

PAVE CUT ORDINANCE

STREET EXCAVATIONS AND OPENINGS

Definitions and Interpretation.

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

Excavation - any activity within the right-of-way of any street/alley/cartway which involves cutting, breaking, or disturbing the surface thereof. In this Part, the term "opening" shall have essentially the same meaning as "excavation."

Person - any natural person, partnership, firm, association, corporation or municipal authority.

Street - any public street, avenue, road, square, alley, highway, or other public place located in the Borough of Dupont and established for use of vehicles, but shall not include State highways.

2. In this Part the singular shall include the plural, and the masculine shall include the feminine and neuter.

Permit Required to Make Excavation or Opening.

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 Dupont without first securing a permit therefor, as hereinafter provided.

Exception to Permit Requirement.

No permit, as established by this Part, shall be required of the Borough of Dupont, or a contractor to the Borough of Dupont, opening and/or excavating streets relating to a utility owned by the Borough of Dupont.

Application for Permit.

Any person who shall desire to make any opening or excavation in any of the streets in the Borough of Dupont shall make application to the Borough Manager/Secretary in writing for that purpose. Such application shall be made upon blanks/forms to be furnished by the Borough of Dupont and shall set forth the name of the applicant, the exact location of the proposed opening or excavation, and the

approximate size and/or depth thereof, and 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 of Dupont and the laws of the Commonwealth of Pennsylvania in relation thereto, and that the applicant shall well and truly save, defend and keep harmless the Borough of Dupont from and indemnify it against any and all actions, suits, demands, payments, costs and charges for or by reason of the proposed opening excavation, and all damages to persons and/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 relating thereto.

Permit Fee.

Before any permit shall be issued to open or excavate any street in the Borough of Dupont the applicant shall pay a permit fee as follows:

1. The Pave Cut Fee shall be \$100.00 per pave cut effective January 1, 2015.
2. In the event that the utility, corporation, person or entity proposing the pave cut should require more than one cut per road, then said entity may be required to pay multiple \$100.00 Pave Cut Fees.
3. The determination as to the nature, extent and number of pave cuts to be made and the fees to be charged shall be determined by the Borough after consultation with the pave cut applicant and the Borough Engineer.
4. Permits are required in advance of the cut.
5. In the event that a non-emergency pave cut take place without first obtaining a permit, the violator will be charged a violation fee of an additional \$200.00.
6. All work must be inspected. It will be the responsibility of the individual or businesses making the cut to notify the borough before closing the cut. The Borough shall have 2 business days to respond and inspect.
7. All pave cuts shall be guaranteed for a minimum of one year. Evidence of settling will be documented by the Borough and notification will be forwarded to the individual or business making the cut. They will have two (2) business days to remedy the situation.

8. Should an individual or business failure to remedy a settlement, the Borough will fill the area and charge the individual or business for the costs of material and labor and a penalty charge of \$500.00.

Issuance of Permits Restricted.

Permits shall be issued only to persons furnishing public utility service or the owner or owners of the real property adjoining the location where such opening or excavation is to be made.

Information Contained on Permit.

Any permit issued hereunder shall specify the exact location where the opening or excavation is to be made, the approximated permitted size and/or depth thereof and the time within which the work for which the permit is granted to be completed.

Permit Approval/Disapproval.

A permit may be issued to the applicant after all the requirements therefor have been filed. If the application is disapproved, written notice of disapproval together with reason(s) therefor shall be given to the applicant.

Responsibility to Contact Utilities.

The work authorized by the permit is subject to all the provisions of the Pennsylvania One-Call Act, 73 P.S. §176 *et seq.*, and as further amended or supplemented from time to time. It shall be the permittee's responsibility to contact the utilities that have recorded their facilities in compliance with said Act.

Refilling of Opening or Excavation; Restoration of Surface; Responsibility for Defects Occurring Within 2 Years.

Any person who shall open or excavate any street in the Borough of Dupont shall thoroughly and completely refill the opening or excavation in such manner as to prevent any settling thereafter, and shall restore the surface to same condition as it was before the opening or excavation, and such restoration shall be in accordance with the current specifications of the Department of Transportation of the Commonwealth Pennsylvania which are hereby adopted as specifications of the Borough of Dupont for restoration of surfaces of streets in the Borough of Dupont subject to the following additional conditions:

1. **Restoration.** Prior to the placement of the base course, the existing base and surface must be exposed twelve (12) inches on each side on any failures that may have developed. Restoration of flexible base pavements shall consist of binder for the full depth of four (4) inches. The wearing course ID2 shall be placed at a minimum

depth of two (2) inches and rolled to conform with the existing road, and the edges sealed. Surface treatments such as sand or chip seals are prohibited. On long cuts surface finishing must be rolled with not less than a six (6) ton roller. Small cuts may be finished with a mechanical tamper or vibrator. All openings regardless of size must be permanently restored.

2. Backfilling. The Borough Office must be notified in advance of all backfilling. Backfilling will be done in such manner as to obtain compaction throughout the entire length of backfill not less than that which exists adjacent to the excavation. Type 2A modified subbase material shall be used in all excavations. The method of backfill shall be consistent with good engineering practice, i.e., the material shall be placed in layers not to exceed six (6) inches properly tamped using a mechanical tamper or a mechanical vibrator up to the bottom elevation of the pavement structure.
3. Permanent Restoration. Only utilities or their contractors will be permitted to make permanent restorations of openings in pavements. The restored pavements shall be guaranteed from failure from the date of completion through two (2) winters. Permanent restoration must be completed within 30 days of the initial cut. Any cuts made in the months of November through March shall be permanently restored within 30 days after hot asphalt becomes available. Any failure of restoration will be reported to the pertinent utility and repairs by the utility will be begun within 24 hours later notification. Upon failure of the utility to repair the cut in a satisfactory manner, the municipality shall have the option to do the work or to contract to complete the work and bill the utility.

Responsibility of Permit Holder for Certain Work; Right of the Borough of Dupont to Do Certain Work; Charges Therefor.

All other work in connection with openings in any street, including excavation, protection, refilling and temporary paving, shall be done by or for the person to whom or which the permit has been issued at his or its expense, and all such work shall be subject to the provisions of this Part and to the supervision and approval of the designated official, provided that the Borough Manager/Secretary, or his designee, may if he/she deems necessary to the proper performance of the work, require that cutting of the surface of streets and the backfilling of all excavations therein shall be done by the Borough of Dupont, in which event the applicant shall pay the actual cost of the work performed by the Borough of Dupont.

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

1. No opening or excavation in any street shall extend from the curb line into the highway a distance greater than 1 foot beyond the center line of the street before being refilled and the surface of the highway restored to a condition safe and convenient for travel.

2. No more than 500 feet longitudinally shall be opened in any street at any one time.

3. The work of excavation shall be so conducted as not to interfere with the water mains, sewers or their connections with the houses, gas lines, or any other subsurface lines or constructions, until permission of the proper authorities in connection with such subsurface lines or constructions shall have been obtained.

4. No tunneling shall be allowed without the express approval of the Borough Manager/Secretary, or his/her designee, and permission therefor endorsed upon the permit. The backfilling of a tunnel excavation shall be made only in the presence of the Borough Manager/Secretary, or an inspector designated by him/her, and shall be done only in a method approved by the Borough Engineer..

5. All openings or excavations shall be backfilled promptly with modified 2A stones and thoroughly compacted in layers, each of which layers shall not exceed 8 inches in depth. Backfilling shall be placed to within 10 inches of the surface.

6. A temporary paving of coldpatch premix, thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving and maintained for a period of 90 days.

7. On concrete base streets, such base shall be replaced with concrete and the minimum size of the opening or excavation shall be 16 square feet.

8. During the making of any excavation in the street, every necessary and reasonable precaution shall be taken by the applicant and the parties making the same to keep the street in a safe and passable condition both day and night by guards, barriers, lanterns or other devices, as approved by PennDOT specifications, and all excavating permits granted hereunder are granted under and subject to the express condition that the person to whom the same is issued shall immediately indemnify, save and keep harmless the Borough of Dupont 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, explosive or other injury from any pipe, apparatus, conduit, or any other matter placed in the said excavation.

9. The applicant shall notify the Borough Manager/Secretary when the opening or excavation is ready for backfilling before any backfilling is done, when

backfilling work is completed, when temporary paving has been installed and when the street has been permanently restored so that inspections may be made.

10. In the event that any work performed by or for a permit holder shall, in the opinion of the Borough Manager/Secretary, or his/her designee, be unsatisfactory and the same shall not be corrected in accordance with his/her instructions within the time fixed by him/her, or in the event the work for which the permit was granted is not completed within the time fixed by the Borough Manager/Secretary, or his/her designee, the Borough of Dupont may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost thereof, plus 20 percent to the applicant.

Emergency Openings.

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 an excavation to remedy such condition before securing a permit, provided that application for a permit shall be made immediately and not later than the next business day thereafter, and that all other provisions of this Part 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 Manager/Secretary, after such notice as he/she shall deem necessary under the circumstances of the particular case, shall proceed to do the work necessary and required by such emergency, and charge the same on the basis of cost plus 20 percent to such owner or person.

Restrictions Regarding Trees and Shrubbery.

The permission herein granted does not confer upon the permittee or its contractors the right to cut, remove or destroy trees or shrubbery within the legal right-of-way except under specifications, regulations and conditions as the Borough

may prescribe on such permit. Such requests shall be a part of the permit application, and may be granted or denied by the Borough of Dupont.

Work Necessitating Opening or Excavation to be Done Prior to Street Improvement and Not Until 5 Years Thereafter; Exception.

The Borough Manager/Secretary shall give timely notice to all persons owning property abutting on any street within the Borough of Dupont about to be paved or improved, and to all public utility companies operating in the Borough of Dupont, and all such persons and utility companies shall make all water, gas and other connections, as well as any repairs thereto which would necessitate excavation of the street within 60 days from the giving of such notice, unless such time is extended in writing for cause shown by the Borough Manager/Secretary. New paving shall not be opened or excavated for a period of 5 years after completion thereof, except in case of

emergency, the existence of which emergency and the necessity for the opening or excavating of such paving to be determined by the Borough Manager/Secretary.

Permittee Responsible for Future Relocation of Work.

If at any time in the future the roadway is widened, reconstructed or alignment or grades are changed, the permittee further agrees to change or relocate all or any part of the structures covered by this permit which interfere with the improvement of the roadway at its own cost and expense.

Conditions for Laying and Extending Utility Lines.

No new water, gas main, stream or electric, telephone or other utility line shall hereafter be laid or constructed, and no such existing main or line shall be extended, in any of the streets of the Borough of Dupont until the plan therefor shall have been first filed with the Borough Manager/Secretary and such plan, and the exact location of such main or line, approved by him/her. The Borough Manager/Secretary shall not approve the locating of any such main or line at a depth of less than 32 inches from the surface of the street unless he/she shall be convinced that locating the same at a depth of more than 32 inches from the surface is impossible or impractical.

Bond Required.

No company, corporation or association shall dig up any street, alley or cartway without first giving to the Borough of Dupont 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 digging up, opening or closing of said streets and alleys.

Payment for Work Done by the Borough of Dupont.

Payment of all work done by the Borough of Dupont under the provisions hereof shall be made by the person made liable therefor under the provisions hereof within 30 days after a bill therefor is sent to such person by the Borough of Dupont. Upon failure to pay such charges within such time, the same shall be collectible by the Borough of Dupont by action in assumpsit or in the manner provided by law for the collection of municipal claims to include legal and court costs associated therewith.

Penalties.

Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof, shall be sentenced to a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

Applicability.

The provisions of this Part shall not apply to laying sidewalks or curbs.

THIS ORDINANCE shall become effective immediately upon passage. All Ordinances or parts of Ordinances of the Borough of Dupont in conflict with this Ordinance to the extent of such conflict and not further, are hereby repealed.

RESOLVED AND ENACTED THIS 9th **DAY OF** December, 2014.

**DUPONT BOROUGH COUNCIL
LUZERNE COUNTY, PENNSYLVANIA**

PRESIDENT

Attest:

SEAL

BOROUGH MANAGER:

Examined and adopted this 9th **day of** December, 2014.

Mayor

