

**OFFICIAL
BOROUGH OF FRANKLIN PARK
ORDINANCE NO. 681-2023**

**AN ORDINANCE OF THE BOROUGH OF FRANKLIN PARK,
ALLEGHENY COUNTY, PENNSYLVANIA, AMENDING
CHAPTER 180 IN THE CODE OF THE BOROUGH OF
FRANKLIN PARK, "STREETS AND SIDEWALKS," TO ADD A
NEW ARTICLE IV TITLED "STREET PERMITS" WHICH
REGULATES THE OPENING OR EXCAVATION OF BOROUGH
STREETS, REQUIRING A PERMIT FOR OPENING OR
EXCAVATION OF BOROUGH STREETS, AND ESTABLISHING
STANDARDS FOR OPENING, EXCAVATION, AND
RESTORATION OF BOROUGH STREETS**

WHEREAS, the Section 1202(5) of the Borough Code, 8 Pa.C.S.A. § 1202(5), empowers the Borough of Franklin Park ("Borough") to make regulations as may be necessary for the health, safety, morals, general welfare and cleanliness and beauty, convenience, comfort, and safety of the borough; and

WHEREAS, the Section 1202(12) of the Borough Code, 8 Pa.C.S.A. § 1202(12), empowers the Borough to regulate the streets, sewers, public squares, common grounds, sidewalks, curbs, gutters, culverts, and drains; and

WHEREAS, the Borough has determined that protection of Borough streets and rights-of-way is necessary where excavation of those streets and rights-of-way is to take place; and

WHEREAS, the Borough desires to amend Chapter 180 in Code of the Borough of Franklin Park, "Streets and Sidewalks," to include a new article, Article IV, titled "Street Permits," to regulate the opening, excavation, and tunneling under streets and rights-of-way within the Borough.

NOW, THEREFORE, be it ordained and enacted by the Borough Council of the Borough of Franklin Park, and it is hereby ordained and enacted by and with the authority of the same, incorporating the above recitals by reference:

SECTION 1.

A new Article IV, titled "Street Permits" is hereby created within Chapter 180 in the Code of the Borough of Franklin Park, "Streets and Sidewalks" as follows:

Article IV **Street Permits**

§ 180-17 **Purpose.**

These regulations are adopted and implemented to achieve the following general purposes and objectives:

- A. To regulate the opening, excavation, and tunneling under streets and right-of-way of the Borough of Franklin Park.
- B. To require a permit and payment of a fee.
- C. To provide for the protection, refilling, resurfacing, and repairing of excavations.
- D. To prescribe insurance and deposit requirements.
- E. To prescribe penalties for violations.

§ 180-18 **Definitions.**

Certain words used in this article are defined below.

APPLICANT

Any person, partnership or corporation who makes application for a permit.

BACKFILL

Approved material used to fill a trench or other excavation, or the process of doing so.

BOROUGH

The Borough of Franklin Park, its officers, employees and officials.

BOROUGH STREET

Any road which has been dedicated to and accepted by the Borough for use as a public street, including curbs and shoulders. See "cartway."

CARTWAY

Paved area of the street within which vehicles are permitted, including shoulders.

DEGRADATION FEE

A fee established from time to time by resolution of Borough Council. This fee is imposed on any person, partnership, or corporation which obtains a street excavation permit, and the work to be performed includes open cutting any Borough street that has been newly paved within the last 5 years.

DRIVEWAY

Private roadway providing access for vehicles to a parking space, garage, dwelling, or other structure.

EMERGENCY SITUATION

A situation or event, such as breakage of a utility line, which presents an imminent hazard to the public health, safety, and welfare. Not included in this definition is the routine replacement or replacement of service facilities which are being constructed or replaced as part of normal expansion or routine maintenance activities.

EXCAVATION

Removal of soil, rocks, sidewalk, driveway, curbs, or cartway material for the purpose of installing, replacing, repairing, or removing underground facilities.

NORMAL FLOW

The direction, intensity, and volume of stormwater runoff typically present during various precipitation events.

PAVEMENT CUTS

Open cutting of a cartway, sidewalk, or driveway.

PennDOT

The Pennsylvania Department of Transportation.

PERMIT FEE

Fee established by Borough Council for the purpose of administration costs in issuing permits.

PERMITTEE

Any person, partnership or corporation to whom a permit is issued.

RIGHT-OF-WAY

Land under the control of the Borough which contains Borough streets, cartways, curbs, sidewalks, driveways, driveway aprons, and other nonpaved portions of land which may or may not contain aboveground or underground utilities.

RIGHT-OF-WAY OCCUPANCY PERMIT

A permit which, when issued, permits the permittee to install facilities within a Borough right-of-way. The work permitted under this permit shall not include any work authorized by a street excavation permit.

SIDEWALK

A paved, surfaced or level area, paralleling and usually separated from the cartway used as a pedestrian walkway, to include curb.

SITE PLAN

A plan of the area to be worked upon which shows all pertinent information including, but not limited to, right-of-way lines, street locations, sidewalk locations and any existing sub-surface and aboveground utilities which may be impacted by the work to be performed.

STREET EXCAVATION PERMIT

A permit which, when issued, permits the permittee to open cut any Borough street, sidewalk or driveway or tunnel under any Borough street, sidewalk or driveway.

SUBSURFACE FACILITIES

Any public utility or private transmission lines which are located below grade.

§ 180-19 Permit required.

- A. It shall be unlawful for any person to make any tunnel, opening, or excavation of any kind in or under the surface of any street without first securing a permit from the Public Works Superintendent 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 opening without a permit when emergency circumstances demand the work to be done immediately, provided the permit could not reasonably and practically have been obtained beforehand.
- B. In such cases where emergency openings are necessary, the Borough shall be notified prior to such opening via telephone, electronic mail, or fax notification. The person shall thereafter apply for a permit on the first regular business day on which the Borough is open for business and said permit shall be retroactive to the date when the work was begun.

§ 180-20 Permits generally.

- A. Street Excavation Permit Application. A street excavation permit shall be obtained before any person, partnership, or corporation may open/cut, disturb, or replace any Borough street, sidewalk, curb or driveway, or utilize any type of device or equipment which tunnels under any Borough street, sidewalk, driveway or driveway apron.

(1) Application for a street excavation permit shall be accompanied by:

- a. A completed and signed application form.
- b. The required permit and inspection fee.

- c. The required degradation fee, if necessary.
- d. The required performance guarantee.
- e. A site plan.
- f. A location plan which generally indicates the distance the street excavation will occur from the nearest intersecting street.
- g. A profile indicating the elevation(s) of the subsurface facilities which are being removed, repaired, or constructed. This profile shall indicate the depth below the roadway surface at which the work is going to be performed.
- h. Insurance. Each Applicant shall provide the Borough with an acceptable certificate of insurance naming the Borough as an additional insured and indicating the applicant is insured against claims for damages for personal injury, as well as claims for property damage which may arise from or out of the performance of the work, whether by it, his subcontractor, or any one directly or indirectly employed by the applicant. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from all operations whether completed or in progress. The amount of liability insurance for bodily injury in effect shall not be less than \$1,000,000 for each person, and for property damages not less than \$1,000,000 with an aggregate of not less than \$2,000,000 for each occurrence. Such certificates may be filed with the Borough on an annual basis.
- i. Additional documents as the Borough may require.

(2) The granting of any street excavation permit shall confer a privilege upon the permittee, subject to the terms and conditions of the permit, to temporarily occupy and use the street surface during the course of construction work covered by the permit, and to thereafter occupy the space within which the work is to be located, subject in every case to the specific right of the Borough to require temporary or permanent relocation or removal of any of the facilities entirely at the permittee's expense in the event said facilities are in conflict with the Borough's interest or the public interest in the use of the street.

B. Right-of-Way Occupancy Permit Application. A right-of-way occupancy permit shall be obtained before any person, partnership, or corporation shall perform work in any Borough right-of-way which does not include activity which requires a street excavation permit.

- (1) Application for a right-of-way occupancy permit shall be accompanied by:
- a. A completed and signed application form.
 - b. Required permit and inspection fee.
 - c. A site plan which clearly shows where the right-of-way work will occur.
 - d. Insurance. Each Applicant shall provide the Borough with an acceptable certificate of insurance naming the Borough as an additional insured and indicating the applicant is insured against claims for damages for personal injury, as well as claims for property damage which may arise from or out of the performance of the work, whether by it, his subcontractor, or any one directly or indirectly employed by the applicant. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from all operations whether completed or in progress. The amount of liability insurance for bodily injury in effect shall not be less than \$1,000,000 for each person, and for property damages not less than \$1,000,000 with an aggregate of not less than \$2,000,000 for each occurrence. Such certificates may be filed with the Borough on an annual basis.
 - e. Additional documentation as the Borough may require.
- (2) The granting of a right-of-way occupancy permit shall confer a privilege upon the permittee, subject to the terms and conditions of the permit, to temporarily occupy and use the street right-of-way during the course of construction work covered by the permit, and to thereafter occupy the space within which the work is to be located, subject in every case to the specific right of the Borough to require temporary or permanent relocation or removal of any of the facilities entirely at the permittee's expense in the event said facilities are in conflict with the Borough's interest or the public interest in the use of the right-of-way. The right-of-way occupancy permit does not authorize the permittee to perform any work which is governed by the requirements of a street excavation permit. The permittee shall be responsible for the repair of any and all facilities damaged during the excavation. The permittee shall immediately inform the Borough Engineer when damage to a sewer or other utility occurs. All repairs to damaged facilities shall be made as per the requirements of the Borough Engineer.

C. General Permitting Process

- (1) The completed application shall be submitted to the Borough at the Borough Building. Upon receipt, the Public Works Superintendent shall:
 - a. Review all documentation for completeness and accuracy.
 - b. Review and render a decision regarding the application within 10 working days of receipt of said application.
- (2) Upon approval of an application, the Borough shall provide the applicant with two signed copies of the permit. The applicant must maintain one copy of the approved application at the job site.
- (3) In granting any permit, the Borough may attach such special conditions thereto as may be reasonably necessary to protect public and private property.
- (4) By accepting the permit, the permittee agrees to perform the work in accordance with the terms and conditions of the permit, and of any special conditions which may be attached thereto, and to save and hold harmless the Borough, its officers, employees and agents from any costs, damages, and liabilities which may accrue by reason of the work.
- (5) Every permit issued hereunder shall expire 30 days after it is issued. If the permittee shall be unable to complete the work within the specific time, it shall, prior to expiration of the permit, present in writing to the Borough a request for an extension of time, setting forth therein the reasons for the requested extension. If, in the opinion of the Borough, such an extension is necessary, the permittee may be granted additional time for the completion of the work.
- (6) The applicant must notify the Public Works Department at least 24 hours before work commences and shall not backfill any open cut before the Public Works Department has inspected the site.
- (7) The Borough may revoke any permit issued under the provisions of this Article if it deems that the terms of the permit are being violated. Upon revocation of the permit, the Borough shall provide the permittee with a written explanation of the terms of the permit which are being violated and establish a time frame under which the permittee must complete all necessary reparations to bring the job into compliance with the provisions of the permit.
- (8) If final paving repairs are not completed to the satisfaction of the Borough, the Borough reserves the right, after notice to the permittee, to complete final paving repairs, including the removal of substandard work. These repairs will be funded by the performance guarantee which the permittee must provide.

Upon the satisfactory completion of all work, the Borough shall issue a final completion certificate and return the required performance guarantee or portion thereof.

- (9) Upon the satisfactory completion of all work, the Borough shall issue a final completion certificate.
- (10) By accepting the permit, the permittee agrees to perform the work in accordance with PennDOT's Publication 213, "Work Zone Traffic Control Guidelines."

D. Permit fees, Inspection Fees, Performance Guarantees, Maintenance Guarantees, and Degradation Fees.

- (1) A permit fee and an inspection fee shall be charged for each application under this Article. The fees shall be established by resolution of Borough Council, as amended from time to time.
- (2) Performance guarantees shall be provided for street excavations in the following manner:
 - a. For permit applications proposing street openings of 50 square feet or less, a bond, letter of credit, or cashiers check in the amount of \$10,000 shall be provided prior to issuance of a permit and initiation of work.
 - b. For permit applications proposing street openings of more than 50 square feet, a bond, letter of credit, or cashiers check in the amount of 110% of the anticipated cost of restoring the street opening (but not less than \$10,000.00), as deemed satisfactory by the Public Works Superintendent or Borough Engineer, shall be provided prior to issuance of a permit and initiation of work.
 - c. The term of the performance guarantee shall begin upon the date of posting thereof and shall serve as a maintenance guarantee that shall terminate 18 months after receipt by the permittee of a certificate final completion from the Borough.
 - d. The performance guarantee 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.

- e. If any settlement in a restored area occurs within a period of 18 months from 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 its performance guarantee.

(3) Degradation fee. New paving shall not be opened or excavated for a period of 5 years after the completion thereof, except in an emergency situation. If a permit is sought to excavate or open a street within 5 years after the completion of new paving for any other reason than an emergency situation, the application shall be subject to an additional degradation fee. This fee shall be established by resolution of Borough Council, as amended from time to time.

(4) These fees and the amount of performance guarantees may be changed by resolution of Borough Council.

E. Enforcement Procedures. The Borough Engineer, Code Enforcement Officer, Public Works Superintendent, Police Officer, or other official designated by the Borough Manager may prevent or restrain any work which is proceeding without benefit of a street excavation permit or right-of-way occupancy permit.

§ 180-21 **Duties of permittee.**

It shall be the duty of any person or entity obtaining a permit:

- A. To confine such opening or excavation to the portion of the street and to the dimensions generally indicated on the permit.
- B. To commence such work of opening or excavation on the date indicated in such permit, or as soon as practical thereafter, and to complete such work, along with the refilling of the excavation and the restoration of the street surface as required, on or before the date of expiration of such permit.
- C. To notify the Public Works Superintendent before such opening or excavation is to be refilled, and thereupon to complete such work of refilling and resurfacing to the satisfaction of the Public Works Superintendent or designee and in strict conformity with the requirements of this Article.
- D. While such work is underway, and at all times prior to the completion of the resurfacing of the street, to keep in place sufficient barricades, warning signs, and warning lights or flares to guard the opening or excavation and to warn the traveling public of its location at all times between sunset and sunrise and at all other times when visibility is such as to make their use necessary.

- E. To refill the opening or excavation and to resurface the portion as required by Section 180-24. The resurfacing shall be done in such a manner as to connect with the existing street surface adjacent to the new resurfacing at the same level so that there are no uneven portions of the street where the existing surface joins the newly resurfaced portion of the street.

§ 180-22 **General requirements.**

- A. Unless specifically permitted by the Borough:
 - (1) No street opening shall extend more than ½ of the cartway at one time.
 - (2) Two-way traffic shall be maintained.
 - (3) Access to driveways and/or buildings abutting the street shall be maintained.
 - (4) Not more than 250 lineal feet of any street shall be opened at any time.
 - (5) No excavated materials or backfill materials shall be stockpiled on the cartway or sidewalk.
- B. The permittee shall locate in advance of excavation all surface and subsurface utility lines and structures, as required by 73 P.S. § 176 *et seq.*, also known as the Pennsylvania One Call System. The permittee shall take all precautions necessary to avoid damage to other utility lines including loop detectors, and to public and private property. In the event damage does occur to the property of others, the permittee shall promptly and satisfactorily repair all damages and restore the property to a satisfactory condition.
- C. Provisions shall be made to accommodate the flow of storm water drainage, and no excavated material or trench shall be permitted to interfere with the normal flow of surface water. Erosion and sedimentation controls shall be installed as needed.
- D. Traffic control shall be maintained in accordance with Pennsylvania Department of Transportation requirements, and the permittee shall furnish and maintain upon the work site such signs, barricades, lights, and flagmen as may be necessary to insure safe travel for vehicular and pedestrian traffic.
- E. No blasting may be performed without a blasting plan approved by the Borough. If blasting activities are performed pursuant to an approved blasting plan, then such operations shall be performed by persons authorized by all federal, state, county, and local authorities to undertake such activities and shall be carried out

in strict accordance with federal, state, county, and municipal laws or regulations governing the same.

- F. Appropriate measures must be taken to provide access for emergency vehicles and to all properties affected by the work.

§ 180-23 Pavement cut, excavation, and backfill.

- A. Cuts through bituminous wearing surfaces shall be scored on a neat, straight line to the full trench width, using either a pneumatic spade or a concrete saw. Cuts through concrete shall be sawed to a sufficient depth to enable removal of concrete with a clean saw break.
- B. Excavated material shall be removed immediately or laid off the cartway surface to cause as little inconvenience as possible to public travel. Pedestrian sidewalks shall be kept clean and free of obstruction, and, where necessary, temporary bridging or plank walkways shall be provided. Excavated material not suitable for backfill shall be immediately removed as excavation is in progress. Construction material shall not be stored in the public street except immediately in advance of installation. Loose earth and stone shall be promptly cleaned from the streets and sidewalks, and dust shall be regularly swept up and removed.
- C. Sidewalls of a trench under 4 feet in depth shall be kept as nearly vertical as possible. When over 4 feet in depth, the trench shall comply with the requirements established by Occupational Safety and Health Administration standards.
- D. Backfilling. An opening shall be backfilled by the permittee in accordance with the following:
 - (1) The opening may first be backfilled with fine aggregate materials, meeting the requirements of Section 703.1 of PennDOT Publication 408, or granular material to protect the facility, placed to a height not to exceed one foot over the top of the facility, if the material is compacted to not more than 4 inch loose layers or as authorized under PennDOT Publication 408. To help protect its facility from future excavations, the permittee is required to place a permanent ribbon colored under this subsection at least one foot above its facility. If the facility is nonmetallic, the permittee is also required to place a metallic ribbon at a depth from which the ribbon can be sensed by typical metal locating instruments.
 - (2) The opening shall then be backfilled with select granular material, unless retained suitable materials, as defined in Section 459.1 (relating to definitions), is authorized or other coarse aggregate material meeting the requirements of Section 703.2 of PennDOT Publication 408 is specified in the permit. Select granular material or other aggregate material will be required for use as backfill

of openings in pavements, paved shoulders, and improved (for example, oil and chip) shoulders as well as unimproved (for example, stabilized or earth surface) shoulders within three feet of the edge of pavement. Retained suitable material will normally be authorized for use as backfill of openings outside shoulders and in unimproved shoulders more than 3 feet outside the edge of pavement and up to within 3 feet of the surface.

(3) Backfill should be compacted as follows:

- a. General Rule. Except as provided in Subsection D(2) above, backfill material shall be placed in loose layers not to exceed 8 inches if vibratory compaction equipment is used or as authorized under PennDOT Publication 408. Each layer shall be thoroughly compacted to preclude subsidence, under Section 601.3(e) of PennDOT Publication 408.
- b. Compaction Outside Pavement Shoulders. At least 15 days prior to the start of work, the applicant may submit its written compaction plan to the Borough requesting backfill in an opening outside the pavement and shoulder to be placed in layers thicker than eight inches prior to compaction. The compaction plan shall include full details of equipment, materials and work methods as well as the permittee's acknowledgement of its obligation and commitment to regularly monitor the restored surface until 18 months after the acknowledged completion of the permitted work and to promptly correct failure or subsidence of the street.
- c. Existing Pavement Elevation. Compaction shall be completed to the bottom elevation of the existing pavement.

(4) The Borough may require the permittee to have material proposed for use as backfill and compacted material tested, at the expense of the permittee, for conformance to the applicable gradation and compaction requirements of PennDOT Publication 408.

(5) Test holes shall be backfilled, as soon as safely possible, with existing type material or other material authorized by the Borough and sealed. The Borough may authorize test holes in the pavement or shoulder to be restored without a 1 foot cutback of the surrounding surface.

E. All cuts, excavation, and backfill shall be performed to the satisfaction of the Public Works Superintendent, who may develop additional work standards in consultation with Borough Engineer.

§ 180-24 **Restoration of bituminous pavement.**

- A. Temporary repairs to bituminous pavement shall consist of the trench being backfilled with select granular material and topped with at least 3 ½ inches of cold patch. In all cases, the permittee is responsible for keeping temporary pavement repairs in good condition, free of chuck-holes and soft spots, and to clean the street surface of any debris or earth which may be carried over the street.
- B. Final pavement restoration shall be made only between April 1 and October 31 each year. If, because of weather conditions or time of year, temporary paving and natural stone or gravel are utilized, these temporary materials must be removed to a depth of at least 13 inches below finished street paving grade. All temporary materials shall be removed and replaced with permanent repairs as soon as weather conditions permit. All permanent repairs shall be made as follows.
 - (1) If the trench length does not cross the center line of the cartway, the entire disturbed lane shall be milled to a depth of 1.5 inches and repaved after the trench has been properly backfilled and binder installed as per the trench restoration detail(s) included as appendices to the Borough's Subdivision and Land Development Ordinance. In areas where the trench runs along or crosses the center line of the cartway the entire pavement width (curb-to-curb width) of the affected street shall be milled (as needed) and repaved with wearing. All paving shall run a length of at least ten feet in excess of trench length on each side of the disturbed area and be properly keyed in and sealed.
 - (2) All restoration of bituminous pavement shall be performed to the satisfaction of the Public Works Superintendent, who may develop additional work standards in consultation with Borough Engineer.

§ 180-25 **Restoration of other surfaces.**

- A. Requirements for permanent repairs to surfaces other than bituminous pavement will be determined by the Public Works Superintendent, who may in consultation with the Borough Engineer and Borough Council develop additional work standards. In general, final restorations in any case shall be equal to the original surface.
- B. Sidewalks must be replaced to meet criteria in Article II of this Chapter, including the requirement to apply for a sidewalk permit, prior to pouring the concrete. The sidewalk subbase and forms must be inspected and approved.
- C. Brick pavement shall be restored to good condition as per the Borough's brick pavement specifications and details.

§ 180-26 **Standards for the installation of pipe and other utilities.**

All work shall be completed as per the standards approved by the Borough Engineer and be in conformance with PennDOT Publication 408, the Pennsylvania Public Utility Commission, and the Pennsylvania Department of Environmental Protection Standards.

§ 180-27 **Violations and Penalties.**

Any person, firm, or corporation who shall violate any provision of this article or fails to comply therewith or with any of the requirements thereof, upon conviction thereof in an action brought before a Magisterial District Judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not less than \$100 nor more than \$1,000 plus costs, including reasonable attorneys' fees incurred by the Borough, and, in default of payment of said fine and costs, to a term of imprisonment to the extent permitted by law for the punishment of summary offenses. A separate offense shall arise for each day or portion thereof in which a violation of this article is found to exist and for each section of this article found to have been violated. The Borough may also commence appropriate actions in equity to prevent, restrain, correct, enjoin or abate violations of this article. All fines and penalties collected for violations of this article shall be paid to the Borough Treasurer. The initial determination of ordinance violation is hereby delegated to the Borough Manager, the Police Department, the Code Official, the authorized designee of the Borough Manager, and to any other officer or agent that the Borough Manager or the Borough Council shall deem appropriate.

SECTION 2. All ordinances or parts of ordinances pertaining to the subjects covered by this ordinance shall remain in full force and effect, except to the extent which they are inconsistent herewith in which case this ordinance shall control. The provisions of this ordinance shall not affect any suit or prosecution pending or to be instituted to enforce any of the prior ordinances.

SECTION 3. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decisions shall not affect the validity of the remaining portions of this ordinance. The Borough Council hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

SECTION 4. This Ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect in accordance with applicable law.

ORDAINED and **ENACTED** into law by Borough Council of the Borough of Franklin Park, Allegheny County, Pennsylvania, at its meeting held on the _____ day of _____, 2023.

ATTEST:

BOROUGH OF FRANKLIN PARK

Secretary

By: _____

President

Approved by me this _____ day of _____, 2023.

Mayor