

BOROUGH OF THROOP

Ordinance No. 11 of 1995

AN ORDINANCE

DEFINING AND REGULATING STREET EXCAVATIONS AND OPENINGS; SETTING FORTH REQUIREMENTS FOR PERMIT APPLICATIONS, FORMS AND FEES AND THE APPROVAL AND ISSUANCE OR DISAPPROVAL THEREOF; REQUIRING NOTIFICATION OF UTILITIES; ASSIGNING RESPONSIBILITY FOR RESTORATION OF OPENINGS AND SURFACES AND DEFECTS THEREFROM; ESTABLISHING REQUIREMENTS AND SPECIFICATIONS FOR WORK UNDER PERMIT; AUTHORIZING EMERGENCY WORK; ESTABLISHING LIMITATIONS FOR THE EXTENT OF SURFACE OPENINGS; AUTHORIZING THE BOROUGH OF THROOP TO PERFORM WORK AND COLLECT COSTS; REQUIRING POSTING OF BONDS; AND PRESCRIBING PENALTIES FOR VIOLATION.

Now, therefore, be it ordained, by the Borough council of the Borough of Throop, County of Lackawanna, Commonwealth of Pennsylvania, by the authority of the same that:

SECTION 1 Definitions and Interpretation. The following words, as used in this ordinance, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number; words in the singular number shall include the plural; and words in the masculine shall include the feminine and the neuter.

- a. **APPLICANT** - any person who makes application for a permit.
- b. **BUSINESS DAY** - any normal work day for the Borough government, including Monday through Friday, except designated holidays.
- c. **BOROUGH** - The Borough of Throop
- d. **COST** - actual expenditures incurred by the Borough for labor, equipment and materials, which includes all fringe benefits and overhead.
- e. **EMERGENCY** - any condition constituting a clear and present danger to life and/or property by reason of escaping gas, water, sewage, exposed wires or other breaks or defects in the user's line
- f. **EXCAVATION** - any activity within the right-of-way of any street, alley, court, or cartway which involves cutting, breaking or disturbing of the surface thereof. In this ordinance, "OPENING" shall have essentially the same meaning as excavation.

- g. **PENNDOT** - the Commonwealth of Pennsylvania's Department of Transportation
- h. **PENNDOT STREET** - any Pennsylvania State road located within the municipal boundaries of the Borough of Throop
- i. **PERMIT FEE** - a fee paid by the permittee to the Borough of Throop to cover the costs of issuing, processing and filing the street opening permit and all reasonable costs associated with the inspection of an excavation and restoration of a street opening.
- j. **PERMITTEE** - any person, firm or corporation who has been issued a permit and has agreed to fulfill all the provisions of this ordinance.
- k. **PERSON** - any natural person, partnership, firm, public utility company, association, corporation or municipal authority.
- l. **PUBLIC UTILITY** - any utility company franchised by the Public Utility Commission of the Commonwealth of Pennsylvania.
- m. **RESURFACE** - a process which provides a new wearing surface in a certain paved street area between curbs with the same material which was existing prior to excavation unless the Borough Engineer deems another material to be appropriate.
- n. **SIDEWALK AREA** - that portion of the street right-of-way reserved for pedestrian travel that normally parallels the area intended for vehicular travel.
- o. **STREET** - the entire right-of-way established for the use of vehicles including, but not limited to, any public street, avenue, road, court, alley, highway, cartway or easement within the Borough limits.

SECTION 2 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 Throop unless a permit has been secured for said purpose and in the manner hereinafter described, except in instances which require the placement of utility poles.

- a. Any person who desires to make an opening or excavation in any PENNDOT street within the Borough limits, shall obtain a permit from the Borough in addition to obtaining a permit from PennDOT. The PennDOT permit may be obtained from the Pennsylvania Department of Transportation, District 4-0, O'Neill Highway, Dunmore, Pennsylvania, 18512.
- b. Any person working in the vicinity of a Borough street who in any manner disturbs such street or causes damage to a street shall be required by this article to obtain a permit and correct this damage in accordance with the standards contained herein. Street opening permits are not required for persons excavating in the sidewalk area

adjacent to the curb, for the express purpose of installing or replacing sidewalks, provided that a sidewalk permit has been obtained prior to such work through the office of the Zoning and Code Enforcement Official of the Borough of Throop.

- c. All Borough Departments shall not be required to obtain a permit when work is to be performed by Borough personnel.
- d. All contractors or subcontractors performing work under contract for the Borough, Commonwealth of Pennsylvania, or Federal Government shall obtain a permit for street excavation work.
- e. 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 excavation to remedy such condition before securing a permit, provided that application for a permit shall be made immediately and not later than the following business day thereafter, and that all other provisions of this ordinance 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 Street Commissioner, after such notice as he shall deem necessary under the circumstances of the particular case, shall proceed to do what is necessary and required by such emergency and charge the same on the basis of cost plus twenty percent (20%) to such owner or person.

SECTION 3 Application for Permit. Street opening permits shall only be granted upon compliance with the following express provisions:

- a. Permits shall be issued only to persons furnishing public utility services or the owner or owners of real property adjoining the location where such opening or excavation is to be made.
- b. Any person who shall desire to make any opening or excavation in any of the streets in the Borough shall make application to the Borough Zoning & Code Enforcement Officer, in writing, for that 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 and depth thereof, the full scope of the work to be included in the project, the date or dates during which such excavation is to be performed, the date such excavation is to be refilled and resurfaced in the manner hereinafter provided. The applicant shall furnish a drawing of the proposed opening site upon request by the Borough.
- c. The application 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 of Pennsylvania in relation thereto, and that the applicant shall well and truly save, defend and hold harmless the Borough from, and indemnify it against any and all action, suits, demands, payments, costs and/or 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 related thereto. In the event that a suit shall be brought against the Borough, either independently or jointly with the permittee, and in the event of a final judgement being obtained against the Borough, either independently or jointly with the permittee, the permittee shall pay such judgement with all costs and hold the Borough harmless therefrom.

- d. In any instance where the street opening permit is required for sewer service purposes, the application shall be countersigned by the Borough Street Commissioner.
- e. An applicant shall provide all necessary certificates of insurance executed by the applicant's insurance agency and verify that the applicant is insured against claims for personal injury as well as claims against property damages which may arise from or out of the performance of the excavation work, whether such performance be by the applicant or anyone directly or indirectly employed by him. Such insurance shall include protection against liability arising from completed operations, underground utility damage and collapse of any property. Liability insurance for bodily injury shall be in an amount not less than one million dollars (\$1,000,000.00) for each person, one million dollars (\$1,000,000.00) for each accident and not less than one million dollars (\$1,000,000.00) for property damages. Failure of an applicant to file a certificate of insurance shall be sufficient reason for denying a permit. Evidence of public liability and property damage shall not be applicable to any excavation work carried on by the Borough or it's employees.
- f. No company, corporation or association shall excavate any street without first providing to the Borough a bond with some acceptable trust or surety company as surety in the sum determined by the schedule of fees, 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 excavation, opening or closing of said streets. The surety bond provisions of this ordinance shall not apply to any excavation which is made under a contract awarded by the Borough or made by the Borough.

- g. Before any permit shall be issued to open or excavate any street in the Borough, the applicant shall pay a fee to the Borough Zoning Officer, in the amount fixed by section 3h of this ordinance. No permit shall be issued to any applicant unless the applicant has paid to the Borough any and all monies, then due the Borough, for prior excavations made or for any loss, damages, or expense in any manner occasioned by or arising from the work performed by the applicant under the provisions of this ordinance.
- h. Street opening permit fee: Any person who desires to do any opening or excavation of any street shall pay the sum of one-hundred fifty dollars (\$150.00) for an opening of fifteen (15) square feet or less. Any opening which exceeds fifteen square feet will be an additional two dollars (\$2.00) per square foot. Any street opening or excavation will be rounded to the next highest square foot for purposes of computing the permit fee.
- i. The work authorized by the permit is subject to all provisions of the Act 287 of 1974, as amended in Act 38 of 1991, and as may be amended or supplemented further. It shall be the permittee's responsibility to contact the utilities that have recorded their facilities in compliance with said Act.

SECTION 4 Work Necessitating Opening or Excavation to be Completed Prior to Street Improvement and Not Until Five (5) Years Thereafter; Exception. The Borough Street Commissioner 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 within the Borough. All such persons and utility companies shall make all gas, water, and/or sewer connections or repairs thereto, which would necessitate excavation of the said street, within thirty (30) days upon receipt of such notice unless such time is extended in writing for cause shown by the Borough Street Commissioner. New pavement shall not be opened or excavated for a period of five (5) years after the completion thereof and the acceptance by the Borough, except in the case of an emergency, the existence of which emergency and the necessity for the opening or excavation of such pavement to be determined by the Borough Street Commissioner. Any person who desires to excavate a street for a utility within five years after the completion and acceptance of paving shall make written application to the Borough Street Commissioner, and a permit for such excavation or opening shall be issued only after express written approval of the Borough Street Commissioner.

SECTION 5 Manner in which permitted work is to be completed. Any person who shall open or 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 prior to the opening or excavation, and such restoration

shall be in accordance with the specifications contained herein and when not herein specified, shall be in accordance with the specifications of the Commonwealth of Pennsylvania's Department of Transportation and are hereby adopted as the specifications of the Borough of Throop for restoration of streets in the Borough, as restored. The surface shall conform to the proper grade and be of the same surface covering as the area immediately adjoining the opening. If, within five (5) years after the restoration of the surface as herein provided, defects shall appear therein resulting from defective backfilling by the applicant or the use of materials insufficient with the requirements found in this ordinance, the applicant shall reimburse the Borough for cost of all necessary repairs to the permanent paving and/or restoration.

SECTION 6 Requirements for Work; Correction of Unsatisfactory Work; Completion of Incomplete Work.

- a. No opening or excavation in any street shall extend from the curb line or shoulder into the street a distance greater than one (1) foot beyond the center line of the street before being properly backfilled in accordance with the requirements found herein and the surface of the street restored to a condition safe and convenient for travel.
- b. No more than three-hundred (300) feet longitudinally shall be opened in any street at any one time before being properly backfilled in accordance with the requirements found herein and the surface of the street restored to a condition safe and convenient for travel.
- c. The work of excavation shall be so conducted as not to interfere with the sanitary sewer mains, storm sewer mains, water mains, gas mains, or any subsurface lines or constructions or their service connections with any structure, until permission of the proper authorities in connection with said subsurface lines or constructions shall have first been obtained.
- d. The permittee shall be responsible for contacting the proper authority of any subsurface line or construction immediately in the event of accidental damage to any subsurface line or construction.
- e. No tunneling shall be allowed without the express approval of the Borough Engineer and permission therefore endorsed on the permit. The backfilling of the tunnel excavation shall be made only in the presence of the Borough Engineer or an inspector designated by him, and, shall be done in a method approved by him.
- f. All openings or excavations shall be backfilled promptly, and pavement restoration completed immediately thereafter in accordance with the specifications and construction requirements set forth herein.

1. The permittee shall notify all

potential underground utility owners at the proposed site and shall comply with the requirements of Act 38, otherwise known as the "Pa. One Call System" (1-800-242-1776).

2. The permittee shall provide all traffic control devices in accordance with Pa. D.O.T. publication 203, for the respective site condition. No work shall commence until such devices are properly in place. The permittee shall provide, in addition to the traffic control devices described above, any safety devices and take every reasonable precaution to keep the street in a safe and passable condition, both day and night, by use of guards, barricades, barriers, lanterns and other devices, and, all excavation permits granted hereunder are granted under and subject to the express condition that the permittee shall indemnify, save and keep harmless the Borough 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 in conjunction with the said excavation.

3. The permittee shall be responsible for providing adequate dust control measures throughout the construction process to avoid dirt and/or dust from being carried by the wind onto adjacent properties.

4. All pavement excavations shall be saw cut vertically and extend the full depth of the existing pavement. Saw cuts for permanent pavement restoration shall be located a minimum of twelve (12) inches beyond the limit of trench excavation on all sides.

5. The permittee shall be responsible for providing written notification, a minimum of one full working day (24 hours) in advance, for any anticipated street closure associated with work performed under the respective excavation permit. No street shall be fully closed (inability to provide one clear travel lane a minimum of nine foot in width) without the approval of the Borough Street Commissioner and permission therefore endorsed on the permit.

6. No temporary paving or coldpatch premix used as a temporary filling in a street opening or an excavation shall be permitted, excepting any emergency work as defined in Section 1 of this ordinance and performed during the winter season. Permanent paving shall be installed immediately after the excavation has been backfilled and shall be done so in a manner as herein specified.

7. The bottom of the trench shall be

compacted and shall be free of any loose material prior to the placement of bedding material.

8. Bedding material for the underground utility shall consist of 2B stone installed to a depth to provide a 0.75d base below and a 0.75d cover around and above the utility (where "d" is the outside diameter of the utility) but shall not be less than six (6) inches in any direction surrounding the utility and shall be compacted thoroughly with a mechanical tamper in a manner which will not alter the alignment nor cause displacement of the utility.

9. Backfill material shall consist of #57 coarse aggregate compacted mechanically in six (6) inch layers or lifts to at least 95% of the modified proctor maximum dry density. All backfill material shall be imported and shall be free of debris, wood, ice or any other foreign material not suitable for compaction. Native backfill material may only be utilized for the specific location as authorized by the Borough Engineer and such authorization shall be endorsed on the excavation permit.

10. Permanent pavement restoration shall be constructed as required herein but shall not be less than the existing pavement depth.

11. All bituminous material shall be installed when the ambient temperature and the surface temperature is above forty (40) degrees Fahrenheit and when surfaces are dry and clean of loose or foreign materials.

12. Bituminous base course shall be a minimum of five (5) inches in depth after compaction and shall consist of plant mixed bituminous concrete base course (BCBC) or ID-2 binder. The base material shall extend a minimum of twelve (12) inches beyond the limit of trench excavation and shall be placed in layers of approximately equal depth, with no layer less than two and one-half (2.5) inches nor more than five (5) inches in depth. All irregularities in the surface of more than 1/4 inch shall be satisfactorily corrected.

13. Bituminous wearing course shall be a minimum of one and one-half (1 1/2) inches in depth after compaction and shall consist of ID-2 wearing top. The wearing course shall extend a minimum of twelve (12) inches beyond the limit of the trench excavation on all sides. All irregularities in the surface of more than 3/16 inch shall be satisfactorily corrected.

14. All bituminous materials must be compacted with a vibratory roller operated in the vibrating mode. The surface shall be rolled when the mixture is in the proper condition and when rolling will not cause undue displacement, cracking or shoving.

15. Edge joint treatment shall be applied immediately after the wearing course has been compacted and shall consist of AC-20 liquid bituminous material or E-1, E-3 emulsified asphalt applied to seal all joints flush with the road surface. All water, dust, debris or other foreign material shall be removed from the joint area prior to sealing.

16. All materials used in the permanent pavement replacement must meet or exceed the requirements of Pa. D.O.T. specifications form 408.

17. All grass areas disturbed during excavation shall be restored to the proper grade and shall be mulched and seeded with Pa. D.O.T. formula B.

18. The permittee shall notify the Borough Street Commissioner when: the opening or excavation is ready for backfilling before any backfilling is done; after backfilling work has been completed; and when the street has been permanently restored so that inspections can be made.

g. The permittee shall be responsible for the care and maintenance of the said area for a period of two (2) years from the date of completion of permanent pavement restoration and acceptance by the Borough.

h. The Borough Street Commissioner may request the paving contractor to drill a six (6) inch diameter core through the wearing and base course for verification of pavement thickness. Pavement thickness less than the depth specified herein shall be considered defective work and the affected area shall be removed and replaced at the contractor's own expense. Drilling and filling of test holes shall be considered incidental to the paving operation, and the Borough will not be responsible for any costs or expenses associated with the testing for specified depth or for the removal and replacement of defective materials.

i. In the event that any work performed by or for a permit holder shall, in the opinion of the Borough's Engineer and/or Street Commissioner be unsatisfactory and the same shall not be corrected in accordance with his instructions within the time frame fixed by him, or in the event that the work for which the permit was granted is not completed within the time fixed on the permit, the Borough may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost thereof, plus twenty percent (20%) to such permittee or owner.

SECTION 7. Payment for Work Done by the Borough of Throop. Payment for all work done by the Borough of Throop under the provisions hereof shall be made by the person made liable therefore under the provisions hereof within thirty (30) days upon receipt of a bill sent to such person by the Borough. Upon failure to pay such charges within such time, the same shall be collectible by the Borough of

Through, by an action in assumpsit or in the manner provided by law for the collection of municipal claims.

SECTION 8 Failure to Comply With the Provisions of this Ordinance. If any person shall fail, refuse or neglect to comply with the provisions of this ordinance, or any rules or regulations, or any reasonable orders or directions of a Borough representative in reference thereto, the Borough may refuse to issue further permits to such person or persons until such conditions or orders are complied with.

SECTION 9 Violation and 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 no more than five hundred dollars (\$500.00); and in default of payment, to imprisonment for a term not to exceed ninety (90) days. Each day that a violation of this Ordinance continues shall constitute a separate offense.

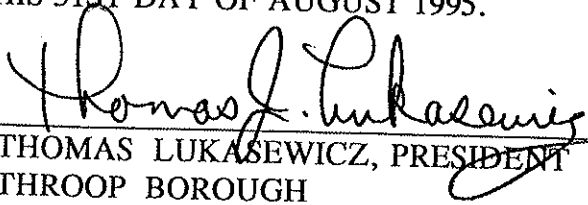
SECTION 10 Applicability. The provisions of the ordinance do not apply to construction or reconstruction of sidewalks where said construction does not alter, disturb, or change in any manner the existing curb.

SECTION 11 Repealer. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.


SECTION 12 Severability. If any section, clause, provision or portion of this Ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this Ordinance so long as it remains legally enforceable minus the invalid portion. The Borough reserves the right to amend this Ordinance or any portion thereof, from time to time as it shall deem advisable in the best interest of the promotion of the purposes and intent of this Ordinance, and the effective administration thereof.


SECTION 13 Effective Date. This Ordinance shall become effective immediately upon approval.

ORDAINED AND ENACTED IN LAW THIS 31ST DAY OF AUGUST 1995.


THOMAS LUKASEWICZ, PRESIDENT
THROOP BOROUGH

ATTEST:


ELAINE MORRELL, ADMINISTRATOR
THROOP BOROUGH


STANLEY LUKOWSKI, MAYOR
THROOP BOROUGH