

BOROUGH OF SWARTHMORE
ORDINANCE NO _____

AN ORDINANCE OF THE BOROUGH OF SWARTHMORE AMENDING CHAPTER 1026 OF THE
CODIFIED ORDINANCES OF THE BOROUGH OF SWARTHMORE RELATING TO STREET
EXCAVATIONS

The Borough Council of the Borough of Swarthmore does enact and ordain as follows:

Chapter 1026 of the Codified Ordinances of the Borough of Swarthmore are hereby deleted and replaced as follows:

Section 1. Definitions.

The following words, when used in this article, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise:

PERSON

Includes any natural person, partnership, firm, association or corporation.

STREET

Any public street, avenue, road, lane, court, cul-de-sac, square, alley, highway or other public place located in the Borough of Swarthmore and either for or intended for public use, and shall include the cartway, sidewalk, gutter, and/or right-of-way area, whether or not such street or any part thereof is owned in fee by others than the Borough.

Section 2. Permit required for street openings and excavations.

It shall be unlawful for any person to open, break or to make any excavation of any kind in any street in the Borough of Swarthmore by digging or otherwise or to dig a tunnel under the surface of any street without first securing a permit therefor as hereinafter provided.

Section 3. Permit required for driveways and roads.

It shall be unlawful for any person to construct any public or private driveway or road so as to open into any Borough street without first securing a permit therefor as hereinafter provided. The design and construction of such driveway or road shall be in accordance with the latest Borough standards and specifications.

Section 4. Application; bond.

Any person who shall desire to make any opening or excavation in any of the streets in the Borough of Swarthmore shall make application to the Borough in writing for the purpose. Such application shall be made upon forms to be furnished by the Borough and shall set forth the name of the applicant, the exact location of the proposed opening or excavation and the approximate size or depth thereon and such other information as may be required upon said application, and it 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 Swarthmore and the laws of the commonwealth in relation thereto, and that the applicant shall well and truly save, defend and keep harmless the Borough from and indemnify it against any and all actions, suits, demands, payments, costs and charges for or by reason of the proposed opening or excavation and all damages to persons or property.

Section 5. Restoration required.

Any person who shall make any opening or excavation in any of the streets in the Borough of Swarthmore, whether by drilling, boring, driving or tunneling or trenching under, across or through any street, shall restore the street to a condition equal to or better than its condition prior to such opening or excavation.

Section 6. Work and restoration standards.

- (a) Any person who shall make an opening or excavation in any street in the Borough of Swarthmore shall perform all such opening or excavation work and the restoration work required hereunder in accordance with the standards and provisions set forth in 67 Pa. Code § 459.8, as amended. Likewise, any aboveground construction shall be in performed accordance with 67 Pa. Code § 459.9. All references in foregoing Code sections to the District Office, the Department of Transportation or similar references shall be deemed to be references to the Borough of Swarthmore.
- (b) In addition to the foregoing work standards, the Borough Engineer shall be entitled to promulgate rules and regulations governing the opening, excavation, refilling, resurfacing and repaving of streets in the Borough of Swarthmore, and after the same have been approved by the Council of the Borough of Swarthmore and entered upon the minutes of Council, any work to be done or performed by any applicant or permittee governed by the terms of this article shall be done in compliance with such rules and regulations. Copies of said rules and regulations shall be furnished to any person making application hereunder.
- (c) If and to the extent that any person shall open or excavate any portion of a street in a manner which results in 20 linear feet or more of such street being excavated on one side of the street only, then such person shall be required to repave the street the full length of the excavation from the center line of the street to the curb on the side of the street on which the excavation occurred; or in a manner which results in 20 linear feet or more of such street being excavated and such excavation occurs on both sides of the street, then such person shall be required to repave the street the full length of the excavation from curb to curb. When four or more lateral openings have been made within 100 lineal feet of pavement, the permittee shall overlay the traffic lanes in which the openings were made for the entire length of highway between the ends of the furthest openings.
- (d) All work commenced in pursuance of said permit shall be continue uninterruptedly to the completion thereof, and said openings or excavations shall be backfilled promptly as specified by the Borough Engineer. Excavated material shall not be used for backfill.
- (e) Immediately upon completion of backfilling, two (2) inches of cold-patch asphalt or approved equal material shall be placed over the stone backfill and flush with the existing roadway surface. The permittee must maintain the trench against settlement until permanent paving is installed.
- (f) Permanent paving shall be constructed by the permittee within sixty (60) days after the installation of the temporary paving in accordance with specification of the Borough Engineer. If within one year after the construction of the permanent paving, defects shall appear therein resulting from defective backfilling by the applicant, the applicant shall reimburse the Borough for the cost of necessary repairs, or may much such repairs themselves if approved by the Borough Engineer.

Section 7. Traffic plan required.

The applicant for any street opening within the Borough of Swarthmore shall submit at the time of application a detailed traffic plan, to be approved by the Police Department. The traffic plan shall be developed in accordance with the requirements of PennDOT Publication 203, "Work Zone Traffic Control", as amended and will consist of a diagram of the traffic flow pattern, along with the means to be used for closing the street to normal traffic, length of time for closure and the type of equipment to be used as traffic flow indicators. The Chief of Police and/or his or her designee shall have full authority to close, change or redirect any and all such activity that would hamper the safety and well-being of the general public.

Section 8. Fees.

Before any permit shall be issued to open or excavate any street, the applicant shall pay a fee as provided in the Borough of Borough's annual Fees and Charges Resolution.

Section 9. Unsatisfactory completion of work.

In the event that any work performed by or for a permit holder shall, in the opinion of the Borough Engineer, be unsatisfactory and the same shall not be corrected in accordance with his or her instructions within the time fixed by him or her or in the event that the work for which the permit was granted is not completed within the time fixed therein, the Borough may proceed to correct such unsatisfactory work or complete any such work not completed and charge the costs thereof, plus 25%, to the applicant.

Section 10. Leaks, explosions or other accidents.

In the case of any leak, explosion or other accident in any subsurface pipe, 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 application for a permit shall be made immediately and not later than the next business day thereafter and that all other provisions of this article 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 Borough Engineer, after such notice as he or she 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 25%, to such owner or person.

Section 11. Notice of new paving given to abutting property owners and utility companies.

In the event that the Borough shall give timely notice to all persons owning property abutting on any street within the Borough about to be paved or improved and to all public utility companies operating in the Borough, then 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 said street within thirty (30) days from the giving of such notice, unless such time is extended in writing for cause shown by the Borough. Should any owner of property abutting on such street fail or refuse to make any connections or repairs required to be made hereunder, the Borough shall have the right to perform such work and to assess the costs for such work against the owner and the property, such costs to be a lien against the property as provided for in the Municipal Claims and Tax Lien Act, Act of May 16, 1923, P.L. 207, as amended and supplemented.

New paving shall not be opened for a period of five years after the completion thereof, except in case of emergency, the existence of which emergency and the necessity for the opening of such paving to be determined by the Borough. If it is sought to excavate upon or open a street within five years after the completion of the paving thereof for any other reason than an emergency as above stated, the applicant shall make written application to the Borough Council, and a permit for such opening shall only be issued after express approval of the Council.

Section 12. Violations and penalties.

Any person, whether principal, agent or employee, violating or assisting in the violation of any of the provisions of this article shall, upon conviction in summary proceedings, pay a fine of not more than \$1,000 for each and every offense or shall be imprisoned for not more than 90 days, or both such fine and imprisonment. Each day that a violation of this article occurs shall be deemed a separate offense.

Section 13. Severability.

The provisions of this ordinance are severable, and if any section, sentence, clause, part, or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, or parts of this Ordinance. It is hereby declared to be the intent of the Borough Council that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional sections, sentence, clause, part, or provision had not been included therein.

Section 14: Repealer.

All resolutions or ordinances, or parts thereof, which are inconsistent herewith are hereby repealed to the extent of the inconsistency.

Section 15: Adoption.

This Ordinance shall take effect and be in force from and after its enactment as required by law.

ENACTED AND ORDAINED THIS 13TH DAY OF SEPTEMBER, 2010.

SWARTHMORE BOROUGH COUNCIL

SUSAN D. SMYTHE
PRESIDENT

APPROVED THIS 13TH DAY OF
SEPTEMBER, 2010

ATTESTED THIS 13TH DAY OF
SEPTEMBER, 2010

RICHARD H. LOWE
MAYOR

JANE C. BILLINGS
BOROUGH MANAGER/SECRETARY