

ARTICLE 905
Street Excavations

EDITOR'S NOTE: Resolution 233-1995, passed December 5, 1995, established street excavation fees.

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CROSS REFERENCES

Street opening and maintenance - see 3rd Class §2901 et seq. (53 P.S. §37901 et seq.)

Grading and paving - see 3rd Class §2930 et seq. (53 P.S. §37930 et seq.)

Closed streets to have detours - see 3rd Class §2978 (53 P.S. §37978)

Collection of costs of improvements - see 3rd Class §3301 et seq. (53 P.S. §38301 et seq.)

Protection of trees during excavations - see S.U. & P.S. 913.08

905.01 DEFINITIONS.

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

- (a) "Applicant" means any person who makes application for a permit.
- (b) "Calendar year" means January 1 through December 31, inclusive.
- (c) "City" means the City of York.

- (d) “City corporate authority” means any governmental corporation initiated by Council under the Municipal Authorities Act of 1945.
- (e) “City highway fund” means a fund established and regulated by the City, the moneys therein are explicitly designated for the resurfacing and reconstruction of City streets.
- (f) “Concrete” means soil cement, plain cement concrete or reinforced cement concrete and material contained in the base course of some City streets.
- (g) “Cost” means actual expenditures incurred by the City for labor, equipment and materials, which include all fringe benefits and overhead.
- (h) “Degradation fee” means a fee paid by the permittee to the City to defray a percentage of the costs for resurfacing and reconstruction of City streets resulting from the depreciation of streets associated with street openings.
- (i) “Department” means the Department of Public Works.
- (j) “Emergency” means any condition constituting a clear and present danger to life or property by reason of escaping gas, exposed wires or other breaks or defects in the user’s line.
- (k) “Inspection fee” means a fee paid by the permittee to the City to defray street opening inspection costs.
- (l) “PennDOT” means the Commonwealth of Pennsylvania Department of Transportation.
- (m) “PennDOT road” means any Pennsylvania State road located within the municipal boundaries of the City of York, Pennsylvania.
- (n) “Permit fee” means a fee paid by the permittee to the City to cover the cost of issuing, processing, inspecting and filing the street opening permit.
- (o) “Permittee” means any person who has been issued a permit and has agreed to fulfill all the provisions of this article.
- (p) “Person” means any natural person, partnership, firm, association, utility or corporation.
- (q) “Public utility” means any utility company, excluding corporate authorities of the City, franchised by the Public Utility Commission of the Commonwealth of Pennsylvania.
- (r) “Resurface” means a process which provides a new wearing surface in a certain paved street area between curbs with the same material that was existing prior to excavation.
- (s) “Resurfacing penalty” means the fee to be paid if any person shall open a street within five years from the date of its reconstruction or being paved.
- (t) “Sidewalk area” means that portion of the street right-of-way reserved for sidewalks or that area defined on the City Plan.
- (u) “Street” means the entire right-of-way of a public street, public highway, public alley, public avenue, public road or public easement within the City limits, excluding the designated curb and sidewalk area.
- (v) “User” means the public utility, municipal corporation, municipal authority, rural electric cooperative or other person who, or which, uses a line to provide service to one or more consumers.
- (w) “Work day” means normal business day for the City government including Monday through Friday, except designated holidays.
(Ord. 37-2005. Passed 9-20-05.)

905.02 PERMIT REQUIRED AND EMERGENCY OPENINGS.

(a) The opening of the surface of any City street is prohibited unless a permit is obtained for that purpose in the manner hereinafter described, except in situations which require the placement of utility poles. Such permit shall be granted through the Department of Public Works when a person applying for such permit files an application with the Department in compliance with the provisions of this article and pays into the City Treasury the amounts adopted by resolution.

(b) Any person working in the vicinity of a City street who in any manner disturbs such street or who in any manner causes damage to a street shall be required by this article to obtain a permit and correct this damage in accordance with the standards of the Department. Street opening permits are not required for persons excavating adjacent to the curb for the express purpose of installing or replacing sidewalks and/or curbs provided a curb and sidewalk permit has been obtained prior to such work.

(c) The obtaining of street opening permits by City departments and corporate authorities shall be waived when work to be performed is completed by their own personnel.

(d) All contractors performing work under contract for the City or City corporate authorities shall obtain the street opening permit for street opening work.

(e) If street openings are necessitated by emergencies, street opening permits shall be obtained on the first regular business day on which the office of the City is open for business and such permit shall be retroactive to the date when the work was begun.

(f) A person performing street openings for an emergency shall verify the emergency nature of the circumstance in writing to the Department of Public Works within five days after such emergency on the street cut opening application.

(g) For work on PennDOT roads within the City limits, no City street excavation permit is required, but a PennDOT permit is required. This permit can be obtained from the offices of Maintenance District 8-4 (York County), Pennsylvania Department of Transportation, 1920 Susquehanna Trail North, P.O. Box 907, York, Pennsylvania 17405-0907. (Ord. 37-2005. Passed 9-20-05.)

905.03 STREET OPENINGS PRIOR TO RECONSTRUCTION OR RESURFACING.

(a) When the City reconstructs or resurfaces any street, the Department of Public Works shall first serve written notice by certified mail of such improvements to all persons owning property abutting the street about to be improved who are in violation of Article 909 relative to curbs and sidewalks and to all public utility companies operating in the City. Within ninety calendar days from receipt of such notice all notified persons shall complete or cause to be complete all necessary repairs and replacement of utility mains, service connections and/or laterals existing under the street and designated curb and sidewalk areas. Notified persons shall also complete or cause to be completed, any new installations, under the street and designated curb and sidewalk areas, required for use within a five year period thereafter.

(b) This section shall not forbid the installation of new pipes, conduits or other services or structures, or the repair or replacement of those already existing, in or under the portions of such highways improved as aforesaid; by penetrating the subsurface beneath paving in accordance with City ordinances and the directions of the Department of Public Works upon obtaining a permit therefor from the Department of Public Works, and upon payment to the City of the same fees as prescribed by Council resolution except for the degradation fee for making a surface opening in the highway of the same dimensions.
(Ord. 37-2005. Passed 9-20-05.)

(c) If any person shall open a street within five years from the date of reconstruction or having been paved, the permittee shall overlay the pavement by making a segment, curb to curb repairs as approved by the Director of Public Works or his designee. The permittee shall conduct repair by milling, planing or other authorized method and overlaying the entire disturbed pavement.

Some examples of repair methods that are not acceptable and the corresponding acceptable method are provided at the end of this article.

The permit and inspection fee shall apply to this permit. The degradation fee shall be applied based on the size of the original cut by the permittee.
(Ord. 33-2012. Passed 10-16-12.)

905.04 PREREQUISITES TO OBTAINING PERMIT.

Street opening permits shall only be granted upon compliance with the following express provisions:

- (a) A written application shall be filed with the Department of Public Works for making all street openings or excavations and signed by the person desiring such permit. Such application shall set forth the purpose for which such excavation is to be made; the size and location of the same; the full scope of work to be included in the project; the date or dates during which such excavation is to be performed; the date such excavation is to be refilled and resurfaced in the manner hereinafter provided; and shall provide that the applicant will faithfully comply with each and every provision contained in this article. An applicant shall furnish a drawing of the proposed opening site upon request of the Department. Items required on the drawing shall be specified at the time of request.
- (b) Prior to the issuing of such permit, every such applicant shall pay to the City Treasurer the amount hereinafter required for the purposes specified and shall exhibit to the Department a receipt for the amount paid. Public utilities recognized by the Pennsylvania Utilities Commission may be exempt from pre-payment. Those exempt utilities will be issued permits upon request followed by a quarterly billing cycle for completed work.
- (c) Where the street opening permit is required for water supply purposes, the application shall be countersigned by the City's plumbing inspection service or authorized person before the permit will be granted. Where the street opening permit is required for sewer service purposes, the application shall be countersigned by the City's plumbing inspection service or authorized person before the permit will be granted.
- (d) No permit shall be granted to any applicant unless the applicant has paid to the City any and all moneys, then due to the City, for prior excavations made or for any loss, damages or expense in any manner occasioned by or arising from the work done by the applicant under the provisions of this article.

- (e) Agree to save the City, its officers, employees and agents from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of such work to be done by the applicant under the provisions of this article. The acceptance of any permit under this article shall constitute such an agreement by the applicant whether the same is expressed or not.
- (f) An applicant shall secure a certificate of insurance from the Department and have the certificate properly executed by the applicant's insurance agency. Properly executed certificates of insurance shall be filed with the Department and verify that the applicant is insured against claims for personal injury as well as against claims for property damages which may arise from or out of the performance of the excavation work, whether such performance be by the applicant or anyone directly or indirectly employed by him. Such insurance shall include protection against liability arising from completed operations, underground utility damage and collapse of any property. Liability insurance shall be in the amounts established by Council resolution. Failure of an applicant to file a certificate of insurance shall be a sufficient reason for denying a permit. The applicant shall save and hold harmless the City from any and all damages and liability by reason of personal injury or property damage arising from work done by the applicant under the provisions of this article. Liability insurance requirements for blasting may be obtained and blasting permits shall be obtained from the City Fire Department.
(Ord. 37-2005. Passed 9-20-05.)

905.05 BOND.

- (a) All persons other than public utility companies desiring to open a street shall furnish a properly executed corporate surety bond.
- (b) All other persons, including contractors performing work for City corporate authorities, desiring to open a street shall furnish a properly executed corporate surety bond. Such bond shall be executed by a reputable surety company licensed to do business in the Commonwealth of Pennsylvania. All bonds obtained by contractors performing work under contract with City corporate authorities shall be countersigned by the director or chairman of the authority.
- (c) The bond shall cover street opening work performed during one calendar year. The bond shall be in effect for a thirty-six month period in accordance with Section 905.16. The amount of the surety bond shall be five thousand dollars (\$5,000) unless any street excavation and restoration work for a single project exceeds such amount. In this case, a person shall secure additional bonding in an amount equal to the difference between the five thousand dollars (\$5,000) and the amount of the proposed restoration based on an amount per square yard set by Council resolution.
(Ord. 37-2005. Passed 9-20-05.)

905.06 FEES.

- (a) A permit fee shall be paid to the City Treasurer prior to permit issuing; the remaining inspection fee and degradation fee shall be paid when the work is completed, inspected and measured by the appropriate City department. The City shall have the right to waive fees for contractors performing work under contract with the City.
- (b) The permit fee shall be in the amount set by Council resolution.

(c) The degradation fee shall be calculated by actual measurement after the work is completed at a rate per square yard set by Council resolution. The City Treasurer shall place collected degradation fees into the City Highway Fund.

- (1) The degradation fee shall be waived for openings made on streets maintained by the Pennsylvania Department of Transportation.
- (2) The number of square yards computed for the degradation fee will be based on the actual size of excavation including any pavement that must be removed to provide a one foot bench beyond the original trench wall. (Ord. 37-2005. Passed 9-20-05.)

905.07 CANCELLATION OF PERMIT.

In all cases where a permit has been issued and the work set forth in such permit has not been completed within a period of twelve months, the permit becomes void, and the permit fee shall not be refunded.

(Ord. 37-2005. Passed 9-20-05.)

905.08 REVOCATION OF PERMIT.

(a) All street opening permits are subject to revocation at any time by the Department of Public Works after written notice for:

- (1) Violation of any condition of the permit;
- (2) Violation of any provision of this article or any other applicable ordinance or law relating to the work;
- (3) The existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or property of others.

(b) Written notice of such violation shall be served upon the person to whom the permit was granted, or his agent or employee engaged in the work. Such notice shall also contain a brief statement of the reasons for revoking such permit. Notice may be given either by personal delivery thereof to the person to be notified or by United States mail, addressed to such person to be notified.

(Ord. 37-2005. Passed 9-20-05.)

(c) (EDITOR'S NOTE: This subsection was repealed by Ordinance 9-1990, Section 7, passed July 3, 1990.)

905.09 TIME EXTENSION AND FEE.

(a) A permit shall remain in effect for a period of twelve months. If the work is not completed in this time period, a new permit shall be obtained, and an additional permit fee shall be required.

(b) No time extension shall be granted for a permit in which work has not started within the twelve month period. A new permit shall be obtained if the same project location work is rescheduled.

(c) Reasonable time extensions, but not longer than three months, for permitted work shall be granted when requested in writing and shall only be honored for those types of projects that commenced during the required twelve month permit period and are of a size and scope that support an extension of time to complete.
(Ord. 37-2005. Passed 9-20-05.)

905.10 BACKFILLING AND PAVING.

(a) The permittee shall be responsible for backfilling and paving the opening and restoring the street surface to its original condition prior to the street cut.

(b) The Department of Public Works shall have the full authority to establish standards for paving and backfilling materials and associated procedures. Details specifying paving and backfilling procedures and materials shall be obtained from the Department prior to any street opening work. (Ord. 37-2005. Passed 9-20-05.)

(c) The permittee shall be responsible to begin restoration of the street surface within ninety (90) calendar days of completion of main line or service line work related to said permit.
(Ord. 33-2012. Passed 10-16-12.)

905.11 BACKFILLING AND REPLACING SURFACE BY CITY.

In case the work has not been completed before the date of expiration as shown on the permit, which time shall be fixed when the permit and/or time extension is granted, the Department of Public Works may take steps to backfill the trench and replace the street surface over the opening for which the permit has been issued upon proper notification from the Department to the applicant. The City shall invoice the permittee for all costs incurred by the City in the performance of this work. Payment not made within thirty days will be chargeable against the posted bond including all fees and costs involved in the collection of this payment.
(Ord. 37-2005. Passed 9-20-05.)

905.12 RESPONSIBILITY; EXTRA INSPECTORS AND OTHER RULES.

(a) The permittee shall assume all responsibility for the excavation made by such party for refilling the same and for all damages caused by the action of the permittee that may arise by reason of the digging of such trenches or excavations. Whenever it is determined by the Department of Public Works that in the best interests of the City it is necessary to assign additional street opening inspectors to supervise excavation, backfill or pavement restoration operations, such inspectors shall be paid by the permittee at a rate per day to be fixed by the Department.

(b) The Department is authorized to make such other rules and regulations for the excavation of streets which it may deem necessary for the proper maintenance of the street surface due to excavations, which rules and regulations shall be printed upon the permit granted or forwarded from the Department in writing from time to time.

(c) The permittee shall be required to return the "Notice of Completion of Street Excavation Permit" when work is completed. This form is to be returned to the office that issued the permit. (Ord. 37-2005. Passed 9-20-05.)

905.13 TEST HOLES.

A street opening permit shall be obtained for any test hole work. No test holes shall be made in or upon a greater surface of the highway than as specified in such permit, and no excavation or test holes shall interfere with any of the water pipes, sewers or drains of the City, or any other underground utility service. Test holes shall be backfilled in accordance with the provisions set by the City Engineer. (Ord. 37-2005. Passed 9-20-05.)

905.14 GUTTERS, LIGHTS AND IDENTIFICATION.

(a) All gutters shall be left open so as not to obstruct the free passage of water, and the sidewalks and foot ways must be kept in a safe and passable condition. All excavations or material from them shall have placed upon them sufficient lights and barricades to identify them from all directions during the day and after dark.

(b) If, for safety purposes, the Department of Public Works deems it necessary to install additional warning devices such as lights, barricades or signs, the permittee shall be notified of the decision and shall receive instructions on the installation. In case of emergencies the City may install all additional warning devices deemed necessary by the Department. The City shall invoice the permittee for rental and installation costs incurred from the date of installation until the permittee installs warning devices.

(c) If the permittee fails to install such devices, the City shall invoice the permittee for rental and installation costs incurred from the date of installation until the date of removal. Payment not made by the permittee within thirty days of the invoice date will be chargeable against the posted bond including all fees and costs involved in the collection of this payment. (Ord. 37-2005. Passed 9-20-05.)

905.15 ADDITIONAL WORK.

If the permittee determines during construction that an additional area of the street will have to be opened, he shall notify and secure permission from the Department of Public Works for the additional opening. Upon receipt of permission, the permittee shall file a supplementary application for the work not later than the next work day. Fee amounts specified in this article and detailed by resolution shall be followed for any subsequent fees associated with supplementary applications. (Ord. 37-2005. Passed 9-20-05.)

905.16 GUARANTEE OF WORK.

The permittee shall guarantee and maintain his work for thirty-six months from the completion of the restoration and replacement work. Within this thirty-six month period, upon notification from the City of necessary correction work required, the permittee shall correct or cause to be corrected all restoration work required within five working days of receipt of the notification. The Department of Public Works shall determine the extent of restoration required and the method of correction. Any and all work not completed within this five-day period may be completed by the City at the discretion of the Director of the Department of Public Works. The City shall invoice the permittee for all costs incurred by the City in performance of this work. Payment not made within thirty days of the invoice date will be chargeable against the posted bond including all fees and cost involved in the collection of this payment. (Ord. 37-2005. Passed 9-20-05.)

905.99 PENALTY.

(a) Any person violating any provision of this article shall, upon conviction thereof be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000) for each and every offense, together with costs, and in default of payment thereof, shall be imprisoned not more than thirty days. Each failure to obtain a permit or to comply with any of the requirements of this article, and each and every day during which such violation continues shall constitute a separate offense.

(b) The Department of Public Works reserves the right to deny the issuance of future street opening permits to any person who violates the provisions of this article. This provision in no way shall prohibit or limit the right of the City to bring legal action against the permittee. (Ord. 37-2005. Passed 9-20-05.)