

Part 3

Street Excavations

§301. Definitions and Interpretation. The following words, when used in this Part 3, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise:

EXCAVATION - any activity within the right-of-way of any street, alley, or cartway which involves cutting, breaking, or disturbing the surface thereof. In this Part 3, the term OPENING shall have essentially the same meaning as excavation.

STREET - any public street, avenue, road, square, alley, highway, or other public place located in the Borough of Smithton and established for the use of vehicles, but shall not include State highways.

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

In this Part 3, the singular shall include the plural and the masculine shall include the feminine and the neuter.

(Ord. 167, 9/18/1989)

§302. Permit Required to Make Opening or Excavation. It shall be unlawful for any person to open or to make any excavation of any kind in any of the streets in the Borough of Smithton without first securing a permit therefor, as hereinafter provided. (Ord. 167, 9/18/1989)

§303. Application for Permit. Any person who shall desire to make any opening or excavation in any of the streets in the Borough shall make application to the Code Enforcement Officer in writing for that purpose. Such application shall be made upon blanks 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 thereof, and shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Borough 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 resulting in any manner therefrom, or occurring in the prosecution of the work connected therewith, or from any other matter, cause or thing relating thereto. (Ord. 167, 9/18/1989)

§304. Permit Fee. Before any permit shall be issued to open or excavate any street in the Borough the applicant shall pay a permit fee in the minimum amount of fifty dollars (\$50.00) to cover the cost of inspection and other incidental services in connection therewith. When application shall be made to open or excavate any longitudinal opening or excavation in excess of ten feet (10'), before any permit shall be issued so to open or excavate, the applicant shall pay in addition to such minimum fee, an additional fee at the rate of twenty-five dollars (\$25.00) for each ten feet (10') or fraction thereof to be opened or excavated upon such street. (Ord. 167, 9/18/1989)

§305. Issuance of Permits Restricted. Permits shall be issued only to persons furnishing public utility services or the owner or owners of the real property adjoining the location where such opening or excavation is to be made. (Ord. 167, 9/18/1989)

§306. Information Contained on Permit. Any permit issued hereunder shall specify the exact location where the opening or excavation is to be made, the approximate permitted size or depth thereof and the time within which the work for which the permit is granted to be completed. (Ord. 167, 9/18/1989)

§307. Permit Approval/Disapproval. A permit may be issued to the applicant after all the requirements therefor have been filed. If the application is disapproved, written notice of disapproval together with reasons therefor shall be given to the applicant. (Ord. 167, 9/18/1989)

§308. Responsibility to Contact Utilities. The work authorized by the permit is subject to all the provisions of the Act of December 10, 1974, P.L. 852, No. 287, §1 et seq., as amended or supplemented from time to time. It shall be the permittee's responsibility to contact the utilities that have recorded their facilities in compliance with said Act. A partial list of utilities providing services in the Borough of Smithton and their office addresses may be obtained from the County Recorder of Deeds. (Ord. 167, 9/18/1989)

§309. Refilling of Opening or Excavation; Restoration of Surface; Responsibility for Defects Occurring Within Two (2) Years. Any person who shall open or excavate any street in the Borough of Smithton shall thoroughly and completely refill the opening or excavation in such a manner as to prevent any settling thereafter, and shall restore the surface to the same condition as it was before the opening or excavation, and such restoration shall be in accordance with the specifications of the Department of Transportation of the Commonwealth of Pennsylvania which are hereby adopted as specifications of the Borough for restoration of surfaces of streets in the Borough, as restored, the surface shall conform to the proper grade and be of the same surface covering as the part of the thoroughfare immediately adjoining the opening. If within two (2) years after the restoration of the surface as herein provided, defects shall appear therein resulting from defective backfilling by the applicant, the applicant shall reimburse the Borough for the cost of all necessary repairs to the permanent paving. (Ord. 167, 9/18/1989)

§310. Responsibility of Permit Holder for Certain Work; Right of Borough to Do Certain Work; Charges Therefor. All other work in connection with openings in any street, including excavation, protection, refilling and temporary paving, shall be done by or for the person to whom or which the permit has been issued at his or its expense, and all such work shall be subject to the provisions of this Part 3 and to the supervision and approval of the designated official, provided that the Code Enforcement Officer may if he deems it necessary to the proper performance of the work, require that cutting of the surface of streets and the backfilling of all excavations therein shall be done by the Borough, in which event the applicant shall pay the actual cost of the work performed by the Borough. (Ord. 167, 9/18/1989)

§311. Requirements for Work; Correction of Unsatisfactory Work;
Completion of Incomplete Work.

1. No opening or excavation in any street shall extend from the curb line into the highway a distance greater than one foot (1') beyond the center line of the street before being refilled and the surface of the highway restored to a condition safe and convenient for travel.
2. No more than five hundred feet (500') longitudinally shall be opened in any street at any one time.
3. The work of excavation shall be so conducted as not to interfere with the water mains, sewers or their connections with the houses, or any other subsurface lines or constructions, until permission of the proper authorities in connection with such subsurface lines or constructions shall have been obtained.
4. No tunneling shall be allowed without the express approval of the Code Enforcement Officer and permission therefor endorsed upon the permit. The backfilling of a tunnel excavation shall be made only in the presence of the Code Enforcement Officer or an inspector designated by him, and shall be done only in a method approved by him.
5. All openings or excavations shall be backfilled promptly with modified 2A stones and thoroughly compacted in layers, each of which layers shall not exceed eight inches (8") in depth. Backfilling shall be placed to within ten inches (10") of the surface.
6. A temporary paving of coldpatch premix, thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving and maintained for a period of ninety (90) days.
7. On concrete base streets, such base shall be replaced with concrete and the minimum size of the opening or excavation shall be sixteen (16) square feet.
8. During the making of any excavation in the street, every necessary and reasonable precaution shall be taken by the applicant and the parties making the same to keep the street in a safe and passable condition both day and night by guards, barriers, lanterns and other devices, and all excavating permits granted hereunder are granted under and subject to the express condition that the person to whom the same is issued shall indemnify, save and keep harmless the Borough of Smithton from any loss in damages, or otherwise whatsoever, which may or shall be occasioned at any time by the said excavation, or by any leak, explosion or other injury from any pipe, apparatus, conduit, or any other matter placed in the said excavation.
9. The applicant shall notify the Code Enforcement Officer when the opening or excavation is ready for backfilling before any backfilling is done, when backfilling work is completed, when the temporary paving has been installed and when the street has been permanently restored so that inspections may be made.
10. In the event that any work performed by or for a permit holder shall, in the opinion of the Code Enforcement Officer be unsatisfactory and the same shall not be corrected in accordance with his instructions within the time fixed by him, or in the event that the work for which the permit

was granted is not completed within the time fixed by the Code Enforcement Officer, the Borough of Smithton may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost thereof, plus twenty percent (20%) to the applicant.

(Ord. 167, 9/18/1989)

§312. Emergency Openings. In the case of any leak, explosion or other accident in any subsurface pipe, line, construction or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, construction or apparatus, to commence an excavation to remedy such condition before securing a permit, provided that application for a permit shall be made immediately and not later than the next business day thereafter, and that all other provisions of this Part 3 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 Code Enforcement Officer, after such notice as he shall deem necessary under the circumstances of the particular case, shall proceed to do the work necessary and required by such emergency, and charge the same on the basis of cost plus twenty percent (20%) to such owner or person.

(Ord. 167, 9/18/1989)

§313. Restrictions Regarding Trees and Shrubbery. The permission herein granted does not confer upon the permittee or its contractors the right to cut, remove or destroy trees or shrubbery within the legal right-of-way except under specifications, regulations and conditions as the Borough may prescribe. (Ord. 167, 9/18/1989)

§314. Work Necessitating Opening or Excavation to be Done Prior to Street Improvement and Not Until 5 Years Thereafter; Exception. The Code Enforcement Officer shall give timely notice to all persons owning property abutting on any street within the Borough of Smithton about to be paved or improved, and to all public utility companies operating in the Borough, and all such persons and utility companies shall make all water, gas or sewer connections, as well as any repairs thereto which would necessitate excavation of the said street within thirty (30) days from the giving of such notice, unless such time is extended in writing for cause shown by the Code Enforcement Officer. New paving shall not be opened or excavated for a period of five (5) years after the completion thereof, except in case of emergency, the existence of which emergency and the necessity for the opening or excavating of such paving to be determined by the Code Enforcement Officer. If it is sought to excavate upon or open a sewer within five (5) years after the completion of the paving applicant shall make written application to the Borough Council, and a permit for such opening shall be issued only after express approval of the Borough Council.

(Ord. 167, 9/18/1989)

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

(Ord. 167, 9/18/1989)

§316. Conditions for Laying and Extending Utility Lines. No new water, sewer, steam or gas main or electric, telephone or other utility line shall hereafter be laid or constructed, and no such existing main or line shall be extended, in any of the streets of the Borough of Smithton until the plan therefor shall have been first filed with the Code Enforcement Officer and such plan, and the exact location of such main or line, approved by him. The Code Enforcement Officer shall not approve the locating of any such main or line at a depth of less than thirty inches (30") from the surface of the street unless he shall be convinced that locating the same at a depth of more than thirty inches (30") from the surface is impossible or impractical. (Ord. 167, 9/18/1989)

§317. Bond Required. No company, corporation or association shall dig up any street or alley without first giving to the Borough of Smithton a bond with some acceptable trust or surety company as surety in the sum of ten thousand dollars (\$10,000.00), conditioned for the faithful performance of these provisions and also for any and all damages, claims, demands, suits, costs and counsel fees occasioned or arising from the digging up, opening or closing of said streets and alleys. (Ord. 167, 9/18/1989)

§318. 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 therefor under the provisions hereof within thirty (30) days after a bill therefor 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 the collection of municipal claims. (Ord. 167, 9/18/1989)

§319. Penalties. Any person, firm or corporation who shall violate any provision of this Part 3 shall, upon conviction thereof, be sentenced to pay a fine of not more than three hundred dollars (\$300.00); and/or to imprisonment for a term not to exceed ninety (90) days. Every day that a violation of this Part 3 continues shall constitute a separate offense. (Ord. 167, 9/18/1989)

§320. Applicability. The provisions of this Part 3 shall not apply to laying sidewalks or curbs. (Ord. 167, 9/18/1989)

**BOROUGH OF SMITHTON
WESTMORELAND COUNTY, PENNSYLVANIA**

ORDINANCE NO. 211

**AN ORDINANCE OF THE BOROUGH OF SMITHTON, WESTMORELAND
COUNTY, PA AMENDING SECTION 301 OF STREET EXCAVATIONS
REGARDING NEW DEFINITIONS AND INTERPRETATION OF
EXCAVATION AND STREETS AND SECTION 304 PERMIT FEE MAY BE
ESTABLISHED BY COUNCIL.**

The following terms, conditions and provisions shall be added to and defined as follows to the respective sections of the Ordinance and the same is hereby amended as follows:

§301. Definitions and Interpretation. The following words when used in this Part 3 shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise:

EXCAVATION - any activity within the right-of-way of any street, sidewalk, right-of-way, easement to excavation alley, or cart way which involves cutting, breaking or disturbing the surface thereof. In this Part 3, the term OPENING shall have essentially the same meaning as excavation.

STREET - Any public street, avenue, road, square, alley, cart way, highway or other public place located in the Borough of Smithton and established for the use of vehicles.

§304. Permit Fee. Before any permit shall be issued to open or excavate any street in the Borough, the applicant shall pay a permit fee as may, from time to time, be established by Borough Council to cover the cost of inspection and other reasonable incidental services in connection therewith. When application shall be made to open or excavate any longitudinal opening or excavation in excess of ten feet (10'), before any permit shall be issued so as to open or excavate, the applicant shall pay in addition to such minimum fee, an additional fee as may be established by council pursuant to resolution.

This ordinance shall take effect immediately.

ORDAINED AND ENACTED THIS 11th DAY OF June, 2012

BOROUGH OF SMITHTON

By Dan Ok Band
President of Council

ATTEST:

Melinda Rodriguez
Secretary

EXAMINED AND APPROVED BY ME THIS 11th DAY OF June, 2012

Christine A. Lutens
Mayor

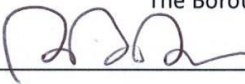
RESOLUTION NO. 02-2019

A RESOLUTION OF COUNCIL OF THE BOROUGH OF SMITHTON, WESTMORELAND COUNTY, PENNSYLVANIA, APPROVAL OF INCREASED FEES FOR STREET EXCAVATING PERMIT WITHIN SMITHTON BOROUGH. COUNCIL BY UNANIMOUS VOTE HAS ADOPTED THE FOLLOWING SECHEDULE OF FEES EFFECTIVE FEBRUARY 11, 2019.

Chapter 21, Part 3, Section 304:

Street Excavating Permit
10 foot or less opening - \$100.00
Each additional 10 feet - \$75.00

The Borough of Smithton

 F.R. Foster

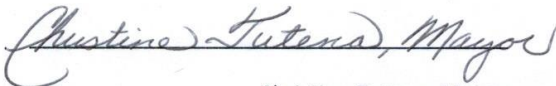
Fred Foster, President of Council

ATTEST:

 _____

Jennifer Perry, Secretary

I, the undersigned, Mayor of the Borough of Smithton, Westmoreland County, Pennsylvania, do hereby certify that I have reviewed and approved the within Resolution this 11th day of February.

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Christine Tutena, Mayor