

BOROUGH OF FREEMANSBURG  
NORTHAMPTON COUNTY, PENNSYLVANIA

Ordinance #2021-003  
(Duly Adopted August 10, 2021)

AN ORDINANCE OF THE BOROUGH OF FREEMANSBURG AMENDING ORDINANCE NUMBER 2020-004, WHICH IS AN ORDINANCE SETTING FORTH STANDARDS FOR OPENING OR OCCUPYING A PUBLIC STREETS AND RIGHT OF WAY, ESTABLISHING PERMIT, RESTORATION, SECURITY REQUIREMENTS, AND PROVISIONS FOR VIOLATIONS AND PENALTIES.

**WHEREAS,** The Borough of Freemansburg is a Municipal Corporation with Offices located at 600 Monroe St. Freemansburg, Northampton County Pa. 18017; and

**WHEREAS,** The Borough desires to proactively monitor and regulate the opening and occupancy of its streets thereby protecting the health and safety of the citizens of the Borough, the public, the integrity of the utilities and the public Rights-of-Ways; and

**WHEREAS,** The Borough desires to enact the following standards and requirements for excavation, construction or any disturbance of the streets within the Borough of Freemansburg.

**I. DEFINITIONS**

**A.** As used in this Ordinance, the following terms shall have the meanings indicated:

**Access:** Any means for passage of vehicles between property abutting a street and the street. It shall be deemed to include only that portion of the driveway or access road that lies within the established right-of-way limits of the street.

**Administrative Staff:** An employee(s) of the Borough who reviews and files documents and, collects and processes Security.

**Applicant:** Any person who makes application for a Permit under the provisions of this, and/or any other Ordinance(s).

**Borough:** The Borough of Freemansburg, County of Northampton, Commonwealth of Pennsylvania. This term shall include the terms Administrative Staff and Inspector(s).

**Construction:** Build, install, work, or (re)place any material(s) or facility(s) within, under or above a street within the Borough, which could interfere with the public's use of said street.

**Emergency:** Any unforeseen circumstances or occurrence, which constitutes a clear and immediate danger to persons or properties.

**Excavation:** Digging or trenching within, under, or above any street or, cutting into or opening and/or removing any pavement surfaces or subsurface of any street. This term includes any work on a street.

**Facility or Facilities:** any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under, or above the Street, which is used or designed to be used to deliver, transmit or otherwise provide utility or any other type of service.

**Inspector(s):** An agent, consultant, employee, or engineer designated by the Borough to review, deny, issue, inspect, and/or enforce applications and permits, excavation/construction activities associated with a Street Opening or Occupancy, and the restoration thereof, pursuant to the standards and requirements of this, and/or any other Ordinance(s).

**Irrevocable Letter of Credit ("Letter of Credit"):** Is a guarantee for payment issued by a bank, which cannot be cancelled during some specified time.

**Municipal Authority:** Any special purpose governmental unit incorporated and/or created pursuant to the laws of the Commonwealth of Pennsylvania, including but not limited to the Pennsylvania Municipal Authorities Act.

**Permittee:** Any person who has been issued a permit under this Ordinance.

**Person:** Shall include, without limitation, any applicant, association, authority, corporation, estate, firm, governmental agency, joint venture, limited liability company, municipal authority, natural person, partnership, permittee, public utility commission, property owner, trust, or and/or any other entity.

**Public Utility Company:** Any entity subject to the jurisdiction and control of the Pennsylvania Public Utility Commission or the Federal Communications Commission.

**Security:** Any escrow(s), fee(s), or letter of credit ("letter of credit") required by this, and/or any other Borough Ordinance and Resolution. Security is established by an applicant/permittee to guarantee that the applicant/permittee complies with the standards and requirements contained herein. Security also helps cover the Borough's Administrative Staff and Inspector costs for processing and verifying compliance of an application and/or permits.

**Street:** Any avenue, boulevard, lane, parkway, road, viaduct, or other way for the movement of vehicular traffic which is an existing State, County, or Borough roadway, or way shown upon a plan and includes the land between street or right-of-way, whether unimproved or improved, with pavement, gutters, sidewalks, curbs, parking areas and/or other areas within.

**Street Occupancy:** Any construction or excavation to establish access from an abutting property to a street, which access will be used by vehicles as a means of ingress or egress to said street. It shall be deemed to include only that portion of the driveway or access road that lies within the established right-of-way limits of the street.

**Street Opening:** Any construction or excavation within, under, or above any street or, the cutting into or opening and removal of any of the pavement surfaces and/or subsurface, curbs or sidewalks within the right-of-way of any street within the Borough, which does not fall within the definition of "street occupancy".

## II. RESTRICTIONS

- A. Opening a New Street:** No Permit shall be issued by the Borough which would allow a Street Opening or Occupancy on a paved and improved Street surface that is less than five (5) years old unless, the Applicant can clearly demonstrate that public health or safety require that the proposed work be permitted or, an emergency condition exists. This section applies to any Street that has received a surface treatment within the previous five (5) year period, including but not limited to topcoat paving or chipping and sealing. For new Streets dedicated to the Borough, the five (5) year period begins from the point of the Borough's formal acceptance of the Street. The Borough shall have the right, but in no event any obligation, to grant exceptions to this section for non-emergency situations following receipt of a written request from an Applicant outlining the justification for the requested exemption.

### III. APPLICATION AND APPLICANT

- A. Application:** Street Opening/Occupancy Permit Applications ("Application") are available upon request, during normal business hours, at the Borough's administrative offices located at 600 Monroe Street, Freemansburg PA. 18017. Applications are also accessible, via PDF, on the Borough's website [www.boroughoffreemansburg.org](http://www.boroughoffreemansburg.org).
- B. Duties and Responsibilities of Applicant:** It shall be the duty and responsibility of an applicant to:
1. Submit a completed application, including all required supporting documentation to the Borough;
  2. Pay the required non-refundable application fee upon submission of an application;
  3. Provide any additional application documentation requested by the Borough;
  4. Make certain that no work commences until an application has been approved and a Permit has been issued.

**C. Denial of Application:** The Borough, at its sole discretion, reserves the right to deny an application for, but not limited to, any of the following:

1. The applicant's application was incomplete or did not meet the requirements of this, and/or any other Ordinance(s);
2. The Street Opening or Occupancy proposed by the applicant poses a health and safety risk to the public;
3. The applicant had defaults with a previous Street Openings or Occupancy Permit;
4. The applicant had prior violations of this, and/or any other Ordinance(s).

#### **IV. PERMIT AND PERMITTEE**

**A. Permit:** Street Opening or Occupancy Permits ("Permits") shall only be issued by the Borough or Inspector(s). It shall be unlawful for any person to make a Street Opening or Occupancy of any kind within, under, or above a Street without first securing a Permit from the Borough. A separate Permit is required for each Street Opening or Occupancy. The Borough, at its sole discretion, may issue a Permit to an Applicant who meets the standards and requirements of this, and/or any other Ordinance(s).

**B. Duties and Responsibilities of Permittee:** It shall be the duty and responsibility of any Permittee to:

1. Pay all Security required by the Borough prior to the acceptance of an Application or issuance of a Permit;
2. Only perform the work specified in the Permit;
3. Only perform work during the dates and times specified in the Permit;

4. Comply with all standards and requirements in this, and/or any other Ordinance(s);
5. Post a copy of the Permit in full view of the public at all times while such work is in progress at the location for which said Permit was granted;
6. Agree that if it becomes necessary to construct, reconstruct, maintain, change the grade of or otherwise alter an existing Street or Facility in such a manner that relocation, removal, and/or replacement of a Street or Facility is required, such relocation, removal, and/or replacement shall be made by the Permittee at his/her own expense.

**C. Permit Limitations:** Except upon written approval from the Borough, a Permittee shall not perform any work greater than that specified in the Permit. Additional, work beyond that originally authorized by the Permit may only be performed under the provisions of the Permit in such an amount as the Inspector shall deem appropriate and necessary to complete the work. Security posted in connection with the original Permit will be utilized to cover any additional costs incurred by the Borough (i.e., administrative and/or inspection costs, default restoration costs, etc.), if applicable. Further, the Inspector may require the Permittee to provide the Borough with additional Security prior to the commencement of additional work.

**D. Revocation of Permits:** Each permit issued by the Borough constitutes a revocable permission to open or occupy a Street. A Permit may be revoked by the Borough upon notice to the permittee, whether written or verbal, for, but not limited to, any of the following:

1. The Permittee violated any condition of the permit or any provision of this Ordinance;
2. The Permittee violated any other applicable Ordinance(s);
3. The actions of the Permittee posed a health and safety risk to the public;
4. The Permittee actions constituted or created a public nuisance;
5. The Permittee failing to replenish the Security required by this Ordinance.

- E. **Expiration of Permit:** Every Permit shall expire within 90 days from the date the Permittee was notified that the Permit was approved and ready for pick up.
- F. **Extension of Permit:** If the Permittee does not complete the work within the 90-day period, the Permittee may request, in writing, an extension of time for Permit from the Borough. The Permittee must state the reasons for the extension request. If in the opinion of the Borough such an extension is necessary and not contrary to the public's interest, the Permittee may be granted additional time for the completion of the work. In the event that the Borough does not agree to an extension of the time to complete the work, the Permit shall be deemed expired following the 90-day period.
- G. **Permits Nontransferable:** Permits are not transferable from one person or entity to another, and the street opening or occupancy shall not be made in any place other than the location(s) specifically designated in the Permit.

## V. SECURITY

- A. **General:** Excluding the amount required for Letters of Credit, the breakdown of fees and costs for an Application and Permit shall be as listed in the Borough's fee schedule, which may be updated from time to time, via Resolution of the Borough Council. All Security shall be provided to the Borough prior to the issuance of a Permit.
- B. **Application Fee:** Is a non-refundable fee that is due upon the submission of an Application. Application fees help cover the Borough's administrative costs for its staff to process and verify compliance of an Application and/or Permit.
- C. **Permit Fee:** Is a non-refundable fee that is due following the approval of an Application and prior to the issuance of the Permit. Permit Fees cover the Inspector's costs to process and issue a Permit.
- D. **Restoration Escrow:** Is a fee(s) that is due following the approval of an Application and prior to the issuance of the Permit. Restoration Escrow Fees also guarantee

that the Street Opening or Occupancy is restored to the standard required by this, and/or any other Ordinance(s). The Restoration Escrow, or a portion thereof, will be utilized if necessary, to cover defaults and/or deficient escrow accounts. Otherwise, the Restoration Escrow, or a portion thereof, may be refundable. Restoration Escrow is not required if a Letter of Credit is obtained from the Permittee.

- E. **Letter of Credit:** A Letter of Credit is required when the cost to restore a Street from an Opening or Occupancy would exceed the Restoration Escrow amount required for the Permit. Typically a Letter of Credit is needed when a Permittee is required by this Ordinance to repave the entire Street or Block. The Letter of Credit may be required by the Borough, to guarantee that any Street Opening or Occupancy is restored to the standard required by this, and/or any other Ordinance(s). The Inspector shall determine the amount of funds required for the Letter of Credit. The Borough's Solicitor shall approve all Letters of Credit prior to the issuance of the Permit. The Letter of Credit, or a portion thereof, will be utilized if necessary, to cover defaults and/or deficient escrow accounts.
  
- F. **Inspection Escrow:** Is a fee(s) that is due following the approval of an Application and prior to the issuance of the Permit. The Inspection Escrow covers the Inspector's costs to inspect work and restoration authorized by a Permit. Inspection Escrow Fees also guarantee that the Street Opening or Occupancy is restored to the standard required by this, and/or any other Ordinance(s). The Inspection Escrow, or a portion thereof, will be utilized if necessary, to cover defaults and/or deficient escrow accounts. Otherwise, the Inspection Escrow, or a portion thereof, may be refundable.
  
- G. **Replenishment of Escrow:** Upon the Borough forwarding the Permittee an invoice for Borough's expenses incurred from the Opening or Occupancy, the Borough is authorized and shall have the unilateral right to withdraw monies from any Escrow to cover the Borough expenses set forth in the invoice(s). The Permittee shall replenish escrows by promptly paying the invoice. Said payment will be deposited into the appropriate escrow account.



- H. Reimbursement:** Upon notification by the Inspector that all work authorized by the Permit has been completed and restored in compliance with the standards and requirements of this, and/or any other Ordinance(s), the Borough will reimburse the Permittee any unused Security. In no event shall the Application Fee, Permit Fee, or any portion of any escrow that was utilized by the Borough to perform services or pay for expenses be reimbursed.

## **VI. INSURANCE**

- A. General Requirements:** Applicants shall provide the Borough with proof that insurance coverage is in place, indicating that the Permittee, the Borough and the Borough's representatives are insured against claims for damages for personal injury as well as against claims for property damages, which may arise from or out of the performance of the work, whether such performance be by the Permittee, or anyone else directly or indirectly employed by the Permittee. The Permittee shall provide copies of its insurance policy, endorsement(s), and the declaration page(s) for the coverage of the Borough, and its representatives are named as additional insureds. Insurance binders shall also be acceptable in lieu of providing the actual policies, endorsement(s), and declaration pages. This information shall be delivered to the Borough for review when the Application is delivered to the Borough. Evidence of the renewal of each such policy shall be provided to the Borough for a Permit to be valid. The insurance coverage requirements are as follows:

1. Such insurance shall cover all manner of liability, including but not limited to collapse, explosion hazards, and underground work by equipment of the street, and shall include protection against liability arising from completed operations;
2. Commercial general liability (includes bodily injury and property damage): limit \$1,000,000 per occurrence; \$2,000,000 in the aggregate, with the Borough of Freemansburg, Northampton County, Pa. listed as additional insured on a primary noncontributory basis; explosion/collapse not excluded;
3. Commercial automobile liability: \$1,000,000 combined single limit, with the Borough listed as additional insured on a primary noncontributory basis;

4. Workers compensation limit per statute; employer's liability: \$1,000,000, all three parts; waiver of subrogation in favor of the Borough from the policyholder;
5. Excess or umbrella liability: \$2,000,000; form follows overall coverage shown above and contains no additional exclusions.

**B. Special Exemptions:** A Public Utility Company, Municipality, or Municipal Authority may be relieved of the obligation of submitting such evidence of insurance coverage if it submits satisfactory evidence that said Public Utility Company or Authority and the Borough and its representatives are insured or have adequate provision for self-insurance of itself, the Borough and the Borough's representatives in accordance with the requirements of this Ordinance. Evidence of self-insurance must be acceptable to the Borough Solicitor. A Public Utility Company, Municipality, or Municipal Authority may submit annually such evidence of insurance coverage or adequate provision for self-insurance of itself in lieu of individual submissions for each Permit.

## VII. NOTIFICATION REQUIREMENTS

- A. Inspector:** The Permittee shall notify the Inspector, in writing, 15 business days prior to the commencement of any work.
- B. Abutting or Adjoining Properties:** If the work to be undertaken by the Permittee will affect the use of properties abutting or adjoining the area of the Opening or Occupancy, the Permittee shall provide written notification to the affected property owners and/or tenants of the proposed work to be done. This notice shall be given not less than 48 hours prior to the commencement of any work.
- C. Owners of Facilities:** If the work to be undertaken by a Permittee will affect other subsurface facilities in the vicinity of the proposed Opening or Occupancy, the Permittee shall notify the owners of such facilities of the proposed work.

- D. Municipal Notification:** The Permittee shall notify the Borough's Police Department and Public Works Department, in writing, 48 hours prior to the commencement of any work. Such notification shall state the nature of the work to be done, proposed beginning and completion dates, location of such projects, and the type and extent of street closures.
- E. County Notification:** In the event of a street closure, whether partial or full, the Permittee shall notify the Northampton County 911 Center, by phone at (610)759-2200, 2 hours prior to any street closure. Such notification shall state the nature of the closure, date(s) and time(s) of closure, location of closure, and the detour route, if applicable. County Notification is of the utmost importance because, street closures can delay the response of emergency service providers if they are unaware of a street closure or detour. The Northampton County 911 center will insure proper notification is made to all applicable emergency service providers.

#### **VIII. STREET OPENING/OCCUPANCY STANDARDS AND REQUIRMENTS**

- A. Performance:** Any Street Opening or Occupancy Permit which shall be issued under this Ordinance shall be made conditional upon the Permittee performing the work in accordance with the plans approved by the Borough and the standards and requirements established herein, by the Borough's Subdivision and Land Development Ordinance ("SALDO"), any and all additional regulations relating thereto adopted by the Borough where applicable, and the driveway regulations of the Pennsylvania Department of Transportation.
- B. Hours of Operation:** Except in the case of an Emergency or by written authorization from the Inspector, work shall only be performed as follows:
  1. Monday through Friday: 7:00 a.m. to 4:00 p.m.
  2. No work may be performed on any Saturday, Sunday or legal holiday.
- C. Worksite:** Worksite conditions is of the utmost importance to the Borough for the safety of workers, Borough residents, and the public. Thus, a Permittee is required to keep the worksite in the following conditions:

1. All street openings or associated occupancies shall be closed or covered with a steel plate(s) at the end of a workday or when an opening or occupancy is left unattended.
2. All obstructions (i.e., equipment, construction vehicles, material(s), etc.) shall be removed from the worksite and/or street at the end of a workday. Exceptions to this section are granted only in an emergency or when written permission is obtained in advance from the Inspector.
3. The worksite and surrounding area shall be cleaned at the end of each workday of all mud, debris, and other obstructions.
4. At the conclusion of the project, the worksite and surrounding area(s) shall be cleaned and returned to the pre-construction condition.

If a worksite is left at any incomplete stage for over 24 hours, it may be deemed contrary to the public's best interest by the Borough and be subject to the Borough's rights and remedies outlined in this Ordinance, including but not limited to those concerning revocation of permits.

- D. **Inspection:** All Street Opening and Occupancy activities shall only be performed under the supervision and direction of the Inspector. Whenever the Inspector shall find that work was not done in a manner serving the best interest of the community or the Borough, or in compliance with the standards and requirements of this Ordinance, the Permittee shall, upon request of the Inspector, bring such work into compliance as deemed necessary by the Inspector.
- E. **Restoration:** All restoration shall be performed under the supervision and direction of the Inspector. If restoration requires changing the grade of or otherwise altering an existing Street in such a manner that removal or replacement of a Street, or a portion thereof is required, such removal or replacement shall be made by the Permittee at the Permittee's expense.

1. **Construction and Excavation Restoration:** Construction and excavation restoration is the backfilling and grading of trenches and/or Street Openings. All openings and trenches shall be backfilled and tamped as per PennDot specifications. All materials utilized for backfilling an opening or trench shall be PennDot approved materials.
2. **Paving Restoration:** Paving restoration is the final paving or finish paving of a Street following any Construction or Excavation activities. Existing paving shall be milled one (1) foot around the opening, topped with a wearing course and sealed. All openings and trenches shall be paved as per PennDot specifications. All materials utilized for paving shall be PennDot approved materials.
3. **Additional Restoration Required:** It shall be at the expense of the Permittee to repave the entire street if:
  - a. a Street Opening or Occupancy extends more than half the block or the entire block (i.e, the Street);
  - b. a Permittee's Permit has more than five (5) Street Openings or Occupancies within one (1) block on any Street in the Borough;
  - c. a Permittee has four (4) prior Street Opening or Occupancy Permits within one (1) block on any Street in the Borough within the past 18 months.

Note: for the purpose of this section, one (1) Opening or Occupancy shall be considered any single area more than five (5) square feet.

- F. **Street Closure:** Permittee's shall make every effort to keep all Streets open to at least one lane of travel. In the event total Street closure is unavoidable, appropriate traffic control and detours shall be established and the Borough and/or Inspector shall approve all detour routes prior to the issuance of a Permit.
- G. **Traffic Control:** in the event a Street closure (whether partial or full) is unavoidable and in the opinion of the Borough or Inspector the closure may cause or create traffic safety issues, the Permittee shall provide trained traffic control personnel in

appropriate attire to direct vehicular traffic. In the event that a Permittee fails to provide traffic control required by the Permit or, a Street Opening or Occupancy Permit that initially did not require traffic control is causing or creating traffic safety issues as a result of the Street Opening or Occupancy, the Borough has the right to provide immediate traffic control services to address the traffic safety concerns, at the expense of the Permittee. Any road closure requires a traffic plan.

- H. **Detours:** In the event that the road closure requires a detour route, the Permittee is required to provide all necessary detour signs required to effectively detour traffic. Any detour requires a detour plan.

## IX. CURBS AND SIDEWALKS

- A. **General:** The provisions of this Ordinance shall not apply to the setting or resetting of curbstones, laying or relaying of sidewalks or footways, driveway aprons or gutters on or a street where such work is the obligation of a sub divider or developer under the Land Subdivision Regulations, before the Borough's acceptance of the street, curbing, sidewalk, etc.
- B. **Duty of Owner:** It shall be the duty of every owner of a parcel of real estate, and they are hereby required, prior to the setting or resetting of curbstones, laying or relaying of sidewalks or footways or gutters on or along any street in the Borough, to make application to the Borough for Opening or Occupying a Street. Once a Permit is obtained, the Inspector will survey and fix the line and grade for the setting or resetting of curbstones, the laying or relaying of sidewalks or footways or gutters. The Inspector will notate on the inspection report the date when such survey was made, and such endorsement by the Inspector shall be sufficient authority for such owner, contractor or laborer to commence and complete along such lot or ground as may be described in such inspection report and in accordance with the standards and requirements established by Ordinance or Resolution, to set or reset curbstones, lay or relay sidewalks or footways and gutters, for which such Permit has been granted.
- C. If any curbing, sidewalks, footways or gutters were constructed after the date of adoption of these standards and requirements relating to line and grade set forth

in this Ordinance, and these standards and requirements are not met, the Borough shall have the authority to require that the owner of the property or properties whose land the curbing, sidewalks, footway or gutters pass or upon whose land it abuts, remove the curb, sidewalk, footway or gutter and require that said owners shall install a curb, sidewalk, footway or gutter in compliance with this Ordinance. If the owner of the lots or real estate shall not within 90 days of the receipt of written notice from the Borough remove and reinstall curb, sidewalk, footway or gutters as requested by the Borough, the Borough shall have the right to remove and reinstall said curb, sidewalk, footway or gutter and assess the owners of the property or properties through which the said improvement passes or upon whose land it abuts for the cost thereof according to the front foot rule. If the owner or owners shall refuse to pay the assessment within 90 days of the receipt of notice, the Borough Solicitor shall collect the same, with interest from 30 days after the completion of the improvement, by action of assumpsit, or by lien to be filed and collected in the same manner as municipal claims.

**X. EXCEPTIONS:**

- A. Municipal Utility Work:** All street excavation or construction work required by utilities owned and/or operated by the Borough shall be in accordance with the standards and requirements of this, and/or any other Ordinance(s) and, under the direction of the Inspector. Security requirements of this Ordinance shall not be applicable to any openings or occupancies made by the Borough.
- B. State and County Highways, Private Roads:** The provisions of this Ordinance shall not be applicable in those instances where the Street is maintained by the Commonwealth of Pennsylvania or by the County of Northampton. For such Streets, work shall not commence until all applicable Permits are obtained from either the Commonwealth of Pennsylvania or the County of Northampton, as applicable.
- C. Private Street:** When work is proposed within a private Street, no Permit is required under this Ordinance, but the work performed shall comply with all other Ordinances, if applicable.

- D. Emergencies:** In case of an emergency arising at night, on weekends or holidays, or at such time the Borough's Administrative Offices are closed and, an immediate Street Opening or Occupancy is necessary for the protection of life and property, a person maintaining facilities within, under, or above the surface of any Street may proceed with a street opening or occupancy without first obtaining a permit. However, a street opening or occupancy may only be made upon the express condition that a Permit Application required by this, and/or any other Ordinance(s) be made on the first regular business day on which the Borough office is open for business and, said Permit shall be retroactive to the date when the work began. Emergencies do not exempt a person from any other standard or requirement of this, and/or any other Ordinance(s).

## **XI. OWNERS OF FACILITIES**

- A. Location of Facilities:** Every person owning, using, controlling or having an interest in Facilities within, under, or above any Street used for the purpose of supplying or conveying gas, electricity, communication signals (including television cable, Internet, fiber optic and telephone), sanitary sewerage, water or steam to or from the Borough or to or from its inhabitants, or for any other purposes, shall file with the Borough within 120 days after the adoption of this Ordinance, plans or "as built prints" containing the names of the Borough's streets wherein the aforementioned facilities owned by such a person are located. The presented prints shall show the location and depth of existing facilities.
- B. Abandoned Facilities:** Whenever any facility or other structure within, under, or above any Street is abandoned, the person owning, using, controlling or having an interest therein shall, within 30 days after such abandonment, file a written statement with the Borough giving in detail the location of the facility(s) so abandoned.

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



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

## **XII. RIGHTS OF THE BOROUGH**

- A. General:** Permits shall be granted subject to the rights of the Borough or any other person to lawfully use the street for any purpose not inconsistent with the Permit. The Borough shall also have the right to require that Permittees allow reasonable additional uses of said permittee's facilities and trenching in order to avoid duplication of facilities, work and congestion of said streets.
- B. Defaults:** Whenever the Inspector shall find a default with any term or condition of the Permit or this Ordinance, including failure to complete the work within the time granted by the Permit, written notice thereof shall be given to the Permittee. Such notice shall state the work to be done and the amount of time deemed by the Inspector to be reasonably necessary for the completion of the work. After receipt of such notice, the Permittee must, within the time therein specified, complete the work required in the notice. Failure to complete this work by the specified date will subject the Permittee to the Penalties and Violations provisions of this Ordinance. In the event that the default has created a condition that the Inspector deems to be a threat to the public health, safety or welfare, including a condition of an emergency nature, no notice must be provided of the default, and the Borough shall have the right to exercise all available remedies without first having provided written notice. The Borough shall have the absolute right to draw on the Permittee's Security for all expenses incurred in curing a default caused or created by the Permittee, including but not limited to restoring the street (including restoration during a post-completion maintenance period) and all costs and expenses of attorneys and experts retained by the Borough.
- C. Indemnification:** All permittees shall be deemed to have agreed to exonerate, indemnify, protect, defend (through legal counsel of the Borough's choice) and

save harmless the Borough and the Borough's representatives from any and all claims pertaining to, relating to, resulting from, caused by or arising out of:

1. the design, construction (including but not limited to materials and workmanship) or operation of the improvements within the street, including but not limited to any alleged negligence of the Borough or Borough representatives, for damages or injuries, including death, to person or properties pertaining to, relating to, resulting from, caused by, arising out of or sustained in connection with the design, construction or operation of the improvements within the street;
2. the failure of the applicant or applicant's agents, contractors, employees, heirs, executors, representatives, successors and assigns to comply with the terms of the permit for construction of the improvements;
3. defects in materials and/or workmanship or for or on account of any accident or other act, negligent or otherwise, or omission of the applicant or his/her/its agents, servants, consultants, independent contractors or employees.

### **XIII. ENFORCEMENT**

- A. The provisions of this Ordinance shall be enforced any public officer authorized to enforce ordinances.
- B. Any violation of this Ordinance may be cause for a notice of violation and/or a citation to be issued to the violator.
- C. A notice of violation or citation shall be served upon a violator by handing it to the violator, by handing it at the residence of the person to be served to an adult member of the household or other person in charge of the residence, by leaving or affixing the notice or citation to the property where the violation exists, by handing it at any office or usual place of business of the violator, to his/her agent or to the person for the time being in charge thereof, or by mailing the notice or citation to the violator's address of record.

#### **XIV. VIOLATIONS AND PENALTIES**

- A.** Any person violating any of the provisions of this Ordinance shall, upon conviction, pay a fine not to exceed \$1,000 for each offense, plus the costs of prosecution, and attorneys' fees. Each day that a violation of this Ordinance continues shall be deemed a separate offense. The Borough, by means of other appropriate legal proceeding, including a complaint in equity, may compel any person to comply with this, or seek any such other relief as any court of competent jurisdiction is empowered to afford.
- B.** Any person who has made a Street Opening or Occupancy within the Borough without first obtaining a Permit shall, upon conviction, pay a fine not to exceed \$1,000 for each offense, plus the costs of prosecution, and attorneys' fees. The person shall then be required, on or before 12:00 pm of the next business day, to obtain an Application and Permit required by this, and/or any other Ordinance(s). The Permit shall cover retroactively such work as has been performed. This previously performed work shall be brought into compliance with all Borough standards and requirements contained herein.
- C.** When a Permit has been revoked or the Borough does not agree to an extension of the Permit to complete the work, and the work authorized by the Permit has not been completed, the Borough may do such work as is necessary to restore the street or part thereof to as good a condition as before the Street Opening or Occupancy was made. All expenses thereby incurred by the Borough shall be recovered from the Permittee, including but not limited to the Borough's attorneys' and experts' fees. The Borough shall have a unilateral right to draw on the permittee's security for all expenses incurred in restoring the street, or portion thereof, under this Ordinance.

#### **XV. CITATION APPEALS PROCESS**

- A.** A person in receipt of a citation may appeal to the Magisterial District Court as set forth on the citation.

**XVI. SEVERABILITY**

- A. If any section, subsection, provision, paragraph, or word of this Ordinance is invalidated by any court of competent jurisdiction, the remaining sections, subsections, provisions, paragraphs, or words shall not be affected and shall remain in full force and effect.

**XVII. REPEALER**

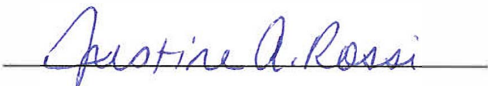
- A. All other Ordinances or parts thereof inconsistent with this Ordinance be and the same are hereby repealed to the extent of such inconsistency.

**XVIII. EFFECTIVE DATE**


- A. This Ordinance is effective immediately.

**DULY ORDAINED** and **ENACTED** this 10<sup>th</sup> day of August, 2021

ATTEST: The Borough of Freemansburg

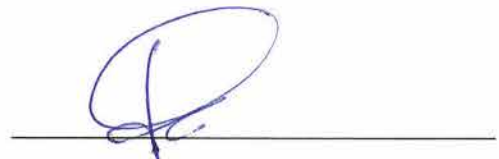
A handwritten signature in blue ink, reading "Justine A. Rossi", is written over a horizontal line.

Justine A. Rossi, Borough Secretary

A handwritten signature in blue ink, reading "Homer G Lorrach", is written over a horizontal line.

Homer G Lorrach, Council President

Municipal Seal

A handwritten signature in blue ink, reading "Donald Lasso", is written over a horizontal line.

Donald Lasso, Mayor

### ***CERTIFICATION***

I, JUSTINE A. ROSSI, the undersigned, Secretary of the Borough of Freemansburg, Northampton County, Pennsylvania (the "Borough") certify that the foregoing is a true and correct copy of a Resolution of the Borough which was duly enacted by affirmative vote of the majority of the members of Borough Council at a meeting duly held on August 10, 2021, and that said Resolution remains in effect, unaltered and unamended, as of the date of this certificate.

I further certify that Borough Council met the advance notice requirements of Act No. 93 of the General Assembly of the Commonwealth of Pennsylvania, approved October 15, 1998, by advertising the date of said meeting and posting a notice of said meeting on the bulletin board at the Municipal Building, 600 Monroe Street, Freemansburg, Pennsylvania 18017.

**IN WITNESS WHEREOF**, I set my hand and affix the official seal of the Borough this 10th day of August, 2021.

  
\_\_\_\_\_

Justine A. Rossi, Borough Secretary

Municipal Seal