients, and maximum flow rates. The plan shall describe the work to be performed and disposition of cut and/or fill, the materials to be used and the manner or method or performance including provisions for protecting and maintaining existing drainage facilities whether on public or private property. The applicant shall also supply the supporting data for the plan as developed by the engineer.

(b) Calculations to determine runoff, which shall be based on the Soil-Cover Complex Method, a description of which is available from the U.S.D.A. Soil Conservation Service and outlined in the "Erosion and Sediment Control handbook, Luzerne County, Pennsylvania.

(1) The design criteria for storm sewer piping on inlet systems within a subdivision being developed shall be designed for a 25-year frequency storm; culverts across roadways shall be designed for a 50-year frequency storm; open watercourses or swales shall be designed for a 100-year frequency storm as prescribed in accordance with the following:

(A) The coefficient of runoff used for all areas up-stream of any drainage structure shall be computed on the basis of existing land use and the projected land use described and shown on the Borough of White Haven Comprehensive Plan, and adjacent municipalities' comprehensive plans, where applicable.

(2) The following provisions apply to the carrying and disposal of storm water runoff:

(A) All drainage facilities shall be designed to carry surface water in such a manner as to prevent erosion or overflow.

(B) The applicant shall agree to the granting and recording of easements covering the installation and maintenance of drainage facilities.

(C) The rate of runoff shall be no greater during and after a 100-year frequency storm when the development is completed than that which existed before the development began and appropriate measurements of calculations shall be provided to verify such provisions.

(3) A soils investigation report, if load-bearing fill is proposed, which shall consist of test borings, laboratory testings and engineering analysis to correlate surface and subsurface conditions with the proposed grading plan. The results of the investigation shall be presented in a report by a registered professional soils engineer and shall include: data regarding the nature, distribution and supporting ability of existing soils and rocks on the site, conclusions and recommendations to insure stable soil conditions and ground water control as applicable. The Borough may require such supplemental reports and data as is deemed necessary by the Borough Engineer. Recommendations included in such reports and approved by the Borough Engineer shall be incorporated in the plan or specifications. In addition:

(A) Fills toeing out on natural slopes steeper than four (4) horizontal to one (1) vertical shall not be made unless a report is received which is deemed acceptable by the Borough Engineer and approved by the Borough Council. The report shall be made by a registered professional soils engineer certifying that he or she has investigated the property, made soils tests and that in his or her opinion such steeper slopes will safely support the proposed fill.

(B) Natural and/or existing slopes exceeding five (5) horizontal to one (1) vertical shall be benched or continuously stepped into competent materials prior to placing all classes of fill.

**§111. Approval.** Upon the approval of the plan by the Borough Council, the Code Enforcement Officer, or Zoning Officer, shall issue the necessary grading permit.

**§112. Standards for Issuance of Grading Permit.**

(a) Notwithstanding any provision of this ordinance or any condition of the grading permit, the permittee is responsible for the prevention of damage to other property, or personal injury, which may be effected by the activity requiring a grading permit.

(b) No person, firm or corporation shall modify, fill, excavate, pave, grade, or regrade land in any manner so close to a property line as to endanger or damage any adjoining street, alley, or any other public or private property without supporting and protecting such property from settling, cracking, erosion, sediment, flooding, or any other physical damage or personal injury which might result.

(c) No person, firm or corporation shall deposit or place any debris or any other material whatsoever, or cause such to be thrown or placed, in any drainage ditch or drainage structure in such a manner as to obstruct the free flow of water.

(d) No person, firm, or corporation shall fail to adequately maintain, in good operating order, any drainage facility on his premises. All drainage ditches, culverts, drainpipes, and drainage structures shall be kept open and free-flowing at all times.

(e) The owner of any property on which any work has been done pursuant to a grading permit granted under this ordinance shall continuously maintain and repair all graded surfaces and anti-erosion devices, retaining walls, drainage structure of means and other protective devices, plantings and ground cover installed or completed. The Borough is responsible for maintenance and repair within the right-of-way of Borough roads.

(f) All graded surfaces shall be permanently seeded, sodded and/or planted or otherwise protected from erosion within thirty (30) days, weather permitting, and shall be tended and/or maintained until growth, is well established. The disturbed area and duration of exposure shall be kept to a minimum using temporary erosion and sediment control measure immediately, as outlined in the "Erosion and Sediment Control Handbook, Luzerne County, Pennsylvania".

(g) All trees in an area of extreme grade change shall be protected with suitable tree wells, unless the necessity for removal is established. Precautions shall be taken to prevent the unnecessary removal of trees.

(h) When required, adequate provisions shall be made for dust control measures as are deemed acceptable by the Borough Engineer.

(i) All plans and specifications submitted for a grading permit shall include all provisions for both interim (temporary) and ultimate (permanent) erosion and sediment control.

The design installation and maintenance of erosion and sediment control measures shall be accomplished in accordance with standards and specifications established by the Luzerne County Soil Conservation District as adopted from standards and specifications of the United States Soil Conservation Service, and as outlined in the "Erosion and Sediment Control Handbook, Luzerne County, Pennsylvania."

(1) Technical standards for the design and installation of erosion and sediment control measure are on file with the Borough, the office of the County Conservation District and other governmental agency offices.

(2) Standards and specifications adopted for the purposes of this ordinance and by the County Conservation District and other governmental agency offices include:

(A) Temporary cover on critical areas,

(B) Permanent grass and legume cover for critical areas on prepared seedbed,



(C) Permanent grass and legume cover for critical areas on unprepared seedbed,

(D) Sodding,

(E) Mulching,

(F) Temporary diversion,

(G) Permanent diversion,

(H) Grassed waterway or outlet,

(I) Grade stabilization structure,

(J) Debris basin,

(K) Drain, and

(L) Drainage – mains and laterals.

(j) A quality control program is critical for fills; therefore, whenever fill material is to be used, the person, firm, or corporation shall be responsible for testing to determine its dry density as per ASTM D1556. The density of each layer shall be not less than ninety-five percent (95%) of the maximum density as determined by ASTM D1557.

(1) Inspection procedure shall follow the general procedure as stated in Section 113.

(2) Compaction test reports shall be kept on file at the site and be subject to review at all times.

(3) Degree of compaction required shall be determined by the Borough Engineer following the guidelines in this section.

### **§113. Inspection Procedures.**

(a) All inspections shall be the responsibility of the Borough Engineer, or, in his or her absence, a qualified person acceptable to the Borough.

(b) Inspection will be carried out on a random basis, except as stated below. However, a set of “as built” plans shall be on file at the site and authenticated by a registered professional engineer. When it is deemed acceptable to the Borough Engineer a designated qualified person may authenticate the “as built” plans and will assume full responsibility for the quality of work.

(c) Any and all “as built” plans shall be available on the site at all times and be subject to inspection and inquiry.

(d) Engineering check notes shall accompany all “as built” plans which involve structural or mechanical measures and shall serve as supporting evidence that structures meet design standards and specifications specified herein.

(e) A final inspection shall be conducted by the Borough Engineer to certify compliance with this ordinance. Satisfactory compliance with this ordinance shall be necessary before issuance of an occupancy or use permit.

**§114. Costs of Inspection.** Permittees shall bear all costs of inspections required or permitted hereunder and shall deposit with the Borough such sum as Borough Council shall determine, to guarantee payment of the costs of such inspections. The cost of inspections shall be in accordance with the established schedule of fees and collection procedure for matters pertaining to this ordinance.

**§115. Fee.** The fee for a grading permit shall be \$150.00. This fee may be changed from time to time by Resolution of Borough Council.

**§116. Remedy of Violation.** In addition to the penalties as set for in Section 119, any movement of the landscape, vegetation, or any ground cover, performed in violation of this ordinance shall be restored to its previous condition, including replacement of excavated earth, removal of illegally placed fill, and restoration of grades and planting. In order to enforce this section the Borough solicitor may seek injunctive relief in accordance with the rules of civil procedure.

**§117. Repealer.** All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

**§118. 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 been included herein.

**§119. 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 undergo imprisonment for a term not exceeding thirty (30) days. Each day that a violation of this ordinance continues, shall constitute a separate offense.

ORDINANCE NO. 3 of 2013

**AN ORDINANCE OF WHITE HAVEN BOROUGH, LUZERNE COUNTY,  
PENNSYLVANIA, AMENDING CHAPTER 13, GRADING AND EXCAVATING, PART  
2, OPENINGS AND EXCAVATION OF STREETS**

**§201. Definition and Interpretation.** The definition of "Excavation" is renumbered from (a) to (b) and the following new definition is added:

(a) Comprehensive Resurfacing-means when the Borough undertakes to pave more than three streets or more than one mile of street within the Borough in any given calendar year.

**§202. Permit Required.** The following sentence shall be added to the end of the section:

"If the application is disapproved, or a permit is denied, written notice of disapproval, together with the reason for disapproval, shall be given to the applicant."

**§203. Street Openings Prior to Reconstruction or Resurfacing.**

(a) When the Borough or the Pennsylvania Department of Transportation reconstruct or resurface any street, the Borough shall first serve written notice by registered mail of such improvements to all person owning property abutting the street about to be improved, and to all public utility companies operating within the Borough. Within ninety (90) calendar days for receipt of such notice all notified persons shall complete or cause to be complete all necessary repairs and replacements of utility mains, service connections, and/or laterals existing under the street and designated curb and sidewalk areas. Notified persons shall also complete or cause to be completed any new installations, under the street and designated curb and sidewalk areas required for use within a two (2) year period thereafter. All repairs, replacements, and new installations shall be in first-class condition so that the same cannot reasonably be expected to require repairs or renewal within a period of at least two (2) years thereafter.

(b) Upon failure of any of the notified person or persons to comply with the notice from the Borough to place the same in first-class condition as hereinbefore provided, the Borough shall cause existing utility mains, service connections and/or laterals to be placed in first-class condition as aforesaid, or to be entirely removed, if not used or necessary for the public convenience, whereupon the Borough shall be entitled to collect the cost of such renewals, repairs, caulking, removal or other work from the aforesaid responsible person or persons, either by invoicing the person or persons, or, in the case of water or sewer house connections, by filing municipal liens therefore against the abutting properties benefited by such connections.

(c) This section shall not forbid, however, the installation of new pipes, conduits or other services or structures, or the repair, replacement or removal of those already existing, in or under the portions of such highways improved as aforesaid, by tunneling beneath paving in accordance with the ordinances of the Borough and the directions of the Borough Engineer or the Pennsylvania Department of Transportation upon obtaining a permit therefore from the Borough,

and upon payment to the Borough of the same fees as prescribed by the provisions of this Part for making a surface opening in the street of the same dimensions.

(d) The Borough reserves the right to deny any street opening or excavation permit for any street that has been resurfaced and/or reconstructed within at least two years prior to application. When comprehensive resurfacing occurs within the Borough no notice is required under this section. Comprehensive resurfacing for purposes of this section means

**§211. Inspection and Degradation Fees.** The following shall be added at the end of the section: At the time of this amendment, the Borough hereby established the Degradation Fees in Table 1 below and the Inspection Fees in Table 2 below.”

TABLE 1 DEGRADATION FEE	Rate of Fee in Dollars per Square Yard Streets Constructed, Reconstructed or Resurfaced Within the Following Number of Years Prior to Issue Date of Permit Rates associates with emergency situation or approved exceptions		
	Less Than 1 Year	1 to 2 Years	Greater Than 2 Years
PAVEMENT STRUCTURE			
Concrete foundation (10 inches or less in depth) with any bituminous surface	100.00	40.00	
Concrete foundation (greater than 10 inches in depth) with bituminous surface	150.00	75.00	
Cement concrete surface streets	100.00	50.00	
Bituminous surface with bituminous or stone base	50.00	25.00	
Macadam, vitrified block, or granite block on stone foundation	25.00	25.00	
Unpaved public streets or alley	25.00	25.00	

TABLE 2 INSPECTION FEE

Total Square Yards to Be Excavated	Inspection Fee (Dollars)	Total Square Yards Be Excavated	Inspection Fee (Dollars)
1	\$30.00	24-25	\$324.00
2	54.00	26-27	342.00
3	78.00	28-29	360.00
4	102.00	30-34	396.00
5	126.00	35-39	438.00
6	144.00	40-44	477.00

7	162.00	45-49	516.00
8	174.00	50-54	552.00
9	186.00	55-59	588.00
10-11	198.00	60-69	642.00
12-13	216.00	70-79	855.00
14-15	234.00	80-89	765.00
16-17	252.00	90-99	822.00
18-19	270.00	100	846.00
20-21	288.00	101	846.00
22-23	306.00	Or Greater	+12.00 x (s.y. over 101,

NOTES:

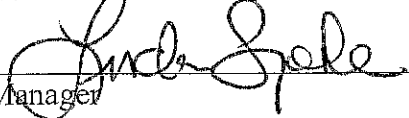
- 1) The number of square yards of excavation shall be computed to the nearest whole square yard.
- 2) Minimum fee shall be equal to fee for 1 square yard.

**§215. Penalty.** The following sentence shall be added to the end of the section:

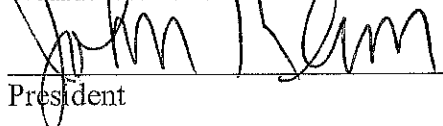
“The Borough shall also have the right to deny the issuance of future street opening permits to any person who has violated the provisions of this Part on more than one occasion within a five year period.”

Except as provided above, the provisions of Chapter 13, Part 2 shall remain the same. THESE AMENDMENTS are hereby adopted this 22 day of July, 2013, by White Haven Borough Council effective upon the date of their adoption.

ATTEST:

  
 \_\_\_\_\_  
 Manager

WHITE HAVEN BOROUGH COUNCIL:

  
 \_\_\_\_\_  
 President

**Part 2**  
**Openings and Excavations in Streets**

**§201. 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.

(a) Excavation – any activity within the right-of-way of any street, alley, or cartway which involves cutting, breaking, or distributing the surface thereof. In this ordinance, the term OPENING shall have essentially the same meaning as excavation.

(Ord. No. 2-2003, 12/16/2003, Sec. 1)

**§202. Permit Required** It shall be unlawful for any person to open or to make any excavation of any kind in or under the surface of any streets without first securing a permit from the Borough for each separate undertaking. Application for a permit shall be made on a form provided by the Borough. However, any person maintained facilities in, under or about 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 reasonable and practicably have been obtained beforehand. The person shall thereafter apply for a permit on the first business day on which the borough Office is open for business, and said permit shall be retroactive to the sate when the emergency work was begun. All applicants shall pay a Seventy-Five (\$75.00) Dollar Fee, which may be raised or lowered by a subsequent Fee Resolution of Borough Council. Permits shall be issued for a period not to exceed one (1) year and any application to renew an expired permit shall be treated as a new application including the payment of a new permit fee. (Ord. No. 2-2003, 12/16/2003, Sec. 2)

**§203. Permit Approval/Disapproval.** A permit may be issued to the applicant after all requirements therefore have been filed. If the application is disapproved, written notice of disapproval, together with the reasons therefore, shall be given to the applicant. (Ord. No. 2-2003, 12/16/2003, Sec. 3)

**§204. Responsibility to Contract 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. (73 P.S. §176 et seq.) as amended or supplemented from time to time. It shall be the Permittee's responsibility to contract the utilities that have recorded their facilities in compliance with the Act. (Ord. No. 2-2003, 12/16/2003, Sec. 4)

**§205. Refilling of Excavation/Restoration of Surface/Responsibility for Defects Occurring within 2 Years.** Any person who shall excavate any street in the Borough

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 excavation. The surface shall conform to the proper grade and be of the same covering as the part of the thoroughfare immediately adjoining the opening. If within 2 years after the restoration of the surface as herein provided, defects shall appear therein, the applicant shall reimburse the Borough for the cost of all necessary repairs to the surface. (Ord. No. 2-2003, 12/16/2003, Sec. 5)

**§206. Responsibility of Permit Holder for Certain Work/Right of Borough to Do Certain Work; Change Therefore.** 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, 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, provided that the Borough may, if it deems necessary to the proper performance of the work, requiring the cutting of the surface of street and the backfilling and resurfacing of all excavations therein shall be done by the Borough, in which event the applicant shall pay the actual cost of the work performed by the Borough. (Ord. No. 2-2003, 12/16/2003, Sec. 6)

**§207. Permittee Responsibilities for Future Relocation of Work.** If at anytime 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 permits which interfere with the improvement of the roadway at his or her own cost and expense. (Ord. No. 2-2003, 12/16/2003, Sec. 7)

**§208. Payment for Work done by Borough.** Payment for all work done by the Borough under the provisions hereof shall be made by the person made liable therefore under the provisions hereof within thirty (30) days after a bill therefore 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 by an action in assumpsit or in the manner provided by law for collection of municipal claims. (Ord. No. 2-2003, 12/16/2003, Sec. 8)

**§209. Limitations of Permits.** Permits are not transferable from one person to another and the work shall not be made in any place or to any extent other than the specifically designated in the permit. (Ord. No. 2-2003, 12/16/2003, Sec. 9)

**§210. Revocation of Permits.** Any permit may be revoked by the Borough after oral or written notice to the Permittee, for:

(a) Violation of any condition of the permit or of any provisions 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 constituting or creating a nuisance or endangering life or property.

When notice of any such violation or condition shall be served upon the Permittee of his or her agent engaged in the work, the Permittee must immediately take the necessary corrective measures before proceeding further with any work for which the permit was originally granted.

When, in the opinion of the Borough, the Permittee has failed to take the necessary corrective measures, and a condition or act constituting or creating a nuisance or endangering life or property exists, the Borough may order the work to be performed by the appropriate Borough designee or employee and the cost therefor incurred by the Borough shall be recovered from the bond the Permittee has filed with the Borough. (In the event of no bond or inadequate bond amount, the amount may be recovered by the Borough in accordance with Section 208 hereof.) When the above action is deemed necessary by the Borough, it shall constitute an automatic revocation of the permit and upon action filed by the Borough; the Permittee shall be subject to fine and penalties as provided for herein.

(Ord. No. 2-2003, 12/16/2003, Sec. 10)

**§211. Inspection.** The Borough shall make such inspections as it may deem necessary of all work authorized by a permit. The Borough is empowered to provide a full-time inspector if necessary to ensure compliance with the provisions of this Ordinance. All inspection costs shall be borne by the Permittee. Such costs shall be based on a schedule of fees adopted by the Borough as revised from time to time by adoption of a Resolution. Said inspection fee shall be recovered by the Borough in accordance with Section 208 hereof. (Ord. No. 2-2003, 12/16/2003, Sec. 11)

**§212. Adoption of Specifications.** The Borough does hereby adopt the following specifications and procedures:

(a) No opening or excavation in any street shall 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 at any one time, except by special permission of the Borough.

(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) Survey markers or monuments set forth the purpose of locating or preserving the line of any street or property subdivision, or a precise survey referenced point, or a permanent survey benchmark with the Borough shall not be removed or



distributed or caused to be removed or distributed, unless permission to do so is first obtained in writing from the Borough. Permission shall be granted only upon condition that the Permittee shall pay all expenses incident to the proper replacement of the monument. Any existing survey markers which are removed or displaced by any construction operation shall be reset by a surveyor licensed or registered in the Commonwealth of Pennsylvania, with such work being completed at the Permittee's expense.

(f) Work performed by the Permittee interferes with the established drainage system of any street; provisions shall be made by the Permittee to provide proper drainage to the satisfaction of the Borough.

(g) When any earth, gravel, or other excavated materials caused to toll, flow or wash upon any street, the Permittee shall cause the same to be removed from the street within four (4) hours after deposit of such materials, or upon notice from the Borough to remove such materials. In the event the earth, gravel or other excavated materials so deposited is not removed, the Borough shall cause such removal, and the costs incurred by the Borough shall be recovered from the bond the Permittee filed with the Borough.

(h) Every Permittee shall place around the project such barriers, barricades, lights, warning flags and danger signs as necessary for the protection of the public. Barricading shall be in compliance with the regulations as set forth by the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Traffic Engineering, for maintaining and protection of traffic on construction projects and handbook for work area traffic control and any future revisions thereto.

(1) All trenching and excavating shall conform to the requirements of the Pennsylvania Department of Labor and Industry standard for such work. Additional safety requirements may be prescribed by the Borough.

(2) Whenever any person fails to provide or maintain safety devices required by the Borough, such devices may be installed and maintained by the Borough. The amount or costs incurred shall be paid by the Permittee.

(3) No person shall willfully 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.

(i) Access to private driveways shall be provided except during working hours when construction operations prohibit provisions of such access. Permittee must notify property owners in advance whenever a driveway is to be blocked. Free Access must be provided at all times to fire hydrants.

(j) The excavation shall be in two (2) classes; that portion in the area outside the cartway and that portion within the cartway.

(1) For excavation outside the cartway, excavated materials shall be laid compactly along the side of the trench and kept trimmed up so as to cause as little inconvenience as possible to public travel. In order to expedite the flow of traffic or to abate a dirt or dust nuisance, the Borough may require the Permittee to provide toe boards or binds, and if the excavated area is muddy and causes inconvenience to pedestrians, temporary wooden plank walks shall be installed by the Permittee as directed by the Borough. If the street is not wide enough to hold the excavated materials without using part of an adjacent sidewalk, the Permittee shall keep a passageway at least one-half (1/2) the sidewalk width open along such sidewalk line.

(2) For excavation within the cartway, all excavating material shall be wasted and removed from the site. This shall be done at the time of excavation or after excavation backfill has been completed. If excavation material is left at the site or until after completion of the work, all conditions stated in paragraph (j)(1) above shall be adhered to.

(k) 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 Borough to do the work authorized by the permits is to be performed in traffic-congested areas.

(l) In granting any permit, the Borough may attach such other conditions as may be reasonably necessary to prevent damage to public 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. Such conditions may include, but shall not be limited to:

(1) Limitations on the period of time of the year in which the work may be performed;

(2) Restrictions as to size and type of equipment;

(3) Designation of routes upon which materials may be transported;

(4) The place and manner of disposal of excavated materials;

(5) Requirements as to the laying of dust, the cleaning of streets, the prevention of noise and other results offensive or injurious to the neighborhood, the general public or any portion thereof; and

(6) Regulations as to the use of streets in the course of work.

(m) During the progress of the work, gutters, and waterways must be kept open or other provisions made for the removal of storm water. Street intersections may be blocked one-half (1/2) at a time, and the Permittee shall lay and maintain temporary one (1) foot on either side of the trench opening at ground surface. Sawing or cutting shall

extend to full depth or existing surface. Where existing surfaces are damaged, taken up, undercut, or unraveled by construction excavation operations which extend beyond the original saw or cut marks for removal, the Permittee in resorting such bituminous or concrete surfaces to original condition shall re-saw or cut the surface to a straight and even line six (6) inches beyond the furthest point of damage from the trench centerline.

(n) When temperatures fall below 33 degrees F., all grouting and concrete materials entering into the construction are to be preheated and used while warm. When any mortar or cement concrete work is carried out under freezing conditions, the heated area must be maintained for at least twenty-four (24) hours or the installation shall be protected from frost by covering with hay, straw, or similar substance to a depth of at least two (2) feet before auxiliary heat is removed. Where areas cannot be appropriately protected by covering with hay or straw and where it is impractical to completely cover the work area with an enclosure and heat the work to at least 40 degrees F., the work shall be suspended.

(o) The trench shall be excavated along the limits proposed by the permit holder and approved by the Borough. All trenches shall be vertical sides; no tapering of said trenches shall be permitted, unless approved in writing. The width of the trench, unless otherwise approved, shall be six (6) inches minimum and eighteen (18) inches maximum on each side of the utility pipe. The bottom of the trench shall be hollowed out so as to allow the body of the pipe to have a bearing throughout on the trench bottom. Ground adjacent to all excavations shall be grated to prevent water running in. Any accumulated water in the excavation shall be removed by pumping or other means approved by the Borough prior to the placement of pipes or utilities and before backfill is begun.

(Ord. No. 2-2003, 12/16/2003, Sec. 12)

**§213. Maintenance and Performance Bonds.** Applicants for permits shall submit, together with the application, a performance bond in the amount of One Thousand (\$1,000.00) Dollars for each permit for opening up to one hundred (100) square feet. For opening in excess of one hundred (100) square feet, the bonds shall be in the amount as shall be determined and approved by the Borough. In the case of those who maintain utilities under the streets and rights-of-way, of the Borough, the performance bond shall be so written as to cover each and every opening made. The performance bond shall guarantee the work performed by the Permittee for a period of 2 years. (Ord. No. 2-2003, 12/16/2003, Sec. 13)

**§214. Insurance Requirements.** Each applicant, prior to the receipt of a permit, shall provide the Borough with an acceptable certificate of insurance, indicating that he or she is insured against claims for damage which may arise from or out of the performance of the work, whether such performance be by himself or herself, his or her subcontractor, or any one directly or indirectly employed by him or her. Such insurance shall cover collapse, explosion, hazards, and underground work by equipment on the street and shall include protection against liability arising from completed operations. In order to protect

the Borough and Permittee, the permittee shall provide a certificate of insurance for liability insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00) aggregate for bodily injury, Two hundred Fifty Thousand Dollars (\$250,000.00) for each occurrence, and Two Hundred Fifty Thousand Dollars (\$250,000.00) for aggregate property damage. Public Utilities and authorities may submit annually such evidence of insurance coverage in lieu of individual submissions for each permit. (Ord. No. 2-2003, 12/16/2003, Sec. 14)

**§215. Penalty.** Any person violating any of the provisions of this Ordinance or any regulations and specifications adopted thereunder shall, upon determination of the civil violation, be required to pay a fine not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00) for each violation. Any person who violates or permits the violation of this Ordinance shall, in addition to the payment of the fine be obligated to pay all courts costs, including reasonable attorney's fees, incurred by the Borough. Each day that a violation is permitted to exist after notice by the Borough shall constitute a separate violation. (Ord. No. 2-2003, 12/16/2003, Sec. 15)

**§216. 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 been included herein. (Ord. No. 2-2003, 12/16/2003, Sec. 16)