

BOROUGH OF BIG BEAVER

ORDINANCE NO. 238

AN ORDINANCE OF THE BOROUGH OF BIG BEAVER, COUNTY OF BEAVER, COMMONWEALTH OF PENNSYLVANIA, REPEALING ORDINANCE 114, ARTICLE II, AS AMENDED, AND ISSUING NEW STANDARDS AND PROCEDURES REGULATING STREET OPENINGS, EXCAVATIONS, PAVEMENT CUTS REQUIRING PERMITS THEREFORE, IMPOSING FEES, REQUIRING DEPOSITS AND BONDS IN CONNECTION THEREWITH, REQUIRING THE FILING OF INFORMATION REGARDING UNDERGROUND FACILITIES LOCATED WITHIN PUBLIC STREETS AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

Section 1: Purpose.

- A. The purpose of this Article is to regulate the opening, excavation or occupancy of any Borough road, street, alley, public way or right-of-way to ensure that the aforesaid road, street, alley, public way or right-of-way is replaced or maintained in acceptable conditions and to acceptable standards to protect the safety and welfare of the citizenry.

Section 2: Legislative Authority.

- A. Section 1202 (17) of the Act of February 1, 1966 (P. L. 1656, No. 581), as amended, commonly referred to as the "Borough Code of the Commonwealth of Pennsylvania,"² confers the authority on the Borough Council to regulate the roads, streets, alleys, public ways and rights-of-way of the Borough.

Section 3: Definitions and Word Usage.

- A. As used in this article, the following terms have the meaning indicated, unless otherwise expressly stated:

APPLICANT - Any person or Public Utility company who makes an application for a Street Opening Permit.

BOROUGH – The Borough of Big Beaver, Beaver County, Pennsylvania.

BOROUGH COUNCIL – The Borough Council of the Borough of Big Beaver, Beaver County, Pennsylvania.

BOROUGH REPRESENTATIVE - The Borough Secretary, Public Works Director, Borough Engineer, or other designated person.

EMERGENCY – A sudden, unforeseen occurrence requiring immediate action. If such immediate action is not undertaken, great loss, harm or danger will occur to the citizenry or the person required to open or excavate the road.

OPENING – The excavation of or under a road, street, alley, right-of-way, or public way of the Borough of Big Beaver.

PERMITTEE - Any person who has been issued a permit and has agreed to fulfill all the terms of this Ordinance.

PERMIT FEE - A fee paid by the Permittee to the Borough for the sole purpose of review and issuance of the permit by the Borough.

PERSON – Any natural person, partnership, firm, company, corporation, municipal authority or political subdivision.

RIGHT OF WAY – Land dedicated or purchased by the Borough of Big Beaver for purposes such as public transportation. Included as part of the right-of-way is the cartway (i.e., paved or improved surface) of the road and adjacent parallel land.

ROAD - A public way of the Borough of Big Beaver utilized to convey traffic. Also included are streets, alleys, sidewalks, public ways or rights-of-way of the Borough of Big Beaver.

- B. In this Article, words used in the present tense shall include the future, words used in the singular shall include the plural, words used in the plural shall include the singular, the word "shall" is mandatory, the word "may" is permissive, and the masculine shall include the feminine.

Section 4: Permit Required.

- A. No person shall open, excavate or occupy any Borough of Big Beaver road, street, alley, public way or right-of-way without first obtaining a permit from the Borough of Big Beaver except as specified in Section 5 of this Article. No permit shall be required for routine maintenance work when such work does not require the opening or excavation of Borough roads and no damage or alteration to the cartway or right-of-way is proposed.
- B. A separate permit shall be required for multiple jobs or projects which may occur or be proposed by a single person simultaneously within the Borough. Further, a separate permit shall be required for the opening, excavation or occupancy of more than one (1) Borough road, street, alley, public way or right-of-way except as specified in Subsection C below.

- C. If any person, organization or agency is planning to conduct a major Borough-wide project which will include work within numerous Borough roads, streets, alleys, public ways or rights-of-way, the Borough, at its option, may issue one (1) comprehensive permit which covers the entire project.

Section 5: Permit Application.

- A. Any person who desires to open, excavate or occupy any Borough of Big Beaver road, street, alley, public way or right-of-way shall file an application with the Borough. Applications shall be submitted on forms provided by the Borough.
- B. A fee for the application for an occupancy of Borough roads permit may be prescribed by the Borough Council. Such a fee may be revised from time to time through resolution by the Borough Council. If a fee is prescribed, it shall be submitted by the applicant to the Borough in conjunction with the application for an occupancy of Borough roads permit. In addition to the application fee, the applicant shall be required to reimburse the Borough for reasonable costs associated with review of the application and any other expenses incurred by the Borough or its professional consultants in carrying out the provisions of this ordinance, including but not limited to engineering and legal fees. The applicant is responsible for reimbursement of noted costs associated with the application incurred by the Borough. The required bond, as noted in Section 11, will not be released until all associated fees have been paid and costs incurred by the Borough for the associated application, including but not limited to engineering and legal fees of the Borough's professional consultants, are reimbursed to the Borough in full by the applicant.
- C. In addition to the permit application and application fee, for excavations that propose more than 150 square feet of opening, the applicant must provide the following for the Borough to consider the application as complete:
 - 1. A site plan showing location of the proposed work. The site plan shall include the following:
 - a) Location Map,
 - b) North Arrow,
 - c) Scale,
 - d) Roadway name,
 - e) Roadway right-of-way,
 - f) Roadway cartway limits and identify the existing surface,
 - g) Limits of proposed excavation,
 - h) Limits of proposed restoration in accordance with Section 10 described herein,
 - i) Details in accordance with Borough standards described herein,
 - j) Existing and proposed utility locations, noting inverts of all nearby structures and identifying sizes and materials of all utilities,

- k) Property information of adjacent parcels, including but not limited to parcel number and property owner names,
 - l) Any existing structures adjacent to the proposed work,
 - m) Existing driveways within the vicinity of the proposed work,
 - n) Any additional information as deemed necessary by the Borough.
- 2. A traffic control plan illustrating proposed barricades, warning lights, or warning devices as needed or as directed in order to minimize the inconvenience and danger to the public by construction operations. Barricades shall be in accordance with current PennDOT Publication 213 and “Manual on Uniform Traffic Control Devices” standards. Suitable warning signs shall be positioned and illuminated at night to identify in advance the work area. The type and location of signs and other traffic control devices shall be in accordance with the most current “Manual on Uniform Traffic Control Devices” as prepared by the U.S Department of Transportation, Federal Highway Administration.
- D. The Borough Council or the Borough Representative thereof shall act within forty-five (45) days of receipt of a complete application for an occupancy of Borough roads permit. Applications that are incomplete or that are not submitted with the required fee will be returned to the applicant.
- E. When the application is found to be in compliance with the provisions of this Article, the Borough Council or the Borough Representative thereof shall issue a permit to the applicant.
- F. The permit shall state the following: the name of the person, agency or organization which the permit has been issued; the site location; the date of issuance and the date of expiration of the permit; and a general description of the work to be completed.

Section 6: Length of Permit.

- A. Permits issued by virtue of this Article shall be valid for the duration of the project specified on the permit application.
- B. Permits are not transferable to any other person, agency or organization and are only valid for the person, agency or organization which was issued the permit. The permit is not transferable to any other job or site location within the Borough of Big Beaver.
- C. Permits which expire shall be renewed by the applicant. The Borough shall renew the permit for a nominal processing fee if the work being conducted is proceeding expediently.

Section 7: Inspection by Borough.

- A. The Borough Representative shall inspect the conditions of the proposed job location before work begins and after work is completed.
- B. It shall be the responsibility of the permit holder to keep a copy of the permit on the job site for the duration of the job. The permit holder shall present the permit to any Borough official, representative or police officer who requests to see the permit.
- C. It shall be the responsibility of the permit holder to notify the Borough when work is completed in order for the Borough Representative to inspect the job site. The permit holder shall notify the Borough at least forty-eight (48) hours before any cartway which has been opened or excavated is replaced or reconstructed.
- D. The Borough Representative will inspect the site to review the restoration work completed of the cartway and adjacent right-of-way.

Section 8: Emergency Work.

- A. Any person, agency or organization which must perform emergency work within any Borough road, street, alley, public way or right-of-way and cannot notify the Borough of Big Beaver before such work begins may do so.
- B. If emergency work is being conducted, the person, agency or organization shall notify the Borough as soon as possible.
- C. Persons, agencies or organizations which perform emergency work shall still be required to apply for a permit and receive a permit for the work completed. Further, the cartway and/or adjacent right-of-way shall be replaced or reconstructed as prescribed in Section 10 of this Article.

Section 9: Street Opening Regulations.

- A. If possible, no opening or excavation in any street shall extend beyond the center line of the street before being backfilled and the surface of the street temporarily restored. The intent is to always provide a minimum of one lane of traffic wherever possible.
- B. No more than one hundred (100) feet measured longitudinally shall be opened in any street at any one time. All pipes shall be bedded and backfilled in accordance with Borough standards, incorporated herein by reference.
- C. All utility facilities shall be exposed sufficiently or definite location shall be determined ahead of trench excavation work to avoid damage to these facilities

and to permit their relocation, if necessary. The Permittee will be responsible for submitting a location request through the Pennsylvania One Call System.

- D. Any person, utility, or municipal entity whose facilities are damaged, or caused to be relocated by the Permittee shall notify the Permittee and the Borough of such damage and thereafter may make the necessary repairs or relocation and (in conjunction with notifying the Borough of such) may file a claim against the Permittee for the cost of such repairs or relocation. Public utility companies concerned shall be notified by the Permittee in sufficient time to determine the validity of the damage or relocation claims.
- E. 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 benchmark 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 owner. Permission shall be granted only upon condition that the Permittee shall pay all expenses incident to the proper certified replacement of the monument.
- F. Work authorized by a permit shall be performed dawn to dusk, Monday through Saturday, unless the Permittee obtains written consent from the Borough Council to do the work at an earlier or later hour. Such permission shall be granted only in the case of an emergency or in the event the work authorized by the permit is to be performed in low volume traffic areas.
- G. Access to private driveways shall be provided at all times. When construction operations at the driveway prohibit provision of such access in which case access shall not be blocked for more than two (2) hours and a twenty-four (24) hour notice shall be provided to the property owner. Free access must be provided at all times to fire hydrants unless approval for nonaccess is otherwise given by a Borough Council or the Fire Department Chief.
- H. All materials, upon being excavated, shall be removed from the site and disposed of. The storing of excavated materials on site is prohibited. 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 Borough Representative.
- I. When any earth, gravel, or other excavated material is caused to flow, roll, or wash upon any street, the Permittee shall remove all material from the street as quickly as possible to permit safe flow of traffic. In the event the earth, gravel, or other excavated material deposited is not removed as specified, the Borough Representative shall cause such removal and the cost incurred shall be paid by the Permittee or deducted from his permit fees.

J. Drainage:

- 1) Pipe drains, pipe culverts, or other facilities of the Borough encountered shall be protected by the Permittee.
- 2) Altering drainage shall be prohibited, unless specifically authorized by the permit. The Permittee may not:
 - a. Alter the existing drainage pattern or the existing flow of drainage water.
 - b. Direct additional drainage of surface water toward; onto or into or in any way affect the road right-of-way or road facilities.
- 3) The permit does not authorize the permittee to direct, divert or otherwise drain surface waters over the property of another property owner.
- 4) The permit does not relieve the permittee from acquiring the consent, permission, or other authorization from a property owner who may be adversely affected by drainage alterations.
- 5) The permittee is responsible for damage caused to property owners as a result of work done under the permit.
- 6) When work performed by the permittee interferes with the established drainage system of any street, provisions shall be made by the permittee to provide proper drainage.

Section 10: Road Replacement or Reconstruction.

- A. Any opening or excavation conducted by the permit holder of any Borough cartway shall be replaced or reconstructed in accordance with the specifications of this section. If the permit holder proposes to utilize any materials which differ from the specifications of this section, the permit holder must gain prior approval from Borough Council.
- B. Any opening or excavation conducted by the permit holder in any Borough right-of-way, excluding the cartway, shall be replaced or refilled to the grade which existed before the opening or excavation occurred. If the permit holder proposes to utilize any materials which differ from the existing composition of right-of-way or proposes to alter the grade, the permit holder must gain prior approval from Borough Council.
- C. Prior to backfilling and paving the opening in the cartway, the opening shall be sawcut and squared off. The area shall be filled to full depth with 2A limestone to the existing cartway finish grade. The 2A limestone shall be in accordance with PA Department of Transportation Publication 408, latest addition. The limestone must be compacted in eight (8) inch lifts to 100% of the maximum weight density or to visual nonmovement under the compaction equipment. The limestone shall be allowed to settle for two (2) weeks before the final paving of the cartway shall occur. After two (2) weeks, remove the excess limestone in order to fill the cut with four (4) inches of a bituminous binder course. Both sides of the opening shall

be milled one (1) inch deep and two (2) feet beyond the opening of the cartway. A one (1) inch wearing course shall then be installed. After the one (1) inch wear course is in place, the seams of the existing cartway and the wearing course shall be sealed with an acceptable bituminous joint sealant material. All paving shall be done in accordance with PA Department of Transportation Publication 408, latest addition.

- D. If the Applicant or Permittee proposes multiple transverse openings of the roadway within 50 feet of each other, measured from the centerline of each trench, the applicant is required to mill and overlay the entire cartway between all proposed openings.
- E. The Applicant or Permittee shall notify the appropriate Borough Representative forty-eight (48) hours prior to completing restoration work.

Section 11: Bond Requirements.

- A. Upon receipt of a permit and prior to initiation of the work, the Permittee shall provide the Borough with an acceptable corporate surety bond or letter of security to guarantee faithful performance and maintenance of the work authorized by a permit granted pursuant to this Ordinance. The amount of the bond shall be one hundred and ten percent (110%) of the estimated cost of restoring the street opening. The term of the bond shall begin upon the date of posting thereof and shall terminate eighteen (18) months after receipt by the Permittee of a certificate final completion from the Borough Representative. If the Permittee anticipates requesting more than one (1) permit per year as required by this Ordinance, he may furnish one (1) continuing corporate surety bond, in the amount of \$100,000, to guarantee faithful performance in such amount as the Borough Representative deems necessary. The amount of such bond shall be in relation to the cost of restoring pavement costs to be made by the Permittee throughout the year. In the case of a public utility company, its corporate bond in a form satisfactory to the Solicitor of the Borough of Big Beaver, may be accepted in lieu of the corporate surety bond required by this section.
- B. Upon completion of all work accomplished under the provision of a permit, the Permittee shall notify the Borough Representative in writing. A certificate of completion shall be issued by the Borough Representative to each Permittee after the permanent restoration of the excavation has been made, the Borough Representative has conducted a final inspection, and providing the work authorized by the permit has been performed satisfactorily according to Borough specifications.
- C. The Bond will not be released until all associated fees have been paid and costs incurred by the Borough for the associated application, including but not limited to engineering and legal fees of the Borough's professional consultants, are reimbursed to the Borough in full by the applicant as noted in Section 5.B.

- D. If any settlement in a restored area occurs within a period of 18 months from the date of completion of the permanent restoration, and the Permittee fails to make such correction after notification, any expense incurred by the Borough in correcting such settlement shall be paid by the Permittee or recovered from his bond, unless the permittee submits proof satisfactory to the Borough Representative that the settlement was not due to defective backfilling.
- E. If the Borough Representative finds that a default has occurred in the performance of any term or condition of the permit, written notice thereof shall be given to the principal and to the surety on the bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the Borough Representative to be reasonably necessary for the completion of such work.
- F. After receipt of such notice the surety 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.

Section 12: Liability Insurance.

- A. Each Applicant, upon the receipt of a permit, shall provide the Borough with an acceptable certificate of insurance naming the Borough and its employees as additional insured and indicating that the Permittee and Borough is insured against claims for damages for personal injury as well as against claims for property 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 and shall include protection against liability arising from completed operations. The amount of the insurance shall be prescribed by the Borough Representative in accordance with the nature of the risk involved; provided, however, it shall provide for a minimum of comprehensive bodily injury liability insurance including coverage on a personal injury basis and comprehensive property damage liability insurance not less than \$2,000,000 combined single limit. Public utility companies and authorities may be relieved of the obligation of submitting such a certificate if they submit satisfactory evidence that they are insured in accordance with the requirements of this Ordinance or have adequate provision for self-insurance.
- B. Public utility companies may file an annual certificate of insurance in lieu of individual certificates for each permit.

Section 13: Guaranties.

- A. Any person who opens a Borough Road as described in this Article shall be responsible for the condition of the road for eighteen (18) months from the date the job was completed. If, from the completion date, the road sinks or the

pavement which was replaced in the road opening fails, the person shall be responsible for replacing the road to conditions which are acceptable to the Borough.

Section 14: Enforcement.

- A. The rules and regulations of this Article shall be enforced by the Borough Council and/or the Borough Representative.

Section 15: Violations and Penalties.

- A. Any person who shall violate any provision of this Article shall, upon conviction thereof, pay a fine of not more than one thousand dollars (\$1,000.). Each day that a violation is permitted to exist after written notice shall have been given by the Borough shall constitute a separate offense hereunder. Also any person, firm or corporation found in violation of this Ordinance shall be subject to all costs to restore per the terms of this Ordinance

Section 16: Additional Remedies.

- A. The Borough Council may take any appropriate civil action or action in equity to enforce the provisions of this Article as well as utilizing any other remedies otherwise provided by law.
- B. If any cartway and/or right-of-way is not replaced or reconstructed by the permit holder to the standards prescribed in Section 10 of this Article, the Borough Council may cause the same to be done and may take action against the permit holder to recover the costs associated with such replacement or reconstruction.
- C. If the work in opening or filling or maintaining or permanently paving and completely restoring the surface shall not be promptly done, or shall be unskillfully or improperly or incompletely performed, the Borough Representative, or any other person designated by Council, may cause the same to be done in such manner as the Borough Representative may deem proper, and the expense thereof, including any overhead expense, shall be charged to the person, agency or organization by whom the opening or excavation as aforesaid was made, together with an additional charge of 10% as a penalty. No new openings under an existing permit shall be made and no new permit shall be issued to any person, firm or corporation where either or both of the following are present: the person, corporation or firm is in default under this section, until the costs and penalty herein provided for are paid; or the person, agency or organization has openings or excavation already caused by them which have not been properly filled, and the surface maintained and restored as aforesaid, in a safe condition at the proper grade, all of which the Borough Representative or other person so designated by Council shall be sole judge and whose opinion thereon shall be final.

Section 17: Severability.

- A. If any chapter, section, subsection, paragraph, sentence, or phrase of this Ordinance is for any reason declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole or any section or part thereof other than the section or part thereof so declared to be invalid.

Section 18: Repealer.

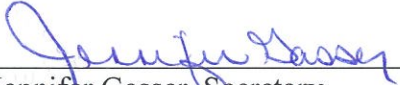
- A. Any ordinance, chapter, section, subsection, paragraph, sentence, or phrase of any Ordinance of the Borough conflicting with the provision of this Ordinance shall and the same is hereby repealed to the extent of such conflict.

Section 19: Effective Date

- A. This ordinance shall be effective upon adoption

ENACTED AND ORDAINED by the Members of Council of Big Beaver Borough,
Beaver County, Pennsylvania, in public meeting this 15th day of October, 2024.

ATTEST:



Jennifer Gasser, Secretary

BIG BEAVER BOROUGH COUNCIL



Kim Wagner, Council Vice President

Read and approved by me, Michelle Joy, Mayor/Council President of the Borough of Big Beaver, this 15th day of October, 2024.



Mayor/Council President