

SCHWENKSVILLE BOROUGH

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REPEALING ARTICLE IV STREET STANDARDS, EXCAVATIONS AND PERMITS AND REPLACING THE SAME BY ADOPTION OF THE FOLLOWING

ARTICLE IV

**Street Standards, Excavations and Permits**

**§ 143-24. Unlawful to open or excavate certain portions of streets.**

It shall be unlawful for any person to open or to make any excavation of any kind in any street in the Borough of Schwenksville [“the Borough”], except in and upon those portions thereof established for the use of vehicles.

**§ 143-25. Permit required to open or excavate in street.**

It shall be unlawful for any person to open or to make any excavation of any kind in any of the streets or connecting to any of the streets in the Borough without first securing a road opening/highway occupancy permit [a “Permit”] as provided for in this Part.

**§ 143-26 Conformity Required.**

- A. Openings or excavations in streets or alleys within Schwenksville Borough shall conform with the requirements set forth in this Part and in conformance with Specifications which may be adopted by Resolution of Borough Council.
- B. In all other respects, openings or excavations in streets or alleys within Schwenksville Borough shall conform to all other general ordinances of Schwenksville Borough including the Subdivision and Land Development Ordinance.
- C. All Excavations require utility clearance by making a PA One Call notification. Call 1-900-242-1776 before you dig.

**§ 143-27. Permits.**

- A. Permits and Escrow Required.
  - (1) No opening or excavation in any street or alley of Schwenksville Borough may be performed without a permit being first obtained from the Borough Manager of the Borough.
  - (2) No opening or excavation in any street or alley of the Borough may be performed without an escrow being provided to Schwenksville Borough as security guaranteeing the performance of pavement restorations required in said street or alley and guarantee of payment for professional services rendered by Borough’s professional consultants.
- B. Exceptions. The only exceptions to this requirement shall be the following:

- (1) Applicants for Wireless Communications facilities must follow the procedures outlined in Zoning Chapter 176 of the Borough's Codified Code.
- (2) Private Streets or alleys. For openings or excavations in a private street or alley, a permit will not be required from Schwenksville Borough. However, if the opening or excavation is not being constructed by the owner of the private street or their agent, then written authorization shall be obtained from the owner of the private street or property owner where the construction is to occur.
- (3) State Highways. For openings or excavations in a state highway, a permit will not be required from Schwenksville Borough, provided the opener or excavator demonstrates to the Borough that all required PennDot permits and approvals have been obtained. Any openings, re-openings, or excavations in a state highway shall be subject to authorization by the Commonwealth of Pennsylvania Department of Transportation.
- (4) Land Development. For openings or excavations that are part of a Land Development Plan duly approved and financially secured by Schwenksville Borough, a permit will not be required from Schwenksville Borough.
- (5) Emergency work. Emergency repairs involving the replacement of facilities or opening of a surface within a public right-of-way for repair may be performed prior to obtaining a permit, provided that the following procedure is adhered to:
  - (a) The Utility or municipal facility owner shall immediately notify the Borough Office or Manager by telephone or email when the necessity for an emergency repair occurs during normal business hours, Monday through Friday. Emergency work occurring at other times should be reported via text message or email.
  - (b) The following information should be provided to the Borough when notified of emergency work:
    1. Date emergency work is started
    2. Time emergency work is started
    3. Location of emergency work site
    4. Name of the entity performing the work and contact information.
    5. Description of emergency work and what Borough facilities are affected.
    6. A description of and notice of any disruption to residents or the public that is anticipated due to the emergency work, e.g. road or lane closures.
  - (c) A permit must be submitted to the Schwenksville Borough Manager within 15 calendar days after the start of any emergency work. Documentation must be provided to confirm and set forth in detail any work performed to substantiate the emergency. All applicable fees and escrows are still required.

C. Permit Application.

(1) Applications for permits shall be prepared in writing, using a blank form [Exhibit A] furnished for that purpose by Schwenksville Borough and shall contain the following minimum information:

- (a) The purpose for which said street or alley is to be opened or excavated, the location of said proposed work, the estimated dimensions and area of the proposed opening or excavation, the location of all utilities located in the area of the proposed opening, including any utilities which may share the same trench, and the dates when the proposed work will occur or occurred.
- (b) A Diagram, drawing or plan illustrating the location and size of the excavation in relationship to the Borough's infrastructure including streets, curbs, stormwater management facilities and other such features.
- (c) An agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Borough and shall well and truly save, defend and keep harmless the Borough from and indemnify it against any and all actions, suits, demands, payments, costs and charges for or by reason of the proposed opening or excavation and all damages to persons or property resulting in any manner therefrom or occurring in the execution of the work connected therewith, or from any other matter, cause or thing relating thereto.
- (d) The name and contact information for the entity applying for the permit and its agents or clients for whom the work is being completed.
- (e) The name and contact information for the entity performing the work.

(2) An Application to Establish an Escrow Account. Pursuant to paragraph 143-27. A. (2), an escrow account is required to be established. No application for a Permit shall be considered complete without an Application to Establish an Escrow Account and the securities to fund it. [Exhibit B]

D. Permit Fees and Securities. All applicants for permits to open or excavate any street or alley shall pay before the issuance of said permit, such application fees and provide such securities as provided for in this Chapter and as may be set forth by the Master Fee Schedule of Schwenksville Borough. Permit Issuance fees paid to Schwenksville Borough shall be nonrefundable.

- (1) Permit Issuance Fees. Issuance fees are used to defray the costs incurred by the Borough in reviewing and processing the application and plan(s), including the preliminary review of the site location identified in the application, and issuing and processing the permit. Permit issuance

fees shall be as set forth by the Master Fee Schedule for Schwenksville Borough.

- (2) General Inspection Fees. General inspection fees are used to defray the costs incurred by the Borough for spot inspection(s) after the permitted work has been completed, to ensure compliance with the permit and these regulations. General inspection fees shall be based on the current Fee Schedule in effect for the Borough Engineer and Code Enforcement provider as approved and adopted with the Master Fee Schedule for Schwenksville Borough. These fees shall be deducted from the required escrow pursuant to paragraph 5 below submitted to guarantee the work is done in conformance with this ordinance prior to the refund of the escrow balance.
- (3) Exemptions: Permit issuance fees are not required for any of the following:
  - (a) The Commonwealth of Pennsylvania.
  - (b) Governmental Authorities organized under the laws of this Commonwealth.
  - (c) The federal government.
  - (d) Utility facilities owners for:
    1. The installation of streetlights at the request of the Borough.
    2. The replacement or renewal of facilities prior to a Borough resurfacing project after notice from the Borough.
    3. The removal of poles and attached appurtenances
    4. Facilities moved at the request of the Borough
    5. Work governed under the Wireless Communication Zoning Regulations.
- (4) Additional Inspection Fees. If the Borough determines that the permitted work is of significant magnitude or importance to warrant assignment of one or more inspectors to inspect the permitted work on a more than spot inspection basis, the permittee shall be charged for costs, fees or expenses incurred by the Borough in accordance with the Master Fee Schedule and Borough Engineer and Code Inspection Fee Schedules in effect.
- (5) Escrow.
  - (a) All applicants who apply for permits to open or excavate in any street or alley, shall furnish, prior to the issuance of a permit, an escrow to Schwenksville Borough for the following purposes:
    1. As security guaranteeing the satisfactory performance of pavement restoration work, required in said street or alley;

2. As funds for compensation to the Borough for General Inspection Fees charged by the Borough's consulting engineer or code inspection service for services rendered;

(b) The amount of the required escrow shall be the greater of the following amounts:

1. An amount equal to the area of the opening or excavation multiplied by the unit price for pavement restorations set by the Master Fee Schedule of Schwenksville Borough [for purposes of determining the area of any planned opening or excavation, the minimum width of any opening or excavation shall be five feet]; or
2. An amount equal to \$2,500.00;

(c) The escrow shall be in the form of cash or an irrevocable letter of credit or other form of security in form satisfactory to the Borough Solicitor and shall remain in effect for a minimum of two years. Upon written request, Schwenksville Borough shall return the balance of the escrow to the applicant only after completion of the work, including completion of all pavement restorations in the street or alley, and only after said work has been inspected by the Borough Engineer or Code Official and certified to be satisfactory by the Borough Manager or his/her designee, the maintenance period has expired and all inspection or code enforcement fees and administrative charges have been satisfied.

1. An administrative fee of \$100.00 shall be deducted from the Escrow Account Balance prior to issuance of a refund.

(d) The requirements of this subsection D.(5) shall apply to all applicants except the Commonwealth of Pennsylvania, any Commonwealth bureau or department, and the federal government.

E. Issuances of Permit; Denial; Appeal

- (1) Within 15 days after receipt of an administratively complete application to open or excavate any street or alley, the Borough Manager shall either approve the same and issue a permit therefore, provided that the proposed construction conforms to the laws of the Borough; or, if the proposed construction does not conform with the laws of the Borough or if upon reasonable investigation and knowledge of fact the Borough Manager determines that the proposed construction would constitute a traffic hazard or a hazard to the safety of pedestrians, the application shall be denied by notice, in writing, setting forth therein the reasons for the denial.

- (2) Upon receipt of notice denying the issuance of a permit, any property owner or person adversely affected, may appeal the Borough Manager's decision within 30 days by written appeal to the Borough Council indicating rationale for the appeal. The Borough Council shall make inquiry into the causes of the denial and shall afford the aggrieved party an opportunity to present the reason for the appeal to Borough Council at a public meeting. The public meeting shall take place not more than 45 days from receipt of the application of appeal; and Borough Council's written decision shall be issued not later than 30 days thereafter and shall be final.

**§ 143-28. Design and Construction Requirements; Inspections; Corrective Action.**

A. Standards. The person, firm, contractor, authority or corporation making the opening or excavation in any street or lane or alley within Schwenksville Borough shall thoroughly and completely refill the opening or excavation, pounding and ramming so as to prevent any settling hereafter; and shall permanently restore the surface and shall perform all work, including backfill and surface restorations, in accordance with the following standards which are hereby adopted as specifications for Schwenksville Borough:

- (1) Borough Standard Construction Details. [Exhibit C]
- (2) Commonwealth of Pennsylvania Department of Transportation Publication No. 72M, "Standards for Roadway Construction."
- (3) Commonwealth of Pennsylvania Department of Transportation Publication No. 408, "Specifications."
- (4) Section 143-31. General regulations included herein.

A. Inspection.

- (1) The applicant shall notify the Borough Manager at least 24 hours prior to beginning work. The Borough Manager or their designee shall have the right to inspect any portion of the work associated with openings or excavations in any street, lane or alley within Schwenksville Borough.
- (2) Completion of work must be reported via email or in writing to the Borough Manager or their designee within 24 hours thereof.
- (3) The Borough Manager or their designee shall conduct an inspection of the completed work and, if the work is satisfactory, shall issue a certification of completion attesting to the same. If the work is determined not to be satisfactory, then the applicant will be required to address any deficiencies prior to issuance of a certificate of completion or any release of escrow or other form of security held by Schwenksville Borough for the work.
- (4) Approval by the inspector. Approval by the Borough's inspector of all or part of any permitted work shall not constitute acknowledgement that the work was performed in accordance with the permit, nor shall such approval of the inspector act as a release of the permittee or waiver by the Borough of its right to seek performance or restitution from the permittee should the improvement fail.

B. Corrective Action.

- (1) Failure to complete the work to the satisfaction of the Borough Manager or failure to complete the work within a reasonable time period, as determined by the Borough Manager, shall, upon written notice to the applicant, result in corrective action being taken by Schwenksville Borough and all costs of the same being taken from the escrow or other form of security held by Schwenksville Borough for the work.
- (2) If the costs incurred by Schwenksville Borough to perform the corrective action exceed the amount held in escrow or other form of security, then the applicant shall be responsible for those additional costs.
- (3) The cost to perform the corrective actions shall be in addition to the penalties provided for elsewhere under this Part.

**§ 143-29. Opening of Newly Improved Streets Restricted.**

- A. Permits shall not be issued for opening or excavating any public street or alley of Schwenksville Borough that has been newly improved within a period of less than five years, such period to be taken from the date when the street surface was completed. Newly improved streets shall include those which have been constructed, reconstructed or resurfaced with a new surface layer of bituminous asphalt paving.
- B. The only exception(s) to this requirement shall be the following:
  - (1) In the event of an emergency which affects the public safety. A routine or scheduled replacement of service lines or installation of new services shall not be deemed cause for granting a permit on an emergency basis.
- C. Where this restriction is violated, a fee shall be paid to Schwenksville Borough as damages for decreasing the life of the street surface. This fee shall be paid in addition to any other permit fees or escrows required by other provisions of this Part. The amount of said fee shall be determined as follows:
  - (1) For surfaces aged up to two years, the fee shall represent the cost to resurface the full width of the cartway along the frontage of the property or properties receiving benefit, the area of which shall be calculated by multiplying the full width of the cartway by the frontage thereon of the property or properties receiving benefit. The fee shall be an amount equal to the area multiplied by the unit cost for pavement resurfacing set by the Master Fee Schedule of Schwenksville Borough.
  - (2) For surfaces aged more than two years and up to five years, the fee shall represent the cost to resurface half of the width of the cartway along the frontage of the property or properties receiving benefit, the area of which shall be calculated by multiplying the half width of the cartway by the frontage thereon of the property or properties receiving benefit. The fee shall be an amount equal to the area multiplied by the unit cost for pavement resurfacing set by the Master Fee Schedule of Schwenksville Borough.

**§ 143-30. Responsibility of permit holder; right of Borough to do work at permit holder's expense.**

All other work in connection with openings in any street, including excavation, protection, refilling and temporary paving, shall be done by the applicant at his expense, and all such work shall be subject to the provisions of this Article and to the supervision and approval of the Borough Engineer, provided that the Borough Engineer may require that cutting of the surface of improved streets and the backfilling of all excavations therein shall be done by the Borough, and the charge therefore shall be paid by the applicant on the basis of actual cost of the work, plus 20%.



**§ 143-31. General regulations.**

- A. No opening or excavation in any street shall extend from the curb line into the highway a distance greater than one foot beyond the center line of the street before being refilled and the surface of the highway restored to a condition safe and convenient for travel.
- B. No more than 200 feet longitudinally shall be opened in any street at any one time.
- C. The work of excavation shall be so conducted as not to interfere with the water mains, sanitary sewers or storm sewers or their connections with the houses or any other subsurface lines or constructions until permission of the proper authorities, in connection with such subsurface lines or constructions, shall have been obtained.
- D. No tunneling shall be allowed without the express approval of the Borough Engineer and permission therefor endorsed upon the permit. The backfilling of a tunnel excavation shall be made only in the presence of the Borough Engineer or an inspector designated by the engineer and shall be done only in a method approved by the engineer.
- E. All openings or excavations shall be repaired in accordance with Borough specifications as indicated in the diagram attached hereto **as Exhibit C**, backfilled promptly with suitable materials approved by the Borough Engineer and thoroughly compacted in layers, each of which shall not exceed six inches in depth. On improved streets, the backfilling shall be placed to within 10 inches of the surface. On improved streets, a temporary paving of suitable stony materials, thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving.
- F. Any contradiction of standards or specifications is to be resolved at the discretion of the Borough Engineer.
- G. During the making of any excavation in any street, every necessary and reasonable precaution shall be taken by the applicant and the parties making the same to keep the street in a safe and passable condition both day and night by guards, barriers, lanterns and other devices, and all excavating permits are granted under and subject to the express condition that the person to whom the same is issued shall indemnify, save and hold harmless the Borough from any loss in damages, or otherwise whatsoever, which may or shall be occasioned at any time by the said excavation or by any leak, explosion or other injury from any pipe, apparatus, conduit or any other matter placed in the said excavation.
- H. The applicant shall notify the Borough Engineer when the opening or excavation is ready for backfilling before any backfilling is done, and when the work is completed by proper backfilling in the case of unimproved streets and by temporary paving in the case of improved streets.
- I. In the event that any work performed by or for a permit holder be determined, in the opinion of the Borough Engineer, to be unsatisfactory, and the same shall not be corrected in accordance with his instructions within the time fixed by him, or in the event that the work for which the permit was granted is not completed within the time fixed by the Borough Manager, the Borough may proceed to correct such unsatisfactory

work or complete any such work not completed, and charge therefor, plus 20%, to the applicant.

J. Geometric Requirements

- (1) All final paving repairs shall be square or rectangular in shape and shall be generally parallel or perpendicular to the street.
- (2) When a longitudinal opening longer than 100 feet is made in the pavement, the traffic lanes in which the opening is made shall be overlaid for the entire length of the portion of the street that was opened.
- (3) When four or more openings are made by the same person within a section of a street of 100 linear feet, the traffic lanes in which the openings are made shall be overlaid for the entire length of the street extending from the first such opening through the last such opening.
- (4) When cuts are made within four feet of each other or an existing cut or seam: they shall be combined into a single surface restoration area.
- (5) When cuts are made within three feet of a curb line or edge of roadway, wearing surface restoration shall extend to the curblineline or edge of road.
- (6) When multiple cuts are made which have a width equal to or greater than 50% of a travel lane or parking lane, surface restoration shall be extended to cover the full width of the travel lane or parking lane.

- H. The contractor shall bear full responsibility and liability for harm to persons or property caused by incidents related to the condition of a utility trench and will be required to immediately improve unacceptable conditions within 24 hours after receiving notice by Schwenksville Borough. If the contractor fails to perform remedial work as directed, the Borough may restore the trench and bill the contractor for cost incurred plus an administrative fee of 20%.

**§ 143-32. Emergency excavations; Borough authorized to make repairs at expense of defaulting owner.**

In the case of any leak, explosion or other accident in any subsurface pipe, line, construction or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, construction or apparatus, to commence an excavation to remedy such condition before securing a permit, provided that application for a permit shall be made immediately and not later than the next business day thereafter, and that all other provisions of this article are fully complied with. If any such emergency condition shall not be immediately attended to by the owner or person responsible for such pipe, line, construction or apparatus, the Borough Engineer, after such notice as he shall deem necessary under the circumstances of the particular case, shall proceed to do the work necessary and required by such emergency, and charge the same on the basis of cost plus 20% to such owner or person.

**§ 143-33. Notice to property owners, authorities and utility companies of proposed improvements; restrictions on excavating newly improved streets.** [Exhibit D]

- A. The Borough Manager shall give advance notice to all persons owning property abutting on any street within the Borough about to be paved or improved, and to all public utility companies and authorities operating in the Borough, and all such persons, authorities and utility companies shall make all water, gas or sewer connections, as well as any repairs thereto which would necessitate excavation of the said street within 30 days from the giving of such notice, unless such time is extended in writing for causes shown by the Borough Engineer.
- B. Notice shall indicate the following:
  - a. Location of Capital Improvements
  - b. Description of Capital Improvements
  - c. Approximate dates for contract award of Improvements/date the improvements will commence.
  - d. Notice that new paving shall not be opened for a period of five years after the completion thereof, except in case of emergency, the existence of which emergency and necessity for the opening of such paving to be determined by the Borough Engineer. If it is sought to excavate upon or open a street within five years after the completion of the paving thereof, for any reason other than an emergency as above stated, the applicant shall make written application to the Borough Council and a permit for such opening shall only be issued after express approval of Council.

**§ 143-34. Requirements for Public Service Companies and Authorities for New Facilities in Schwenksville Borough**

- A. No new water, sanitary sewer or gas main shall hereafter be laid or constructed, and no existing water, sanitary sewer or gas main shall be extended in any of the streets of the Borough until the exact location thereof and the plan therefor shall first have been approved by the Borough Council.
  - (1) All public service companies shall provide written notice to Schwenksville Borough at least 90 days before making any opening or excavating any street or alley, except in the case of emergency which has immediate and imminent effects on the public health, safety and welfare.
  - (2) All public service companies shall furnish a performance guarantee to Schwenksville Borough for the restoration of the street before the issuance of any permit for opening or excavating the same. The performance guarantee shall be provided in the form of a cash escrow, irrevocable letter of credit or performance bond. The amount of the performance guarantee shall be the greater of the following amounts:
  - (3) An amount equal to the area of the opening or excavation multiplied by the unit cost for pavement restorations set by the Master Fee Schedule of Schwenksville Borough. For the purposes of determining the area of any planned opening or

excavation, the minimum width of any opening or excavation shall be five feet;  
or

(4) An amount equal to \$25,000.

- B. All public service companies and authorities shall be responsible for pavement resurfacing of the streets and alleys where opening or excavation work is performed. The pavement resurfacing work shall be performed to the limits prescribed by the applicable Borough Standard Construction Details. [Exhibit C] and in accordance with this chapter.
- C. All public service companies shall be required to furnish a maintenance guarantee to Schwenksville Borough in the form of a cash escrow, irrevocable letter of credit or maintenance bond to secure the structural integrity and function of the pavement restoration and pavement resurfacing work performed. The guarantee must be furnished to Schwenksville Borough before the release of escrow or other form of security.
  - (1) The amount of the guarantee shall be 15% of the value of the pavement restoration and pavement resurfacing work performed.
  - (2) The term of the guarantee shall be 18 months from the date of completion.

**§ 143-35. Payment for work done by Borough; collection.**

Payment for all work done by the Borough under the provisions of this article shall be made by the person made liable therefor under the provisions hereof within 30 days after a bill therefor is sent to such person by the Borough. Upon failure to pay such charges within such time, the same shall be collectible by the Borough in the manner provided by law for the collection of municipal claims.

**§ 143-36. Violations and penalties.**

Any person, firm or corporation who shall violate any provision of this article, 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 more than \$1,000 plus costs, and in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this article continues or each section of this article, which shall be found to have been violated shall constitute a separate offense.