

BOROUGH OF BLAKELY, LACKAWANNA COUNTY,
PENNSYLVANIA
ORDINANCE NO. 5 of 2021

AN ORDINANCE AMENDING THE BOROUGH OF BLAKELY'S
EXCAVATION OF STREETS ORDINANCE,
ORDINANCE No. 4 OF 1976, ORDINANCE No. 6 OF 2017 and
ORDINANCE No. 3 of 2020

WHEREAS, on January 20, 2020 the Council of the Borough of Blakely adopted Ordinance Number 3 of 2020, which Ordinance regulates the Excavation, Backfill, and Restoration of Borough Streets, Roads, Avenues, Alleys, or Rights-of Ways. A true and correct copy of Ordinance Number 3 of 2020 is attached hereto and made a part hereof as Exhibit "A". Requiring a permit therefor, and payment of fees; and prescribing penalties for violation of the ordinance.

Be it ordained by the Council of the Borough of Blakely and it is hereby ordained by and with the authority of the same as follows:

OVERVIEW

The Borough has the responsibility to accommodate both Applicants/Permittees and the traveling public. It is in public interest to regulate the design, construction, drainage and maintenance of accesses, local roads, utility facilities and other property and structures within the right-of-way in order to preserve safe and reasonable access, safe and convenient passage of traffic, as well as protect the structural integrity of the road system.

Utility Permits may be issued to install, repair, replace, connect, remove, or disconnect privately, publicly or cooperatively owned lines, facilities, and systems such as electricity, telephone, and cable television poles and conduits, utilities such as gas, water and sewer lines, and similar encroachments and obstructions, and any other structures which directly or indirectly serve the public or any part thereof.

Driveway Permits may be issued to install, alter, or remove a driveway and/or private road or other means of passage of vehicles between the street and abutting property. Also, to construct, replace, or remove a curb and/or sidewalk or to connect to drainage and/or sanitary-facilities.

PURPOSE

The purpose of this Ordinance is to:

- A. Require permits for access to the right-of-way of Borough roads for railways, driveways, private roads, electricity, telephone and cable television poles and conduits, utilities (such as gas, water and sewer lines), and similar encroachments and obstructions, and any other structures; it being in the public interest to regulate:

- a. The location, construction and maintenance of utility facilities and other such structures within the Borough's right-of-way.
 - b. The location, design, construction, maintenance and drainage of driveways and private streets within the Borough's rights-of-way, to ensure the structural integrity of streets, economy of maintenance, preservation of proper drainage, and safe and convenient passage of traffic.
- B. Authorize the Borough to remove or permit the removal from any Borough Street or right-of-way any grass, brush, shrub, tree or other vegetation deemed to constitute a hazardous or dangerous condition to the use of the road or those which impair the use or maintenance of the road.
 - C. Authorize the Borough to require the removal of any nuisance or obstruction on any Borough road or associated drainage facility created by felling trees, making fences, turning the road, diverting water onto the road, filling, or in any other manner.
 - D. Describe the specifications and requirements for restoration of any Borough Road or right-of-way following the installation or repair of any railways, driveways, private roads, electricity, telephone and cable television poles and conduits, utilities (such as gas, water and sewer lines), and similar encroachments and obstructions, and any other structures.

SECTION I. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "Applicant" - Any person making application to the Borough for an excavation or driveway or private access permit hereunder.
- B. "Bores" - The installation of conduit or pipe by using the Conventional Bore or Jacking method.
- C. "Borough" - The Borough of Blakely, and in cases where the text of this Ordinance so implies, the Borough Council or its agents.
- D. Directional Boring, also referred to as Horizontal Directional Drill (HDD) is a steerable trenchless method of installing underground pipe, conduit, or cables in a shallow arc along a prescribed bore path by using a surface-launched **drilling rig**, with minimal impact on the surrounding area. Pa. Act 287 will apply for underground utility identification.

- E. "Driveway" - A private access from an individual lot to the road right-of-way.
- F. "Excavation" Any activity within the right-of-way which involves; breaking, cutting or disturbing the surface, boring, jacking, or drilling under the surface thereof. Any excavation and other work permitted under an excavation permit and required to be performed under this Ordinance.
- G. "Inspection"—A careful or critical investigation not necessarily confined to optical observation but is understood to embrace tests and examination for the purpose of ascertaining quality and compliance as prescribed in this Article and discovering and correcting errors.
- H. Pa Act 287 – Pennsylvania One Call System, to protect the public health and safety by preventing excavation or demolition work from damaging underground lines used in providing electricity, communication, gas, propane, oil delivery, oil product delivery, sewage, water or other service; imposing duties upon the providers of such service, recorders of deeds, and persons and other entities preparing drawings or performing excavation or demolition work; and prescribing penalties.
- I. "PennDOT" – The Pennsylvania Department of Transportation
- J. "Permittee" - Any person who has been granted and has in full force and effect an excavation permit issued hereunder.
- K. "Person" – Any individual, firm, partnership, association or organization of any kind.
- L. "Right-of-Way" - Land reserved for use for Borough purpose including any street which is owned in fee simple title by the Borough.
- M. "Street" - Any public street, highway, sidewalk, alley, avenue, right-of-way, or other public way or grounds or public easements in the Borough of Blakely whether improved or not.

SECTION 2. PERMITS

A. PERMITS REQUIRED

It shall be unlawful for any person to break, dig up, tunnel, bore, undermine or in any manner excavate any street or to make or cause to be made any excavation in or under the surface of any street, or to place, deposit, or leave upon any street any earth or unexcavated material obstructing or tending to interfere with the free use of the street including the Right-of-Way unless such person shall first have obtained a permit therefor from the Borough at least seven (7) days prior to beginning work pursuant to the permit. Permits shall be issued only to persons furnishing public utility services or the owners of real property adjoining the location where such opening or excavation is proposed.

- a. All proposed street openings within the Borough Right-of-Way will require an application to the borough prior to excavation.
- b. The contractor or utility performing the work must notify the Borough appointed Inspection Agency before any backfill or permanent pavement is placed so that an inspector may be dispatched to the site to inspect the work. All backfill and permanent pavement work must be performed under the continuous observation of a Borough designated inspector/testing agency.
- c. All street openings and excavations shall be cut cleanly and squarely with a Road Cut Saw. A minimum 6" wide Pave Breaker Spade may be substituted in emergencies which jeopardize public safety and property. Any street opening performed without sawing or using a spade will be subjected to the same restoration requirements as listed in Section 2.A.g., a fifty foot (50') mill and overlay, and shall also include any base replacement that was damaged by using equipment such as a machine mounted hydro-hammer without first isolating the cut.
- d. All excavated material (spoils) will be hauled away and disposed of properly following the requirements of Pennsylvania's Safe Fill Policy.
- e. All backfill will consist of PaDOT approved material as specified in PaDOT Publication 282 and must be compacted in a minimum of four (4) inch lifts for routine or emergency excavations.
- f. The Street Commissioner or designated testing/inspection agency shall be the judges of the stability and suitability of the fill material. In no case will excessively wet or dry material be allowed as fill material. Fill must be compacted to a dry density at least equal to ninety-five percent (95%) of the maximum dry density attained by the Modified Proctor Test, ASTM D1557, latest revision, Method C or Method D, as designated by the Street Commissioner or designated testing/inspection agency.
- g. All restoration will include a minimum of a one (1) foot cutback around the perimeter and shall be permanently restored to its former condition with 12" overlap on all sides in paved streets.
- h. All final restoration shall be completed within 90 days from the date of the opening unless the cuts are made after the seasonal closing of the asphalt plants. All street restoration will be performed by a reliable, insured, experienced firm. All cuts not restored within the year made minus the 90 day period will be subject to proper restoration performed by the Borough or its Contractors and billed back to the permittee.
- i. All street openings and excavations made on a borough road that has been resurfaced within the past five (5) years, shall be restored according to the

guidelines laid out in this ordinance. In addition, the road will receive a curb to curb milling and placement of ID2 wearing course extending twenty-five feet (25') from the center of the original cut in both directions. This is mandatory unless written consent is given by the Borough of Blakely. The five (5) year guideline shall be retroactive to the date in which the road was resurfaced unless authorized by Blakely Borough.

- j. It is the utilities responsibility to contact building owners on roads to be resurfaced prior to work starting for installation of new services. The borough provides a paving list to the utilities by November 15 of the prior year listing what roads will be replaced. A positive written response back to the borough will be required within ninety days detailing any system improvement or upgrade work or stating that no work needs to be performed and that the area was canvassed for potential new business customers.
- k. All roads to be resurfaced will be inspected by all utilities for leaks, lost or misplaced valve boxes or manholes, prior to construction. They will also be required to raise all boxes and manholes to the appropriate height during the paving process. A positive written response back to the borough will also be required within ninety days detailing stating that no leaks need repair.
- l. If there are more than three (3) pave cuts by any utility within a one hundred and fifty foot (150') section of a borough roadway, the utility(s) will be responsible for a curb to curb mill and overlay of that section as per the guidelines laid out in this ordinance.

B. BACKFILLING REQUIREMENTS

1. The Street Commissioner or designated testing/inspection agency must be notified at least 12 hours in advance of placing any backfill for inspection purposes. No backfill shall be placed without a Borough designated inspector present. In backfilling, four-inch layers shall be placed in the deepest portion of the backfill, and as placement progresses, each six-inch layer shall be horizontally constructed. Compaction operations shall be continued using mechanical tampers until each layer of fill is compacted to a dry density at least equal to ninety-five percent (95%) of the maximum dry density attained by the Modified Proctor Test, ASTM D 1557, latest revision, Method C or D method, as designated by Street commissioner or designated testing/inspection agency.
2. Back filling will be done in such manner as to obtain compaction through the entire length of backfill not less than that which exists adjacent to the excavation. The method of backfill shall be consistent with good engineering practice. Backfill shall begin as soon as practical after the pipe or other construction has been placed and shall thereafter be carried on as rapidly as protection of the balance of the work will permit.

3. Depositing of backfill shall be done so the shock of falling material injury the pipe or adjacent structures.
4. All deficiencies in the quality of material for backfilling the trenches or for filling depressions caused by settlement shall be supplied by the contractor.
5. In all cases, the contractor shall blade and compact the roadway after the trench has been backfilled so that it shall be passable to traffic at all times. The contractor shall maintain the roadway in a condition acceptable to the Engineer or Street Commissioner at all times until final approval of the entire work by the municipality.
6. The contractor shall remedy at his own expense any defects that appear in the backfill for a period of two (2) years following compaction.

C. GENERAL LIABILITY INSURANCE

In addition, all contractors performing work in accordance with a permit issued pursuant to this Ordinance shall be required to provide the Borough with proof of general liability insurance in an amount appropriate and reasonable in relation to the scope of the construction project (as determined by the Borough). At least seven (7) days prior to beginning work pursuant to the permit, Permittee shall also be required to tender to the Borough a deposit to be held in escrow for any Borough inspection or inspection activities, in an amount determined by the Borough based upon the scope of the work to be performed. All unused funds deposited in an escrow for inspection activities shall be returned following satisfactory completion of the work.

D. EMERGENCY REPAIRS

Nothing in this Ordinance shall be construed to require a permit in advance for emergency repairs necessary for the safety of the public or restoration or continuance of public utility service or other public service, but application for such permit and the fees shall be submitted as herein prescribed the next business day following the start of the work, after which time the remaining provisions of this Ordinance shall apply, including all restoration specifications. Notification to the borough will be made on the day of emergency.

E. APPLICATION FOR PERMIT

The application for a permit shall be on a form prescribed by the Borough (Included Herein) and the required number of copies shall be submitted to a Borough Supervisor. Please refer to Appendix A.

F. WORK DONE WITHOUT AN INSPECTOR

Any backfill or permanent pavement work performed without the presence of a Borough designated inspector present shall be removed and replaced under the observation of a

Borough authorized inspector at the cost of the contractor performing the work. The removal and replacement of any uninspected work will be at no cost to the Borough.

G. WORK STANDARDS

All work shall be done in such a manner as is consistent with the safety of the public. Where traffic control is necessary, it shall be accomplished according to the most recent standards of the Pennsylvania Department of Transportation, including those standards detailed in PennDOT Publication 213 where applicable and such other safety measures as determined by the Borough are required to provide for the safe movement of traffic through the work site.

H. DAMAGE TO PUBLIC FACILITIES

The permittee shall restore all pavement and road shoulders in accordance with the specifications contained in Exhibit A through D of this Ordinance at the sole expense of the permittee. Permittee is solely responsible for repairing any failure of facilities, including but not limited to restoration work, within two (2) years of completion of the work. If the permittee fails to comply with this requirement, the Borough shall complete the necessary repairs and collect the costs as per Section 3 subsection B-6 of this Ordinance. The utilities will provide the Borough with a valid email address to send all concerns and questions too.

SECTION 3. FEES

The application for permit shall be accompanied by fees (separate and apart from inspection costs) in accordance with the Schedule of Fees in effect when the permit is issued, as adopted and amended from time to time by resolution of the Borough Council, which fee schedule shall comply with Pennsylvania Department of Transportation requirements. The fees shall cover the costs of processing the application and the necessary inspection of work. In addition, the Borough may assess the applicant an additional fee to cover the cost of any engineering or other consultant services required by the Borough in the administration of this Ordinance or for any necessary inspections. Any item not covered will be reference to Pennsylvania Code 459.4 Permit Fees.

A. Exemptions

The following are exempted from permit and inspection fees:

- a. The Commonwealth of Pa
- b. PA Political Entities which includes public schools and colleges and those who derive their revenue from tax dollars.
- c. Government Authorities organized under the laws of PA
- d. The Federal Government
- e. Charitable Organizations

B. Fees

Application fees charged to defray costs incurred by the Borough in reviewing and processing the application and plans, including the preliminary review of the site location identified in the application, whether or not a permit is issued and processed shall be as follows:

1. Application Fees
 - a. Application fee—\$50.
 - b. Supplement fee for each 6-month time extension and each submitted change—\$10.
 - c. Emergency permits, without prior notice shall be charged an additional \$25 processing fee.
2. Surface Openings. This fee is calculated on the total linear feet of the opening being permitted with different areas of the right-of-way.
 - a. Total linear feet of opening (each 100 feet increment or fraction thereof):
 - i. Opening in pavement—\$40.
 - ii. Opening in shoulder—\$20.
 - iii. Opening outside pavement and shoulder within the Borough Right of Way—\$10
 - b. Surface opening of less than 36 square feet—for example, service connections performed independently of underground facility installation, pipe line repairs—(each opening):
 - i. Opening in pavement—\$30.
 - ii. Opening in shoulder—\$15.
 - iii. Opening outside pavement and shoulder within the Borough Right of Way—\$10.
3. General permit inspection fees. General inspection fees charged to defray costs incurred by the Borough in spot inspections of permitted work or subsequent inspections after the permitted work has been completed and to monitor compliance with the permit. Inspections will be limited to the appropriate signage and traffic control pattern, saw-cutting and pave-breaking prior to excavation, backfilling and compaction of lifts and for any excavation around borough owned facilities and shall be as follows:
 - a. Will be billed at the rate of \$45/hour plus expenses. The fee will not however will only cover actual expenses and will not have any additional markups.
4. Aboveground facilities (for example, poles, or guys or anchors if installed independently of poles).
 - a. Up to ten physically connected aboveground facilities (each continuous group)—\$20.
 - b. Additional aboveground physically connected facilities (each pole with appurtenances)—\$2.

5. Additional fees. If the Borough anticipates that the cost of reviewing the required application information or inspecting the permitted work will exceed the application or inspection fees listed in this section by a significant amount, the following additional fees will be assessed:
 - a. Additional inspection fees. If the Borough determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one or more persons to inspect the permitted work on a more than spot inspection basis, the permit will so indicate and the permittee shall be charged for additional salary, overhead and expenses incurred by the Borough for inspection.
 - b. Charge calculation. The charges will be calculated either on an actual cost basis or a standard unit cost basis.
 - c. Invoices. The Borough will provide an itemized invoice for additional fees owed to the Department.

6. Restoration Fees. After notification to the appropriate facility owner, the borough will repair any pave cut, sidewalk, curb, grass, or other facility or appurtenance due to a failure of the utility to properly repair or restore them. The utility will be required to reimburse the borough the costs of all materials, equipment, and labor including any administrative costs at the appropriate going rate for time and material.

SECTION 4. INSPECTION AND TESTING

The Municipal Designated Testing Company shall inspect all cuts, backfilling, pavement restoration and curb/sidewalk restoration work that occurs within the Municipality's right of way. An inspection fee shall be charged for this inspection (See Fee Schedule.) Such inspection fees shall constitute acceptance of work performed by the contractor, but it is understood that such acceptance does not relieve the utility of any responsibility under this Article throughout the guaranty period.

In order to ensure proper testing, the Borough shall retain an independent testing agency meeting the following requirements:

- Has the ability to provide field testing technicians that have the appropriate ACI, NICET, and NECEPT certifications for inspecting the work being performed as follow:

<u>INSPECTION TYPE</u>	<u>REQUIRED CERTIFICATIONS</u>
Permanent Backfill	NICET Level I Soils and QC Nuclear Regulatory Certified
Permanent Asphalt Paving	NICET Level I Asphalt and NECEPT Bituminous Field Test Technician
Permanent Concrete (Sidewalks or Curbs)	NICET Level I Concrete and NECEPT Concrete Field Test Technician

- Has the ability to mobilize for contractor requests within one (1) hour of being notified.
- Has the ability to submit inspection Reports to the Borough engineer upon completion of work.

SECTION 5. RESTORATION REQUIREMENTS

A. The Street Commissioner or designated testing/inspection agency must be notified in advance of placing any permanent pavement for inspection purposes. No pavement shall be placed without a Borough designated inspector present.

B. Restoration of all pave cuts shall be made "in-kind". If the existing base is rigid, concrete will be used. If the existing base is flexible, BCBC or ID-2 Binder Base will be used. Base restoration shall consist of a minimum of six (6") inches of material, or to the depth of the existing base whichever is greater and shall be compacted in four (4") inch maximum lifts. A minimum of one and one-half (1 1/2") inches of ID-2A wearing course will be required in all pave cuts. The sealing of all joints with PaDOT approved material will be required.

C. A tack coat must be applied to the top of the base course before the top course is installed for all pave cuts where the top is not installed the same day as the base. C. If the utility work being done is because of, and prior to a municipal paving project, the base course may be brought up to the top of the pave cut eliminating the top course.

D. All work and material shall equal or exceed the requirements set forth in the current Penn Dot 408 specifications. The following diagrams are to be used as guides for restoration:

SECTION 6. CURB RESTORATION REQUIREMENTS

- A. The Street Commissioner or designated testing/inspection agency must be notified in advance of placing any permanent pavement or concrete for sidewalks or curbing for inspection purposes. No pavement or concrete for sidewalks or curbing shall be placed without a Borough designated inspector present.
- B. Where the removal of a portion of a curb, sidewalk, or curb and gutter is required to perform work, the curb, sidewalk or gutter shall be restored as follows:
 - a. Asphalt sidewalks shall be a minimum of 2" inches of 9.5 mm Superpave Wearing Coarse or thickness of the adjacent materials, whichever is greater.
 - b. Asphalt curbs shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Section 636. The minimum allowable length of a replaced curb shall be 4 feet.

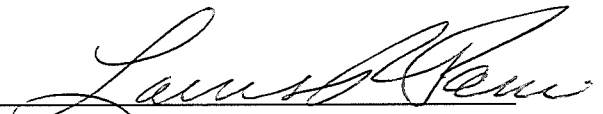
- c. Concrete sidewalks shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Section 676. The minimum allowable length of a replaced concrete sidewalk shall be 4 feet.
- d. Concrete curbs shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Section 630. The minimum allowable length of a replaced curb shall be 4 feet.
- e. Stone curbs shall be replaced in kind. A minimum length of replaced curbs shall be 4 feet.
- f. Where curbing and/or sidewalks are composed of other materials (brick, pavers, granite, flagstone, etc.) every attempt should be made to save the original materials and replace them during resto

SECTION 7. PENALTY FOR WORK DONE WITHOUT PERMIT

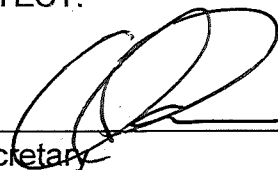
All work done without a permit shall be subject to the penalty provided, plus regular fees (See Fee Schedule).

AND NOW, this 19th day of July, 2021, the Borough herein enacts the above ordinance amending Ordinance 4 of 1976 and Ordinance 6 of 2017 as listed above.

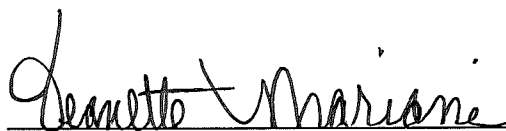
BLAKELY BOROUGH

By: 
Council President

ATTEST:


Secretary

Approved the 19th day of July, 2021.


Mayor