

AN ORDINANCE OF THE BOROUGH OF JOHNSONBURG
ORDINANCE NO. 2020- 02

AN ORDINANCE OF THE BOROUGH OF JOHNSONBURG AMENDING CHAPTER 259, ARTICLE IV OF THE JOHNSONBURG BOROUGH CODE REGULATING STREET EXCAVATIONS AND PAVEMENT CUTS, THE FIXING OF FEES FOR GRANTING PERMITS TO PERFORM SUCH WORK, AND THE FINES AND PENALTIES FOR THE VIOLATIONS OF THE PROVISIONS OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED by the Borough of Johnsonburg and it is hereby enacted and ordained by authority of the same, as follows:

ARTICLE I - DEFINITIONS

SECTION 1. Definitions.

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

- A. "Applicant" shall mean any person who makes application for a permit.
- B. "Borough" shall mean the Borough of Johnsonburg, County of Elk, and Commonwealth of Pennsylvania.
- C. "Superintendent" shall mean the person in charge of the department of highways or the highway operations in the Borough, or his authorized deputy, representative, or inspector.
- D. "Emergency" shall mean any unforeseen circumstance of occurrence, the existence of which constitutes a clear and immediate danger to persons or properties.
- E. "Municipal Authority" shall mean any body corporate and politic created pursuant to the laws of the Commonwealth of Pennsylvania.
- F. "Manager" shall mean the Chief Administrative Officer for the Borough of Johnsonburg or his authorized representative.
- G. "Permittee" shall mean any person who has been issued a permit and has agreed to fulfill all the terms of this Ordinance.
- H. "Person" shall mean and include any natural person, partnership, firm, association, utility, corporation, or authority created pursuant to an act of the Pennsylvania General Assembly. Whenever used in any section prescribing and imposing a penalty, the term "Person"

as applied to associations, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

I. "Public Utility Company" shall mean any company subject to the jurisdiction of and control by the Pennsylvania Public Utility Commission.

J. "Street" shall mean and include a public street, public easement, public right-of-way, public highway, public alley, public way, or public road accepted or maintained by the Borough.

K. "Cartway" shall mean that portion of the street between curb faces or that portion between gutter centerlines if the street is not curbed or if no gutter exists the travel portion plus compacted or stabilized berms.

L. In this Ordinance, the singular shall include the plural and the masculine shall include the feminine and the neuter.

ARTICLE II – STREET EXCAVATIONS AND PAVEMENT CUTS

SECTION 2.1 - Permit Required

It shall be unlawful for any person to make any tunnel, test hole or excavation of any kind in or under the surface of any street without first securing a permit from the Borough for each separate undertaking; provided, however, any person maintaining pipes, lines, or other underground facilities in or under the surface of any street may proceed with an excavation without a permit when an emergency circumstance demands the work to be done immediately, Provided the permit could not reasonably and practically have been obtained beforehand. The persons shall thereafter apply for a permit on the first regular business day on which the Borough Office is open for business and said permit shall be retroactive to the date when the work was begun. In all cases where emergency excavations are necessary, the Borough Police Department shall be notified prior to such excavation.

SECTION 2.2 - Street Excavations Limited

No person to whom a permit has been granted shall perform any of the work authorized by such permit in any amount greater than that specified in the permit, except than upon approval

by the Manager and/or Superintendent additional work may be done under the provisions of the permit in such an amount as the Manager and/or Superintendent shall deem appropriate and necessary to complete the work. Any bond posted in connection with the permit shall be deemed to cover any such additional work as may be approved pursuant to this section within the limit mentioned herein.

SECTION 2.3 - Commencement of Work

Work for which a permit has been issued shall commence within ten (10) days after the issuance of the permit therefor. If not so commenced, the permit shall be automatically terminated unless the permittee applies to the Manager and/or Superintendent for an extension of time within which to commence work. If such an extension is granted, the original permit shall remain in force for the period of time specified in the extension. Permits which terminate within ten (10) days after issuance or within any extension of time granted by the Manager and/or Superintendent may be renewed only upon the payment of an additional permit fee as originally required.

SECTION 2.4 - Permits Non-transferable

Permits are not transferable from one person to another and the work shall not be made in any place other than the location specifically designated in the permit.

SECTION 2.5 - Expiration of Permits

Every permit shall expire at the time stated in the permit. If the permittee should not complete the work within the specified time, he shall, prior to the expiration of the permit, present in writing to the Manager and/or Superintendent a request for an extension of time, setting forth therein the reasons for the requested extension. If in the opinion of the Manager and/or Superintendent such an extension is necessary and not contrary to the public interest, the permittee may be granted additional time for the completion of the work.

SECTION 2.6 - Municipal Utility Cuts

All street excavations required by utilities owned and/or operated by the Borough shall be made and restored under the direction and supervision of the Superintendent. The permit fee, insurance, and bond requirements of this Ordinance shall not be applicable to any excavations made by such municipality owned and/or operated utilities.

SECTION 2.7 - State and County Highways

The provision of this Ordinance shall not be applicable in those instances where the highway is maintained by the Commonwealth of Pennsylvania, or on which the Commonwealth issues occupancy permits.

SECTION 2.8 - Rights of the Borough

Every permit shall be granted subject to the right of the Borough or of any other person to lawfully use the street for any purpose not inconsistent with the permit.

SECTION 2.9 – Revocation of Permits

Any permit may be revoked by the Manager and/or Superintendent, after notice to the permittee, for:

- A. Violation of any condition of the permit or of any provision of this Ordinance;
- B. Violation of any provision of any other applicable ordinance or law relating to the work;
- C. Existence of any condition or the doing of any act constituting or creating a nuisance or endangering life or property.

When notice of any such violation or condition shall be served upon the permittee or his agent engaged in the work, the permittee must immediately take the necessary corrective measure before proceeding further with any work for which the permit was originally granted.

When, in the opinion of the Superintendent, the permittee has failed to take the necessary corrective measures and a condition or act constituting or creating a nuisance or endangering life or property exists, the Manager and/or Superintendent may order the work to be performed by the appropriate Borough department and the cost thereof incurred by the Borough shall be recovered from the bond the permittee has filed with the Borough. When the above action is deemed necessary by the Manager and/or Superintendent, it shall constitute an automatic revocation of the permit and upon action filed in assumpsit by the Manager and/or Superintendent the permittee shall be subject to fines and penalties as are provided for herein.

PART III - APPLICATIONS AND PERMITS

SECTION 3.1 - Duties and Responsibilities of Applicants

It shall be the duty and responsibility of any applicant to:

A. Make written application for such permit on form prescribed by the Borough. No work shall commence until the Manager and/or Superintendent has approved the application and plan and issued a permit and until the permittee has paid and provided all fees, certificates, and bonds required by this ordinance.

B. Furnish in triplicate a plan showing the work to be performed under said permit. One (1) copy of such plan shall be returned to the applicant at the time the permit is granted.

C. Agree to save the Borough, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue and be claimed to accrue by reason of any work performed under said permit. The acceptance of any permit under this Ordinance shall constitute such an agreement by the applicant whether the same is expressed or not.

SECTION 3.2 - Duties and Responsibilities of Permittees

It shall be the duty and responsibility of any person receiving a permit to:

A. Pay a permit fee to cover the cost of inspecting the work authorized by the permit in accordance with the schedule of fees adopted by the Borough Council from time to time.

B. Furnish a maintenance bond as required by Article V of this Ordinance unless excepted from such requirements by said Article.

C. Furnish a certificate of insurance as is required by Article VI of this Ordinance unless excepted from such requirements by said Article.

D. Keep the original copy of the permit and an approved copy of the plan at all times while such work is in progress at the location for which said permit was granted and show such permit and/or plan upon demand by the Borough, highway or police authorities.

E. Comply with all requirements of 73 P.S. §176 et. seq., as amended, and any subsequent amendments or enacted law, also known as "PA One Call".

ARTICLE IV - STREET EXCAVATION REGULATIONS

SECTION 4.1 - Excavation Restrictions.

A. No excavation in any street shall extend beyond the center line of the street before being backfilled and the surface of the street temporarily restored.

B. No more than one hundred (100) feet measured longitudinally shall be excavated in any street at any one time, except by special permission of the Manager and/or Superintendent.

C. All utility facilities shall be located sufficiently ahead of trench, excavation work to avoid damage to those facilities and to permit their relocation, if necessary.

D. Pipe drains, pipe culverts, or other facilities encountered shall be protected by the permittee.

E. Any person whose facilities are damaged or caused to be relocated by the permittee may make the necessary repairs or relocation and file a claim against the permittee with the Borough for the cost of such repairs or relocation. Public utility companies concerned shall be notified by the Borough in sufficient time to determine the validity of the damage or relocation claim. The cost of such repairs or relocation work shall be paid by the permittee.

F. Monuments of concrete, iron, or other lasting material set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point or a permanent survey bench mark within the Borough shall not be removed or disturbed or caused to be removed or disturbed unless permission to do so is first obtained in writing from the

Manager and/or Superintendent. Permission shall be granted only upon condition that the permittee shall pay all expenses incident to the proper replacement of the monument.

G. No excavated material or sediment from such excavation shall be permitted to block, impede or clog existing storm water inlets. When work performed by the permittee interferes with the established drainage system of any street, provision shall be made by the permittee to provide proper drainage to the satisfaction of the Manager and/or Superintendent.

H. When any earth, gravel, or other excavated material is caused to roll, flow, or wash upon any street, the permittee shall cause the same to be removed from the street within four (4) hours after deposit of such materials, or upon notice from the Manager and/or Superintendent to remove such materials. In the event the earth, gravel or other excavated material so deposited is not removed, the Superintendent shall cause such removal and the cost thereof incurred by the Borough shall be recovered from the bond the permittee filed with the Borough.

I. Every permittee shall place around the project such barriers, barricades, lights, warning flags and danger signs as shall be determined by the Superintendent and/or Police Department to be necessary for the protection of the public. Barricading shall be in compliance with the regulations as set forth by the Commonwealth of Pennsylvania, Department of Transportation in the current revision of Publication 408 and Publication 213 or any other state regulatory document adopted regarding this matter.

All trenching and excavation shall conform to the requirements of the Pennsylvania Department of Labor and Industry and the Occupational Safety and Health Administration standards for such work. Additional safety requirements may be prescribed for by the Superintendent.

Whenever any person fails to provide or maintain the safety devices required by the Superintendent, such devices shall be installed and maintained by the Borough. The amount of cost incurred shall be paid by the permittee. No person shall willfully move, remove, injure, destroy, or extinguish any barrier, warning light, sign or notice erected, placed or posed in accordance with the provisions of this Ordinance.

J. Access to private driveways shall be at all times except when construction operations prohibit provision of such access. Free access must be provided at all times to fire hydrants.

K. The excavation shall be in two classes, that portion in the area out the cartway and that portion within the cartway.

a. For excavation in any area other than the cartway, materials shall be laid compactly along the side of the trench and kept trimmed up so as to cause as little inconvenience as possible to public travel. In order to expedite the flow of traffic or to abate a dirt or dust nuisance, the Superintendent may require the permittee to provide toe boards or bins, and if the excavated area is muddy and causes inconvenience to pedestrians, temporary wooden plank walks shall be installed by the permittee as directed by the Superintendent. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, the permittee shall keep a passageway at least one-half sidewalk width open along such sidewalk line or remove material to a point at which time to be replaced after work is completed. Any materials left at the site regardless of their placement shall be barricaded for public safety.

b. For excavation within the cartway, the following shall apply: All excavating material shall be wasted and removed from the site. This shall be done at the time of excavation or after excavation backfill has been completed. If excavation material is left at the site or until after completion of the work, all conditions stated in paragraph K-a above shall be adhered to. All open excavation shall be covered with a steel plate any time active excavation is not occurring or at the end of a work day if the roadway is open to traffic.

L. Work authorized by a permit shall be performed between the hours of 8:00 A.M. and 8:00 P.M., Monday through Saturday, unless the permittee obtains written consent from the Manager and/or Superintendent to do the work at an earlier or later hour. Such permission shall be granted only in case of an emergency or in the event the work authorized by the permits to be performed in traffic-congested areas.

M. In granting any permit, the Manager and/or Superintendent may attach such other conditions thereto as may be reasonably necessary to prevent damage to public or private property or to prevent the operation from being conducted in a manner hazardous to life or property, or in a manner likely to create a nuisance. Such conditions may include, but shall not be limited to: (1) Limitations on the period of time of the year in which the work may be performed; (2) Restrictions as to the size and type of equipment; (3) Designation of route upon which materials may be transported; (4) The place and manner of disposal of excavated materials; (5) Requirements as to the laying of dust, the cleaning of streets, the prevention of noise, and other results offensive or injurious to, the neighborhood, the general public, or any portion thereof, and (6) Regulations as to the use of streets in the course of the work.

SECTION 4.2 - Backfilling and Restoring Excavation

A. Any person who shall open or excavate any improved street in the Borough shall thoroughly and completely refill the opening or excavation, puddling and ramming so as to prevent any settling thereafter; and shall restore the surface to the same condition as it was before the opening or excavation. Such restoration shall be subject to the provisions in this article and otherwise shall be in accordance with the specifications of the Department of Transportation of the Commonwealth of Pennsylvania Publication No. 408 - Specifications, current and updated version, and/or Department of Transportation of the Commonwealth of Pennsylvania Publication No. 72M – Standards for Roadway Construction, current and updated version; 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, except that cold-mix bituminous material may be substituted for hot-mix bituminous material if the latter material cannot be obtained at the time.

B. The permittee must notify the Superintendent no less than twenty- four (24) hours prior to beginning the backfilling of excavations.

C. A permittee may contract the work to be done by others; however, the permittee shall be responsible and liable for all such work done the same as if the work was done by the permittee.

D. If the Superintendent finds that paving surfaces adjacent to the street excavation may be damaged where trenches are made parallel to the street or where a number of cross trenches are laid in close proximity to one another, or where the equipment used may cause such damage, he may require a negotiated contribution from the permittee for the resurfacing in place of patching of such street if the total area of the proposed patch or probably damaged area exceeds twenty-five (25) per cent of the total pavement surfacing between curb faces or between concrete gutter edges in any block. Such negotiations shall be carried on and contributions agreed upon prior to issuance of a permit.

E. After excavation is commenced, the work of making and backfilling the same shall be prosecuted with due diligence.

F. The Superintendent shall make such inspections as he may deem necessary of all work authorized by a permit. The Manager and/or Superintendent are empowered to provide a full time inspector if necessary to insure compliance with the provisions of this Ordinance.

G. All inspection costs shall be borne by the permittee. Such costs shall be based on a schedule of fees adopted by the Council from time to time.

H. The permittee shall be responsible for all work performed by him and warranty such work for a period of two (2) years from the date of final inspection and approved by the Superintendent. The Superintendent shall record the date and time of the final inspection and acceptance on the appropriate forms. One copy shall be retained by the Borough and one sent to the permittee.

I. If during the two year period provided for in paragraph H of this Section the Superintendent determines that settlement of the restored area occurs, the surface area deteriorates, cracks, or fails, or any other condition occurs which indicates failure of the restored area, the Manager and/or Superintendent shall inform the permittee in writing, and the permittee shall make the necessary corrections and/or repairs as directed by the Superintendent. If satisfactory repairs are not made within fifteen (15) days following notice, the Borough may proceed with the work and the application shall reimburse the Borough for cost of the same.

J. In no case shall any excavation made by the permittee be considered in the charge or care of the Borough, or any of its officers or employees, and no officer or employee is authorized in any way to take or assume any jurisdiction over any such opening, except in the exercise of the police power, when it is necessary to protect life and property.

ARTICLE V - PERFORMANCE BONDS

SECTION 5.1 - Maintenance & Performance Bonds

Applicants for permits as provided for by this Ordinance shall submit, together with the application, a performance bond in the amount of \$1,000.00 for each permit for excavation up to 100 sq. ft. For any excavation in excess of 100 sq. ft., the bonds shall be in the amount as shall be determined and approved by the Borough Engineer. In the case of those who maintain utilities under the streets and rights-of-way of the Borough, the performance bond shall be so

written as to cover each and every excavation made. The performance bond shall guarantee the work performed by the permittee for a period of two (2) year as provided for in Section 4.2 - H of this Ordinance. The performance bonds shall be filed in the office of the Borough Secretary and a record of such bonds maintained by the Manager and/or Superintendent. The Manager and/or Superintendent shall be responsible for checking the dates of the period of time which the bonds cover to assure the two (2) year period as covered by Section 4.2 - H.

SECTION 5.2 - Default in Performance

Whenever the Manager and/or Superintendent shall find that a default has occurred in the performance of any term or condition of the permit, written notice thereof shall be given to the permittee and the bonding company. Such notice shall include the work to be done, the estimated cost thereof, and the period of time necessary for the completion of the work.

SECTION 5.3 - Completion of Work

After receipt of such notice, the bonding company must, within the time therein specified, either cause the required work to be performed or, failing therein, indemnify the Borough for the cost of doing the work as set forth in the notice.

ARTICLE VI - LIABILITY INSURANCE

SECTION 6.1 - Insurance Requirements

Each applicant, prior to the receipt of a permit, shall provide the Borough with an acceptable certificate of insurance indicating that he is insured against claims for damage which may arise from or out of the performance of the work, whether such performance be by himself, his subcontractor, or anyone directly or indirectly employed by him. Such insurance shall cover collapse, explosion, hazards, and underground work by equipment on the street, and shall include protection against liability arising from completed operations. In order to protect the Borough and the permittee, the permittee shall provide certificate of insurance for liability insurance in the

amount of \$500,000.00 for each occurrence, or \$500,000.00 aggregate for bodily injury, and \$250,000.00 for each occurrence, and \$250,000.00 for aggregate property damage. Public utilities and authorities may submit annually such evidence of insurance coverage in lieu of individual submissions for each permit.

ARTICLE VII - EXCAVATIONS IN NEW STREETS

SECTION 7.1 - Notices of Improvements

When the Borough shall improve or pave any street, the Borough Secretary shall give notice to all persons owning property abutting on the street about to be paved or improved, and to all public utilities and municipal authorities operating in the Borough, and all such persons, public utilities and municipal authorities shall make all connections as well as any repairs thereto which would necessitate excavation of the street, within forty-five (45) days from the giving of such notice. The time shall be extended if permission is requested in writing and approved by the Borough Secretary after consultation with the Borough Superintendent and Engineer.

SECTION 7.2 - Restrictions Upon Excavating New Streets

No permit shall be issued by the Manager and/or Superintendent which would allow an excavation in a paved and improved street surface less than five (5) years old unless the applicant can clearly demonstrate that public health or safety require that the proposed work be permitted or unless an emergency condition exists.

ARTICLE VIII - GENERAL PROVISIONS

SECTION 8.1 - Street List Requirements

A. Every person owning, using, controlling, or having an interest in pipes, conduits, ducts or other structures under the surface of any street used for the purpose of supplying or conveying gas, electricity, communication impulses, water or steam to or from the Borough, or

to or from its inhabitants, or for any other purposes, shall file with the Manager and/or Superintendent, within one hundred twenty (120) days after the adoption of this Ordinance, a written list and map containing the names of the Borough's streets wherein the aforementioned facilities owned by such a person are located, and stating the size and type of material.

B. Within ninety (90) days after the first day of January of each and every year, such person shall notify in writing the Manager and/or Superintendent of the changes necessary to maintain the street list required in Section 8.1 - A above and a revised map.

SECTION 8.2 - Abandoned Facilities

A. Whenever any pipe, conduit, duct, tunnel, or other structure located under the surface of any street, or the use thereof, is abandoned, the person owning, using, controlling or having an interest therein shall, within thirty (30) days after such abandonment, file with the Manager and/or Superintendent a statement in writing giving in detail the location of the structure so abandoned.

B. Whenever there are manholes or tunnels associated with abandoned underground facilities, such manholes or tunnels shall be filled in at the time of abandonment and the Manager and/or Superintendent notified thereof in writing.

C. When the Borough plans to pave or improve streets in which there are abandoned facilities, the owners of such facilities shall be required to remove them if, in the opinion of the Council, their removal is in the best interest of the Borough. If the owner shall refuse to remove such facilities, the Borough shall remove the abandoned facilities and the owner shall reimburse the Borough for such removal.

SECTION 8.3 - Street Excavation Permit Notices

A. If the work to be undertaken by the permittee is such that it will affect the use of properties abutting or adjoining the project, the permittee shall notify the affected property owners and/or tenants of the proposed work to be done.

B. If the work to be undertaken by a permittee will affect other subsurface installations in the vicinity of the proposed excavation, the permittee shall notify the owners of such facilities of the proposed work.

C. The Manager and/or Superintendent shall notify, in writing, the Borough police and fire departments of all street excavation permits he grants. Such notification shall state the nature of the work to be done, proposed beginning and completion dates, and the location of such projects.

SECTION 8.4 - Penalty for Violation

Any person who shall violate the provisions of this Ordinance shall, in a summary proceeding before a Magisterial District Judge and upon conviction thereof, be sentenced to pay a fine of not more than one thousand dollars (\$1,000), plus costs of prosecution, and, in default of payment such fine and costs, to undergo imprisonment for not more than thirty (30) days. Each day that a violation is permitted to exist after notice in writing shall have been served by the Manager and or Superintendent shall constitute a separate offense.

SECTION 8.5 – Severability

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 8.6 - Repeal of Existing Ordinances

Any Ordinances or provisions of Ordinances inconsistent or contrary to this Ordinance are hereby repealed to the extent of their inconsistency.

SECTION 8.7 –Effective Date

The This Ordinance shall take effect and be enforceable immediately.

PASSED, ENACTED, AND ADOPTED this 13th day of OCTOBER, 2020.

THE BOROUGH OF JOHNSONBURG


Arthur J. Mauts II
President of Borough Council

ATTEST:

Rachel Kilhoffer
Borough Secretary

EXAMINED AND APPROVED BY THE MAYOR OF JOHNSONBURG this 13th day of
October, 2020.

John E. Fowler
Mayor, The Borough of Johnsonburg