

NORTH YORK BOROUGH
YORK COUNTY, PENNSYLVANIA

ORDINANCE NO. 2019-2

AN ORDINANCE OF THE BOROUGH OF NORTH YORK SETTING FORTH REGULATIONS FOR THE OPENING OF OR EXCAVATION WITHIN THE STREET RIGHT-OF-WAY; PROVIDING REQUIREMENTS FOR THE RESTORATION OF SUCH OPENINGS AND EXCAVATIONS; PRESCRIBING FOR THE ADMINISTRATION OF SUCH OPENINGS AND EXCAVATIONS, INCLUDING APPLICATIONS AND FEES THEREFOR AND SETTING PENALTIES FOR VIOLATION OF SUCH RULES AND REGULATIONS.

WHEREAS, the Borough Council of North York, York County, Pennsylvania, has determined that a number of public utilities, contractors and subcontractors make openings or excavate within the right-of-way of the public streets and alleys of the Borough; and

WHEREAS, in order to maintain consistent practices with restoring the right-of-way of public streets and alleys, to maintain the integrity of the right-of-way of public streets and alleys and to maintain a record of those persons or entities making openings in or excavations within the right-of-way of public streets and alleys, the Borough Council finds it necessary to set forth the rules and regulations for openings and excavations in streets, including the administration, fees, financial security, filling of excavations, street restoration, permits and penalties for violation thereof; and

WHEREAS, the Borough Council finds these rules and regulations to be in the best interest of the health, safety and welfare of the residents of North York Borough and the traveling public.

NOW, THEREFORE, BE IT SO ENACTED AND ORDAINED, by the Borough Council of North York Borough, York County, Pennsylvania, and it is hereby enacted and ordained by and through the authority of the same as follows:

SECTION 1. The Borough Council of North York Borough, York County, Pennsylvania hereby adopts the following Ordinance, as follows:

§1. Short Title.

This Ordinance shall be known and referred to as the "North York Borough Street Opening Ordinance."

§2. Permit required; performance guarantee.

A. It shall be unlawful for a person to make an excavation or opening in any street or alley right-of-way in the Borough without first having obtained a permit from the Borough. For purposes of this Ordinance, the term "street" shall include the paved cartway, the shoulder and any portion of the right-of-way. The permit shall be issued by the Secretary upon submission of a completed application and payment of a permit fee, which fee shall be for the use of the Borough to cover the cost of issuance of the permit and of the supervision and inspections required under this Ordinance. The permit fee shall be established by Resolution of Borough Council from time to time.

B. The permit fee includes up to five (5) hours of Engineering and inspection time. The Borough reserves the right to establish an escrow account for Engineering and inspection fees required due to the size, nature or complexity of the street openings or excavations, which, in the opinion of the Borough Engineer, would necessitate Engineering and inspection fees beyond the five (5) hours of Engineering and inspection time included in said permit fee. The Borough shall notify the permit holder of the amount to be placed in escrow within ten (10) days of the date of receipt of the application or issuance of the permit, whichever is later. The amount to be placed in escrow shall be supported by a written estimate of time required by the Borough Engineer and the amount shall be based upon the current rates charged by the Borough Engineer to the Borough as set forth in the Borough Fee Resolution, which resolution may be amended by resolution enacted by Borough Council from time to time. Permit holder shall place such amount in escrow within five (5) days after written notice from the Borough. In the event permit holder fails to place such amount in escrow as provided hereunder it shall result in the suspension or revocation of the permit until such time as the amount it placed in escrow.

C. When such additional Engineering and inspection fees are incurred, the Borough Engineer shall provide a written invoice detailing the specific project, time spent, the hourly rate per employee and a description and date of services performed. The Borough shall provide a copy of such invoice to the permit holder, who may dispute such invoice in accordance with those dispute provisions set forth in Section 503 of the Pennsylvania Municipalities Planning Code, as amended. In the event the permit holder does not dispute said invoice within forty-five (45) days of the date of invoice, the Borough shall withdraw the fees due from said

escrow account.

D. If the escrow account is reduced to twenty-five (25%) percent or less of the initial escrow account and the Borough Engineer determines that the work that remains to be completed will require Engineering and inspection fees in excess of those remaining in the escrow account, the Borough Engineer shall prepare a supplemental estimate of Engineering and inspection fees that will be required through the completion of the excavation and the Borough may require the permit holder to remit such additional amount into escrow. In the event the permit holder fails to remit funds into escrow within ten (10) business days of receipt of notice to do so, the Borough may suspend or revoke the permit issued until such time as the funds are deposited into escrow.

E. If any funds remain in escrow upon completion of the work contemplated by the permit, the Borough shall return such funds remaining to the permit holder within thirty (30) days of the date of the final invoice from the Borough Engineer for services provided pursuant to such permit. If the funds in escrow are not sufficient to pay the final invoice from the Borough Engineer, such balance shall be invoiced to the permit holder and shall be due within forty-five (45) days, subject to the dispute provisions set forth above. Should the permit holder fail to pay for such invoice within the time frame provided herein, the Borough shall be authorized to recover such fees from the financial guarantee provided for below.

F. The permit holder shall deposit with the Borough financial security as provided below, as a guarantee that the permit holder will fill the excavation, restore the surface of the street disturbed by the work done under the permit and pay any additional Engineering and inspection fees beyond those included in the permit fee, as required hereunder.

1. Cash deposits. Any person applying for a permit under this Ordinance may deposit a sum in cash as financial security. The amount of the cash deposit shall be set by the attached formula, which formula may be amended by Borough Council by resolution from time to time with input from the Borough Engineer. Upon completion of the work covered by the permit and upon satisfactory inspection by the Borough Engineer, 1/2 of such cash deposit shall be promptly refunded by the Borough to the permit holder. The balance of the cash deposit shall be held by the Borough for a period of one year from the

date of the expiration of the permit.

2. Surety bond. The applicant may provide to the Borough a surety bond naming the Borough as beneficiary in an amount equal to the difference between any cash deposit given and the guarantee amount set in accordance with A. above. The Borough may accept a "blanket" surety bond from utilities who intend to apply for multiple openings and excavations within the Borough on an annual basis. Such "blanket" surety bond shall be in an amount, in the opinion of the Borough, sufficient to guarantee the filling of excavations and restoration of the surface of streets for all openings or excavations made within the Borough in any annual period. The required surety bond shall:

- a. Be with a surety company satisfactory to the Borough.
- b. Be with a surety company authorized to transact business in the Commonwealth.
- c. Be satisfactory to the Borough Solicitor in form and substance.
- d. Be conditioned upon the permit holder's compliance with this Ordinance and further conditioned upon filling, restoring and placing in good and safe condition, as near as to the condition prior to disturbance by the permit holder, and to the satisfaction of the Borough Engineer.
- e. Be for a term that commences on the date of the permit and ends upon the expiration of one year from the date of expiration of the permit.

§3. Conditions of permit.

Every permit issued under this Ordinance shall state, as conditions of the permit, the purpose for which the opening or excavation is authorized; the location and approximate surface area of the opening; the dates when the work under the permits is to be commenced and to be completed; the name of the contractor or subcontractor completing such opening or excavation, and the number of days for which the permit shall be valid. It shall be the duty of the permit holder to do all work under this Ordinance in conformity with all these conditions, and a failure to comply with any of the conditions shall constitute a violation of this Ordinance.

§4. Duties of permit holder.

A. It shall be the duty of the holder of every permit issued under this Ordinance:

1. At all times to take every necessary and reasonable safety precaution, including the installation and maintenance of guards, barriers and warning signs and, during hours of darkness and restriction visibility, warning lights or flares.
2. To backfill the excavation, with materials prescribed, compacted into eight (8") inch layers, and to resurface the portion of the street disturbed by the excavation with the same material that was at the location before the excavation, as set forth in the attached guidelines for "Paving Maintenance and Restoration", which represent the minimum standards for completion of the work permitted. The Borough Council may amend the guidelines for Paving Maintenance and Restoration by resolution adopted from time to time.
3. Before the date of expiration of the permit, to remove all tools, equipment, debris and other material and Ordinances used in connection with or accumulating by reason of the opening or excavation and the work pertaining to the excavation.
4. To save and hold the Borough, its employees, officers, agents and servants, harmless from and indemnify it against all actions, suits, demands, payments, costs and charges for or by reason of the opening or excavation, and all damages to persons or property resulting in any manner from the opening or excavation, or occurring in the prosecution of the work connected with it or from any other matter, cause or thing relating to it at any time when the permit is in effect and for a period of one year after the date of expiration of the permit, provided a permit holder who occupies a street under a franchise previously granted by the Borough shall also be responsible for adhering to any conditions contained in that franchise pertaining to the subject matter of this Ordinance or to making, guarding or refilling openings or excavations in streets or restoring the surfaces of the street afterward.
5. To provide satisfactory written evidence that the permit

holder has in force and will maintain public liability insurance of not less than \$1,000,000 for any one person and \$1,000,000 in the aggregate and property damage insurance of not less than \$500,000 from a duly licensed insurance company authorized to do business in this Commonwealth.

6. To contact and comply with the Pennsylvania One Call System.

7. To secure and clearly mark equipment or vehicles that remain overnight so as not to create a threat to the health, safety or welfare of any Borough resident or to anyone using streets located within the Borough.

8. Except in the event of an emergency as defined in Section 6 below, at least twenty-four (24) hours prior to the start of excavation or street opening, the permit holder shall notify the Borough or its designated agent as indicated in the permit application to schedule an inspection for the work. No work shall occur without notification and inspection by the Borough or its designated agent except in the event of an emergency as defined in Section 6 below.

9. In the event the permit holder fails to notify the Borough or its agent and have such inspection, the permit holder shall be required to reopen the area of the street restored so that the Borough or its agent may inspect the backfilled area as required herein.

10. Should the permit holder fail to notify the Borough or its agent and have the work inspected as provided in this Section 4, the permit holder shall be required to pay an additional permit fee of \$200 to cover administrative costs and additional Engineering and inspection fees.

B. Restoration of surface.

1. The permit holder shall restore the surface of all streets broken into or damaged as a result of the excavation work to the street's original condition. The permit holder may be required to place a temporary surface over openings made in paved traffic lanes. Except when the pavement is to be replaced prior to the opening of the cut to traffic, the fill above the bottom of the paving slab shall be made with suitable material, well tamped into place, and the fill shall be topped with a minimum of at least one inch of bituminous mixture which is suitable to maintain the opening in good condition until permanent restoration can be made. The crown of the

temporary restoration shall be flush with the adjoining pavement. The permit holder shall exercise special care in making such temporary restorations and must maintain such restorations in safe traveling condition until such time as permanent restorations are made. The asphalt which is used shall be in accordance with the specifications of the Borough Engineer. If, in the judgment of the Borough Engineer, it is not expedient to replace the pavement over any cut or excavation made in the street upon completion of the work allowed under such permit by reason of the looseness of the earth or weather conditions, the Borough Engineer may direct the permit holder to lay a temporary pavement of suitable material designated by him over such cut or excavation, to remain until such time as the repair of the original pavement may be properly made.

2. Permanent restoration of the street shall be made by the permit holder in strict accordance with the guidelines for Paving Maintenance and Restoration. Disturbed portions of the street, including but not limited to slopes and appurtenances and structures such as guide rails, curbs, signs, markings, drainpipes, driveways and vegetation, shall be restored by the permit holder to a condition at least equal to that which existed before the start of work authorized by the permit. Additional restoration may also be required, upon written notification, to restore the structural integrity of the pavement or shoulder.

a. If the permit holder opens pavement having bituminous concrete surface, and the Borough street's wearing course is less than five years old, the permit holder shall, in addition to the restoration conditions outlined in the permit and this Ordinance, overlay the pavement in accordance with the following conditions:

i. When a longitudinal opening longer than 100 linear feet has been made in the pavement, the permit holder shall overlay the traffic lanes in which the opening was made for the entire length of the street that was opened, in a manner authorized by the Borough.

ii. When two or more transverse openings have been made within 100 linear feet of pavement, the permit

holder shall overlay traffic lanes in which the openings were made for the entire length of the street between the openings, in a manner authorized by the Borough.

iii. When four or more openings have been made by the same permit holder within 200 linear feet of pavement within any twelve month period, the permit holder shall overlay traffic lanes in which the openings were made for the entire length of the street between the openings, in a manner authorized by the Borough.

iv. If disturbance lanes adjacent to undisturbed lanes are overlaid, the edge of the disturbed lane shall be saw cut or milled to a depth of 1 ½" or the depth of the existing surface course, whichever is less, for the length of the opening to ensure a smooth joint, with proper elevation and cross section. A full-width overlay may be authorized on various streets instead of saw cutting or milling the disturbed lane.

v. If disturbed lanes adjacent to shoulders are overlaid, the shoulder shall be raised, with material and in a manner authorized by the Borough for the type of existing shoulder, so that the overlaid pavement and shoulder edges are at the same elevation.

vi. A one foot cut-back of the wearing surface may be required on a case by case basis, in a manner authorized by the Borough.

b. Regardless of the age of the wearing course:

i. If more than 100 linear feet of longitudinal or transverse openings, or both, are made in the pavement, the

Borough may require the permit holder to overlay traffic lanes in which the openings were made for the entire length of street that was opened, if the Borough determines that the rideability or structural integrity of the pavement has been impaired by the openings.

ii. If four or more openings are made by the same permit holder within 200 linear feet of pavement within any twelve month period, the Borough may require the permit holder to restore the entire disturbed pavement between the openings by milling, planing or other authorized method and overlaying the entire disturbed pavement.

iii. Acceptance or approval of any excavation work by the Borough Engineer shall not prevent the Borough from asserting a claim against the permit holder for defective work if discovered within 24 months from the completion of the excavation work. Further, the Borough Engineer's presence during the performance of any excavation work shall not relieve the permit holder of its responsibilities hereunder.

iv. A one foot cut-back of the wearing surface may be required on a case by case basis, in a manner authorized by the Borough.

§5. Work performed by Borough; costs.

If any work required under a permit issued under this Ordinance shall not be completed within the time required by the permit or shall not be completed and maintained as required in §4 above by the permit holder, the Borough or the person designated for the purpose by the Borough shall have authority to have the work completed or rectified, as the case may be, by Borough personnel or by any person or firm engaged by the Borough for the purpose. Any settlement of the surface within the said one-year period shall be determined to be conclusive evidence of defective

workmanship, and the Borough may use any or all of the deposit or proceed against such bond to perform the necessary repair work. The cost of such work including design, engineering and legal fees, with an additional charge of 10%, shall be charged to the permit holder and shall be due and payable to the Borough within thirty (30) days of the date of such invoice. In the event the permit holder fails to pay said invoice, the deposit or surety bond filed with the Borough under §2 shall be used as a source for the money due from the permit holder under this section, and if the deposit or bond is not sufficient, the amount remaining due shall be collected from the permit holder by the Borough. The Borough may collect such amounts due through any legal means, including, but not limited to an action in assumpsit and the Municipal Lien and Tax Claim Law. No subsequent permit shall be issued to any person who owes any amount to the Borough under this section.

§6. Emergency openings or excavations.

In case of any emergency resulting from the breaking of any pipe or main, an explosion or other unforeseen occurrence, the person responsible for the maintenance of the pipe, main or other facility involved in the emergency may proceed with the opening or excavation of the street, as necessary to remedy the condition and to make necessary repairs, without first having applied for and obtained the permit required under this Ordinance, but, within 72 hours after the occurrence of the emergency, they shall apply for and obtain a proper permit, following the same procedures and adhering to all other requirements that would have applied had he applied for and obtained the permit in advance.

§7. Revocation of permit.

- A. Any permit issued under this Ordinance may be revoked by North York Borough after notice for violation of any condition of the permit or violation of any provision of this Ordinance or any other applicable ordinance or law relating to the work.
- B. 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 the Borough Engineer's instructions within the time fixed by the Borough Engineer, or in the event the work for which the permit was granted is not completed within the time fixed by the Borough Engineer, the Borough may proceed to correct such unsatisfactory work or complete or cause to be completed any such work not completed and charge the costs thereof, plus 10%, to the permit holder or his surety. Written notice of such violation or failure to complete the work shall be served upon the permit holder and his agent or employee engaged in performing the work. Such notice

shall contain a brief statement of the reasons for revoking such permit. Notice may be given either by personal delivery or by United States mail to such person(s) to be notified.

§8. Violations and penalties.

Any person, including any business entity, non-profit entity or public utility, who does not comply with the provisions of this Ordinance or permits an opening or excavation to be undertaken that is not in compliance with this Ordinance shall be subject to a summary criminal proceeding before the Magisterial District Justice as provided by the Pennsylvania Rules of Criminal Procedure, as may be amended from time to time. Upon a finding of a violation, a fine of not less than \$450 nor more than \$1,000, plus costs of prosecution, including court costs and reasonable attorney fees incurred by the Borough to prosecute the violation, shall be imposed, and such person may be subject to imprisonment of up to 15 days in the event such fines and costs are unpaid. Each day that such violation(s) continues shall be a separate violation of this Ordinance.

§9. Severability.

It is hereby declared to be the legislative intent that if a court of competent jurisdiction declares any provisions of this Ordinance to be invalid, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid. In such case, all provisions of this Ordinance that were not declared invalid shall continue to be separately and fully effective. Borough Council hereby declares that it would have passed all other parts of this Ordinance, without including any part declared invalid, if it had advance knowledge that such part would be declared invalid. If the entire Ordinance should be declared invalid, then the previous Street Opening and Excavation Ordinance that was in effect immediately prior to the enactment of this Ordinance shall automatically be re-instated as the Street Opening and Excavation Ordinance for North York Borough.

§10. Procedural Defects in Enactment.

Allegations that this Ordinance or any amendment was enacted in a procedurally defective manner shall be appealed as provided in Pennsylvania law.

§11. Repealer.

Any provisions of any other ordinance that are inconsistent or incompatible with this Ordinance are hereby repealed and all other Borough ordinances or parts thereof that are inconsistent or incompatible herewith are repealed to the extent of such inconsistency or incompatibility. This Repealer clause shall only repeal Borough ordinances or parts thereof that were adopted prior to this Ordinance and that are clearly in direct conflict with this Ordinance.

§12. Enactment.

This Ordinance shall become effective five (5) days after enactment.

ENACTED AND ORDAINED by the Borough Council of North York Borough this 12th day of February 2019.

ATTEST:

NORTH YORK BOROUGH COUNCIL




Brittany Reed, Secretary

By: 

Richard Shank, President

APPROVED this 12th day of February 2019.

By: 

Andre Palmer, Mayor