

BOROUGH OF PENNS GROVE

ORDINANCE NO. 2014-6

AN ORDINANCE AMENDING CHAPTER 189, ARTICLE V OF THE CODE OF THE BOROUGH OF PENNS GROVE

WHEREAS, Chapter 189, Article V of the Code of the Borough of Penns Grove is entitled "Street Openings" and governs the process and manner in which street openings shall occur; and

WHEREAS, Chapter 189, Article V of the Code of the Borough of Penns Grove is outdated and requires certain revisions;

NOW THEREFORE, BE IT ORDAINED by the Mayor and the Members of the Council of the Borough of Penns Grove, County of Salem, and the State of New Jersey that Chapter 189, Article V of the Code of the Borough of Penns Grove shall be deleted in its entirety and replaced as follows:

189-27 Prerequisites to opening streets.

No person, firm, partnership or corporation shall open or dig a trench in any public road, street, highway or sidewalk of this Borough without having first:

A. Made a written application therefore to the Borough of Penns Grove in the County of Salem on forms to be provided by the Borough and supplied a map or sketch of the project to the Borough.

B. Paid the proper fee and escrow to said Borough for such opening or trench, in the amount specified by §189-31

C. Provided the Borough a cash, letter of credit or surety company bond, in the amount specified by §189-30, to guarantee that the opening or trench made by the permittee will be properly closed. Upon completion of the work in a satisfactory manner, the performance bond or cash will be released in return for a maintenance bond or cash to guarantee that the road, street or highway over the opening or trench will remain in good condition for at least one year after the permanent closing by the permittee. The minimum amount of each maintenance bond shall be 25% of the amount of the performance bond but shall not be less than \$50. A utility company may, in lieu of giving a separate performance bond and separate maintenance bond on each project, keep in continuing effect and posted with the Borough Clerk a combination performance and maintenance bond or letter of credit for \$10,000 by the permittee and a surety company licensed to do business in New Jersey, which bond shall guarantee both performance and maintenance by the utility company in regard to street openings as required by this article and shall be approved as to form by the Borough Solicitor.

D. Received from the Borough a written permit for the specific opening or trench.

189-28 Permit required to open Right of Way Areas (ROW).

No person, firm or corporation shall direct or cause any employee, agent or contractor of such person, firm, partnership or corporation to open or dig a trench in any public road, street, sidewalk or ROW until a written permit for such opening or trench has been issued by the Borough.

189-29 Permittee's responsibilities; construction standards.

Each permittee shall accomplish each of the following items with respect to each opening or trench for which the permittee is responsible. The permittee shall:

A. Have the trench or opening dug within 60 days after the permit aforesaid is granted.

B. Have the material which is taken from the opening or trench placed so as not to interfere with public use of the roadway and/or sidewalk areas.

C. Have proper and ample guards, barricades, signs and lights maintained on the site to sufficiently warn users of the road, street or highway of the dangers attendant to the project, from the time the excavation is begun until the time the opening or trench is completely restored and completely reopened to public travel.

D. Contractor is required to perform work and traffic control in accordance with NJDOT Standards and the Manual on Uniform Traffic Control Devices for Streets and Highways, United States Department of Transportation.

E. Assume full liability for any and all injuries caused by the negligence of the permittee or the employees or agents of the permittee in constructing such opening or trench, as well as in its maintenance or closing.

F. Keep said opening or trench open a minimum period of time to accomplish the purpose of the permittee and close such opening or trench with semi permanently materials immediately thereafter. Said period shall not exceed 30 days.

G. Comply with the following standards hereby adopted in this Borough for such openings and trenches in public roads, streets and highways:

(1) Protection for traveling public. The permittee shall keep such opening or trench properly guarded and, at night, have lights placed thereat and, in doing the work, interfere as little as possible with the travel along the road and open no greater part of the road at any time than shall be allowed by the Borough Engineer.

(2) Protection from suits. The permittee shall also save harmless said Borough of Penns Grove, its officers and servants from and against any loss, injury or damage resulting from any negligence or fault of the permittee, his agents or servants in connection with the performance of the work covered by the permit.

(3) Time limit. The opening or trench shall be backfilled and semi-permanently patched immediately, and the pavement shall be permanently restored within 60 days. In case the work has not been completed before the day of expiration, as shown on the permit, and the permittee has not requested an extension of time, the Borough Council may take steps to restore the trench and replace a permanent pavement over the opening for which the permit has been issued, and if any extension of time beyond said date is needed for the completion of the work, a new application must be filed, if required by the Borough Engineer.

(4) Maintenance. The restoration of the opening or trench shall be maintained by the permittee for one year after completion.

(5) Excavation.

(a) The permittee shall give a forty-eight-hour notice to the Borough Clerk & Engineer or their duly authorized assistant prior to making an opening, except in case of emergency.

(b) No excavation work may commence until all existing utilities underground are marked out in accordance with the Underground Facilities Protection Act better known as the "One-Call Law" established in October 1994. No opening shall be commenced on a Saturday, Sunday or holiday, except in case of emergency.

(c) On a bituminous-surface-treated road, the edges of the opening shall be saw cut straight through the bituminous surface before the trench is excavated.

(d) The work shall be so conducted as not to interfere with the water, sewer or other utility mains or any connections with buildings until permission of the proper authorities shall have been obtained. No excavation which will damage trees shall be made without the approval of the Borough Engineer.

(6) Backfilling. The permittee shall completely backfill the excavation and replace as great a portion as possible of the material excavated, compacting it by using mechanical tamping equipment, and supply additional material when there is a deficiency. Whenever the Borough Engineer or his duly authorized representative shall deem the material unsatisfactory for backfill, the permittee shall backfill the trench with select backfill material, Zone 3, compacted, and shall remove all excess material from the premises. The material shall be placed in layers not exceeding six inches in thickness, moistened where and as directed, and each layer mechanically tamped until thoroughly compacted.

(7) Restoration of surface paving and surface paving foundation. After the backfilling of the opening or trench has been completed, as above specified, the restoration of the pavement shall be governed by the following applicable rules:

(a) In the case of any opening or trench in the earth shoulder, the permittee shall restore the top four inches of the trench or opening with topsoil with sufficient organic material capable of supporting the growth of grass and shall fertilize, seed and mulch the surface.

(b) In the case of a gravel pavement, the permittee shall fill the top 12 inches of the excavated trench or opening with compacted, state-approved I-5 road gravel.

(c) In the case of a penetration macadam road which consists of broken stone of various sizes, the permittee may salvage the broken stone and replace it in the top of the trench similar to the original pavement and cover it with two inches of hot mix asphalt (HMA).

(d) In the case of a gravel-based bituminous concrete road, the permittee shall restore the surface with six inches of compacted, state-approved I-5 road gravel covered with two inches of hot mix asphalt base, Mix 19M64, and two inches of HMA, Mix 9.5M64, top pavement or surface and base similar to existing road, whichever is greater.

(e) In the case of a bituminous-treated gravel road, the permittee shall restore the surface with 12 inches of compacted, state-approved I-5 gravel covered with two inches of HMA, Mix 9.5M64.

(f) In the case of a concrete surface, the permittee shall construct a concrete foundation and shall restore the reinforcement and the concrete pavement as directed by the Borough Engineer.

(g) In the case of any special condition, the permittee shall restore the trench or opening as directed by the Borough Engineer.

(h) In any case, if the Borough is required to restore the pavement, the final charges, based on the schedule of costs, shall be billed to the permittee on the completion of the work by the Borough.

189-30 Bond/Guarantee.

A. Each applicant for a permit for such opening or trench shall post cash, letter of credit or surety company bond with the Borough to cover the estimated costs of closing the particular opening or trench for which the application is being made, according to the Borough Engineer.

B. Each such letter of credit, surety bond or cash shall be executed by the permittee as principal therein. The surety company shall be the surety therein, which surety company shall be one licensed to do business in the State of New Jersey.

C. Upon completion of the project by the permittee and the restoration of the public road, street, highway or sidewalk, in accordance with this article, the permittee shall receive back their performance guarantee upon proper written application therefore and upon approval thereof by the Borough Engineer and upon posting of the maintenance bond, letter of credit or cash described in §189-27C

189-31 Permits Fees and Escrow.

A. Each applicant for a permit shall pay a fee of \$100 for such permit and \$250 for the permit review by the Borough Engineer. Said permit fee shall be nonrefundable and shall be utilized to defer the administrative costs of the Borough.

B. In addition to the fee set forth herein, each applicant shall post an inspection escrow with the Borough Chief Financial Officer. Said escrow shall be in an amount determined as follows: the sum of \$500 plus \$2 per square/linear foot of surface opened in concrete or bituminous surface or \$500 plus \$1 per square foot of surface opened in earthen surfaces. Said escrow account shall be utilized to pay all professional services which shall be required in order to administer this article as it affects the proposed street/sidewalk opening, including engineering, legal and other expenses connected with the application. Sums not utilized shall be returned to the applicant once permanent paving has been in place for one year and is deemed in satisfactory condition by the Borough Engineer and release of the maintenance bond required pursuant to §189-27C. If the applicant shall post such escrow but not proceed with the street opening as anticipated, the escrow shall be returned, less any charges made against said escrow, upon the abandonment or expiration of the permit.

C. If the Borough Engineer determines that the escrow fund, as posted by the applicant, is insufficient to pay for engineering, legal and other expenses, then the applicant shall be required, upon written notice, to provide such funds as the Borough Engineer shall determine to be necessary to pay said costs. Upon notification, in writing, the applicant shall post said amounts within five business days. Failure to post the requested escrow shall result in the revocation of the permit.

D. The fee and escrow required under the provisions of this section shall accompany the application made when it is initially filed with the Borough or its representative.

189-32 Escrow account for public utility.

A. "Public utility," as used in this article, shall mean any public or quasi-public agency or entity under the jurisdiction of the Board of Regulatory Commissioners.

B. In order to satisfy the escrow requirements which are otherwise stated in §189-31B, a public utility may post an escrow with the Borough Chief Financial Officer in the amount of \$1,000 for repair or installation of services. Said escrow account shall be utilized to pay for all professional services which shall be required to administer this article as it affects the proposed street opening.

C. Said escrow shall be administered by the Borough Chief Financial Officer as follows: Whenever engineering, legal or other services are rendered in connection with an application made by the public utility, said expenses shall be paid from the escrow posted by the public utility. Notice of such payment shall then be provided, in writing, to the public utility. Said notice shall advise the public utility as to the service rendered, the date the service was rendered and the location of the street opening. The public utility shall then reimburse the escrow in an amount equal to the expenses paid from the escrow. Said reimbursement shall be made within 30 days of the date that notice is provided to the public utility.

D. In the event that a public utility does not post an escrow of \$1,000 in accordance with this section, the public utility shall be required to abide by the provisions of §189-31B, C and D, If the public utility fails to make reimbursement in accordance with Subsection C in a timely fashion, notice of such failure shall be provided to the public utility, and, thereafter, the public utility shall be required to abide by the provisions of §189-31B, C and D.

E. In the event that there shall be a dispute between the Borough and the public utility as to the validity of any charge or expense paid from the escrow established under this section, notice of such must be provided by the public utility to the Borough Chief Financial Officer within 30 days of the date that the public utility receives notice of the charge or expense which is disputed. Any dispute shall be resolved by the Borough Council in its sole discretion.

F. In the case of utility main replacements or extensions, the applicant shall post an escrow with the Borough Treasurer in the amount of 3% of the approved cost of construction. Said escrow account shall be utilized to pay for all professional services which shall be required in order to administer Chapter 189 of the Borough of Penns Grove Code as it affects the proposed street/sidewalk opening, including engineering, legal and other expenses connected with the application. The applicant shall pay the permit fee and application by two separate checks to the Borough.

189-33 Duties of Borough Engineer.

Unless otherwise directed by the Borough Council, the Borough Engineer shall be the agent and representative of this Borough to:

A. Review and approve road opening applications.

B. Inspect the sites of the proposed openings or trenches.

C. Inspect openings or trenches, warning guards, barricades, signs and lights maintained or to be maintained at the respective sites by the permittee.

D. Inspect the closing of openings or trenches and the restoration of public roads, streets and highways.

E. Notify the permittee and the Borough Council of any failure, refusal or neglect on the part of the permittee or his employees or representatives to comply herewith.

F. Inspect the trench opening at the end of the maintenance period, report any discrepancies, coordinate with permittee to address discrepancies and make recommendation to release bond/guarantee upon proper completion of the work.

G. Administer the provisions of this article for and on behalf and in the name of this Borough, under the direction of and for the Borough Council.

189-34 Responsibility for damages.

Nothing in this article shall be construed by any permittee or other person to absolve any permittee or his employees, agents or contractors of any responsibility for any damage done to any person or property in opening or digging a trench in any public road, street or highway.

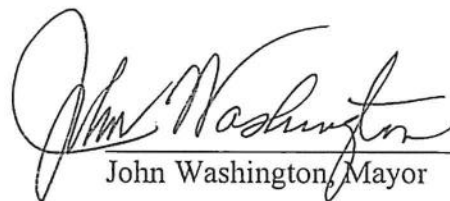
189-35 Violations and Penalties.

Any person or entity violating or failing to comply with any of the provisions of this article shall, upon conviction thereof, be punishable by a fine of up to \$1,000. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons or entities allowing or permitting the continuation of the violation may be punished for each separate offense.

THIS ORDINANCE shall take effect according to law. All other Ordinances or part of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Attest:


Sharon R. Williams, Municipal Clerk


John Washington, Mayor

Notice: The above ordinance was introduced and passed on the first reading at the meeting of the Mayor and Council of the Borough of Penns Grove in the County of Salem held on the 6th day of May, 2014 and will be considered for final passage at a meeting to be held by the Mayor and Council at Borough Hall, Broad Street and State Street, Penns Grove, New Jersey at 7:00 p.m. on the 4th day of June, 2014, at which time any interested person will be given an opportunity to be heard.


Sharon R. Williams, Municipal Clerk

BOROUGH PERMIT NUMBER _____

Date of Application _____

Date of Approval _____

**APPLICATION & PERMIT TO OPEN STREET/ROW IN THE
BOROUGH OF PENNS GROVE**

Application hereby being made by the undersigned, and permission is hereby given to the undersigned to make an opening at _____ Road/Street _____
Block _____ Lot _____ of not more than _____ square feet, for the purpose of _____

_____ according to two (2) copies of attached plan or sketch drawn to reasonable scale showing relative north, exact location and extent of opening, all necessary information and data filed with the application for this permit.

The applicant agrees to fully comply with Chapter 189, Article V of the Code of the Borough of Penns Grove and all resolutions, ordinances, rules and regulations of the Borough of Penns Grove for the opening of streets and particularly with the resolution adopted according to law by the Borough Committee of the Borough of Penns Grove, a copy of which ordinance the undersigned acknowledges receipt thereof prior to the time of making application for this permit.

The applicant agrees that the issuance of this permit shall constitute a valid contract between the Borough of Penns Grove and the applicant. The applicant likewise agrees that he will indemnify and save harmless the Borough from any loss or damage which may result by reason of the opening on behalf of the applicant of any street, road or highway owned or under control of the Borough.

Permit Application Fee Paid \$ _____ Applicant: _____

Permit Review Fee Paid \$ _____ Signed By: _____

Inspection Escrow Deposit Received \$ _____ Address: _____

Bond/Guarantee Filed \$ _____ Phone: _____ Fax: _____

Email Address: _____

Emergency Permission Granted _____

BOROUGH OF PENNS GROVE

BY _____
Borough Engineer or his authorized agent DATE

BY _____
Borough Engineer or his authorized agent DATE

All rights of the applicant under this permit shall become void sixty (60) days from the date hereof unless extended by endorsement made hereon by the Borough Engineer or his authorized agent.

Renewal Fee Paid \$ _____

Permit Extended to _____

Borough Engineer DATE

Excavation by mechanical machine is not granted unless the Borough Engineer causes his signature to appear immediately below:

Borough Engineer DATE

EMAIL COPY OF SKETCH & PERMIT TO: ssmith@smithcogroup.com