

**Part 2**  
**STREET EXCAVATIONS**

**§ 21-201. Title. [Ord. 785, 6/1/1987, § 1]**

This Part shall be known as the "Street Excavations in Right-of-Way Ordinance of the Borough of Hatboro."

**§ 21-202. Definitions and Interpretation. [Ord. 785, 6/1/1987, § 2]**

1. In this Part, the singular shall include the plural and the masculine shall include the feminine and the neuter. The word "person" means any natural person, partnership, firm, association, corporation, or Borough authority.
2. The following words, when used in this Part, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise.

**BOROUGH** — The duly incorporated Borough of Hatboro, County of Montgomery, Commonwealth of Pennsylvania, in the United States of America.

**BOROUGH COUNCIL** — The duly elected governing body of the Borough of Hatboro.

**BOROUGH OFFICIAL** — A duly appointed official of the Borough designated to enforce this Part.

**EMERGENCY** – A condition that (1) poses a danger to life, health, or of a significant loss of property or (2) requires immediate repair or replacement to restore service.

**EXCAVATION** — Any activity within the right-of-way of any street, avenue, road, square, alley, highway, footpath, or other public place, which involves cutting, breaking, or disturbing the surface thereof. In this Part, the term "opening" shall have essentially the same meaning as excavation.

**FIRE MARSHAL** — The duly appointed Fire Marshal of the Borough of Hatboro.

**PERMITTEE** – The person, entity, company, contractor, etc. to which the permit is issued.

**RIGHT-OF-WAY** — A public or private strip of land over which are provided rights for various purposes including vehicular access and travel, storm drainage, and utilities. Street rights-of-way shall include all that area between the legal right-of-way lines.

**STREET** — A public accessway serving primarily as a means of vehicular travel, furnishing access to abutting properties, and which may also be used for utilities and stormwater control. Includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct, and any other ways used or intended to be used primarily by vehicular traffic.

**§ 21-203. Legislative Intent. [Ord. 785, 6/1/1987, § 3]**

It shall be the intent of this Part to establish standards and regulations concerning the opening and restoration of streets within a public right-of-way within the Borough of Hatboro and to protect the public and the Borough of Hatboro from unsafe conditions, hazards, and damages stemming from such work done within a public right-of-way within the Borough of Hatboro.

**§ 21-204. Permit Required to Make Opening or Excavation. [Ord. 785, 6/1/1987, § 4]**

1. It shall be unlawful for any person to open or to make any excavation of any kind in any public right-of-way in the Borough of Hatboro without first securing a permit therefor, as hereinafter provided.
2. Application for a permit shall be made on a form provided by the Borough and shall be submitted to an authorized Borough official at the Borough office during normal office hours. The application shall include:
  - A. Name, address, and telephone number of applicant and contractor.
  - B. Plan showing the full extent of work to be done, exact location of proposed opening or excavation, and the approximate size and depth thereof.
  - C. Description of the full extent of work to be done, exact location of proposed opening or excavation, and the approximate size and depth thereof.
  - D. Expected start and finish dates.
  - E. Contractor's evidence of insurance in accordance with § 21-210.
  - F. Surety bond in accordance with § 21-210.
  - G. An agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Borough and the laws of the Commonwealth in relation thereto, and that the applicant 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 openings or excavations, including protection, refilling, temporary paving, final paving, pavement markings, right-of-way restoration, and all damages to persons or property resulting in any manner therefrom, or occurring in the prosecution of the work connected therewith, or from any other matter, cause or thing relating thereto.
  - H. Permit fee in accordance with § 21-205.
3. Permits shall be issued only to persons furnishing public utility services or the owner or owners of the real property adjoining the location where such opening or excavation is to be made.
4. A permit may be issued to the applicant after all the requirements therefor have been fulfilled. If the application is disapproved, written notice of the disapproval together with reasons therefor shall be given to the applicant.

**§ 21-205. Permit Fee. [Ord. 785, 6/1/1987, § 5]**

1. Before any permit shall be issued to open or excavate in any right-of-way in the Borough, the applicant shall pay a permit fee to cover the cost of inspection and other incidental services in connection therewith.
2. Fees for permits and inspections shall be set from time to time by resolution of Borough Council. Permit fees shall include engineering costs which may be incurred by the Borough in connection with the requested application.

**§ 21-206. Responsibility to Contact Utilities. [Ord. 785, 6/1/1987, § 6]**

1. The work authorized by the permit is subject to all the provisions of the Act of December 10, 1974, P.L. 852, No. 287, § 1 et seq., as amended or supplemented from time to time (referred to as the Underground Utility Line Protection Law or the PA One Call Law). It shall be the permittee's responsibility to contact and coordinate with utilities that have recorded their facilities in compliance with said Act.
2. The Borough shall give timely 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 the Upper Moreland-Hatboro Joint Sewer Authority, that all such persons and utility companies shall make all 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 cause by Borough Council.
3. If it is sought to excavate upon or open a street within five (5) years after the completion of the paving, the applicant shall mill and overlay the wearing course as indicated in § 21-209.9.C.

**§ 21-207. Regulations. [Ord. 785, 6/1/1987, § 7]**

All openings and excavations, including utility trenches, shall be properly backfilled and pavement replaced in accordance with the Borough of Hatboro's Specifications and Design Standards, incorporated herein by reference and as may be amended from time to time by Resolution of Borough Council, with the specifications of PennDOT which are hereby adopted as specifications of the Borough, and in accordance with the following regulations:

1. During the making of any excavation in the street, every necessary and reasonable precaution shall be taken by the permittee to keep the street in safe and passable condition both day and night for the traveling public, including motorists, bicyclists, and pedestrians, by guards, barriers, lanterns, signage, and other devices.
2. No opening may be made for more than 200 linear feet in any right-of-way at any one time, unless authorized by the Borough Official.
3. All openings or excavations must be backfilled prior to the contractor leaving the job site each day. No excavation shall be left open overnight unless necessity can be adequately demonstrated and written permission is granted by the Borough Official. It shall be the responsibility of the permittee to contact the Borough Official and obtain his written permission before leaving the job site.
4. Utility patches within three (3) feet of other utility patches shall be joined in order to limit the number of joints in the pavement. The pavement interface with the curb is considered a joint; patches within three (3) feet of the curb shall be extended to the curb.
5. No opening or excavation in any street shall extend from the curb line into the street a distance greater than one (1) foot beyond the center line of the street before being refilled and the surface of the street restored to a condition safe and convenient for travel.
6. The work of excavation shall be so conducted as not to interfere with the water, sewers, gas, other subsurface lines or their connections with buildings or structures, until permission by

the proper authorities in connection with such subsurface lines or connections has been obtained by the permittee.

7. No tunneling shall be allowed without the express approval of the Borough Official and permission thereof endorsed on the permit. The backfilling of a tunnel excavation shall be made only in the presence of the Borough Official and shall be done only in a method approved by the Borough Official.
8. No blasting shall be allowed, nor explosive material permitted, in any excavation without prior approval by the Borough Official and the Fire Marshal. Permission to blast or use explosives shall require a separate application with additional insurance and said operation shall meet all requirements of the current Fire Prevention Code of the Borough of Hatboro and shall be under the supervision of the Fire Marshal.
9. The permittee shall avoid unnecessary damage or injury to trees, shrubs, and landscape plantings and replace any tree, shrub, or other landscape planting removed or damaged during the course of work. Any tree, shrub, or other landscape planting that shows substantial damage attributable to the permittee's work within 18 months of the Borough Official's final acceptance of the work shall be replaced by the permittee at the permittee's sole expense.
10. So that inspections may be made, the permittee shall notify the Borough Official a minimum of 48 hours prior to the following operations:
  - A. Opening or excavating
  - B. Preparation of the subgrade
  - C. Placement and compaction of backfill
  - D. Placement and compaction of the subbase
  - E. Laying and rolling of the base course
  - F. Placement of temporary paving
  - G. Laying and rolling of the wearing course
  - H. Placement of pavement markings
11. All surplus soil and debris shall be removed from the job site and properly disposed of in accordance with Pennsylvania Department of Environmental Protection regulations.
12. All openings or excavations in any street shall be backfilled promptly with PennDOT 2A coarse aggregate and thoroughly compacted in layers, each of which layers shall not exceed depths indicated in the Borough of Hatboro's Specifications and Design Standards and the specifications of PennDOT which are hereby adopted as specifications of the Borough.
13. Compaction testing will be required at the discretion of the Borough Official. Compaction tests shall confirm compaction to 98% dry density minimum.
14. Temporary paving (cold patch) shall be installed flush with the surface of the adjoining paving and shall be thoroughly bound and compacted. Following temporary paving, permanent paving shall not be placed prior to 90 days nor more than 120 days from when the opening or excavation restoration is completed, though the period may be extended by the Borough Official if unforeseen circumstances or weather conditions prevent completion of

permanent restoration.

15. The permittee shall keep the temporary paving in good condition until the permanent pavement is placed. For the purpose of this section, "good condition" shall mean a condition which allows for smooth travel by motor vehicles and bicycles. If the permittee fails to keep the temporary paving in good condition, the Borough shall send a notice to the permittee noting the permittee's failure to comply with the terms of this Ordinance and requiring the temporary pavement repair within ten (10) working days of the date of the notice. If the permittee does not repair the temporary pavement in accordance with this Part within ten (10) working days of the date of the notice, the Borough may elect, but is not obligated, to perform the work and invoice the permittee for all costs and expenses incurred by the Borough to be paid within thirty (30) days of receipt. If invoice is not satisfied, the Borough has the option to seek relief from permittee's posted surety bond and seek reimbursement in conformance with this section and §§ 21-210 and §§ 21-212.
16. Disturbed features, including, but not limited to, slopes, appurtenances, guide rails, curbs, signs, pavement markings, drain pipes, driveways and vegetation, shall be restored by the permittee to a condition at least equal to that which existed before the start of work authorized by the permit and consistent with the Borough of Hatboro's Specifications and Design Standards and the specifications of PennDOT which are hereby adopted as specifications of the Borough. Additional restoration may also be required, upon written notification by the Borough Official, to restore the structural integrity of the pavement.

**§ 21-208. Preferential Streets. [Ord. 785, 6/1/1987, § 8]**

1. All streets within the Borough that are designated as state roads and Warminster Road are hereby designated to be preferential streets.
2. Permits for work on preferential streets shall require work on any project that causes interference with normal vehicular traffic flow for a minimum of 16 hours a day until the project is completed.
3. The Borough Official may grant an exception to the requirements of Subsection 2 if the permittee removes all obstructions to vehicular traffic and plates any excavation, ditch or trench during the hours between 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.

**§ 21-209. Permanent Restoration; Responsibility for Maintenance. [Ord. 785, 6/1/1987, § 9]**

1. Any person who shall open or excavate any street in the Borough shall thoroughly and completely refill the opening or excavation in such a manner as to prevent any settling thereafter and shall restore the surface in accordance with the provisions of this Part, the Borough of Hatboro's Specifications and Design Standards, and with the specifications of PennDOT which are hereby adopted as specifications of the Borough.
2. Final restoration of sidewalks, curbs, curb cuts, and driveway aprons shall be in accordance with current Borough standards as set forth in the Sidewalk and Curb Ordinance of the Borough of Hatboro [Part 1]. All sidewalks, curbs, curb cuts, and driveway aprons must be restored in complete sections and to a line and grade of existing adjoining sidewalks and curbs.
3. The permittee shall complete permanent restoration of any opening or excavation in the right-of-way not less than 90 calendar days nor more than 120 calendar days from when the

temporary opening or excavation restoration is completed, though the period may be extended by the Borough Official in writing if unforeseen circumstances or weather conditions prevent completion of permanent restoration. If the permittee fails to install the permanent pavement with this time frame, except as may be extended by the Borough Official in writing, the Borough shall send a notice to the permittee noting the permittee's failure to comply with the terms of this Ordinance and requiring the permanent pavement be installed within ten (10) working days of the date of the notice. If the permittee does not install the permanent pavement in accordance with this Part within ten (10) working days of the date of the notice, the Borough may elect, but is not obligated, to perform the work and invoice the permittee for all costs and expenses included by the Borough to be paid within thirty (30) days of receipt. If invoice is not satisfied, the Borough has the option to seek relief from permittee's posted surety bond and seek reimbursement in conformance with this section and §§ 21-210 and §§ 21-212.

4. Perform any base repairs with a minimum 5 inch compacted depth of 25mm PG64S-22, 3-30 million ESALs asphalt base course.
5. The top of every utility (manhole, inlet, valve box, etc.) shall be flush or no more than one (1) inch below the street surface.
6. Restored openings, utility structures, and joints in the pavement shall be sealed.
7. After the street surface is permanently restored, the permittee shall install permanent pavement markings as they existed prior to the work being performed.
8. Final restoration of any other portion of a right-of-way, either paved or unpaved, shall be in accordance with the directions of the Borough Official.
9. Milling and Overlaying.
  - A. Mill and overlay shall include milling the existing asphalt pavement to 1.5 inch depth or the depth of the exiting surface, whichever is less; applying an emulsified asphalt Class TACK or NTT/CNTT tack coat; placing a new compacted depth matching the milled depth of 9.5mm PG64S-22, 3-30 million ESALs, SRL-H asphalt wearing course; and sealing all joints with PG 64S-22.
  - B. The exact limits of mill and overlay shall be determined in the field by the Borough Official. The Borough reserves the right to adjust the pavement limits in order to match seams from the original paving operation or to otherwise preserve the integrity of the street to the greatest extent practical.
  - C. If it is sought to excavate upon or open any street which has been resurfaced within five (5) years, the following additional requirements shall apply:
    - a. When a longitudinal opening longer than 100 linear feet has been made in the pavement, the permittee shall overlay the traffic lanes in which the opening was made, for the entire length of street that was opened, in a manner authorized by the Borough Official.
    - b. When two (2) or more transverse openings have been made within 100 linear feet of pavement, the permittee shall overlay traffic lanes in which the openings were made, for the entire length of street between the openings, in a manner authorized by the Borough Official.

- c. When four (4) or more emergency openings have been made by the same permittee within 100 linear feet of pavement, the permittee shall overlay traffic lanes in which the openings were made, for the entire length of street between the openings, in a manner authorized by the Borough Official.
- d. If disturbed lanes adjacent to undisturbed lanes are overlaid, the edge of the disturbed lane shall be saw cut or milled to a depth of 1.5 inch or the depth of the existing surface course, whichever is less, for the length of the opening to ensure a smooth joint, with proper elevation and cross section. A full width overlay may be authorized by the Borough Official instead of saw cutting or milling the disturbed lane.
- e. If disturbed lanes adjacent to shoulders are overlaid, the shoulder shall be raised, with material and in a manner authorized by the Borough Official for the type of existing shoulder, so that the overlaid pavement and shoulder edges are at the same elevation.

D. Regardless of the age of the wearing course:

- a. If more than 100 linear feet of longitudinal or transverse openings, or both, are made in the pavement, the Borough may require the permittee to overlay traffic lanes in which the openings were made, for the entire length of street that was opened, if the Borough determines that the rideability or structural integrity of the pavement has been impaired by the openings.
  - b. If four (4) or more openings are made by the same permittee within 100 linear feet of pavement, the Borough may require the permittee to restore the entire disturbed pavement between the openings by milling, planing or other authorized method and overlaying the entire disturbed pavement.
  - c. If an opening is made within three (3) feet from the edge of pavement or other longitudinal joint or opening, the surface restoration shall be extended to the edge of pavement or other longitudinal joint or opening. The pavement interface with the curb is considered a joint; patches within three (3) feet of the curb shall be extended to the curb.
  - d. The transition areas at each end of an overlay shall follow the contour of the surrounding surface.
10. If the permanent pavement shows defects within 18 months from its final acceptance by the Borough Official, the Borough shall send a notice to the permittee noting the permittee's failure to comply with the terms of this ordinance and requiring the repair of the pavement within ten (10) working days of the date of the notice. If the permittee does not repair the paving as directed by the Borough within ten (10) working days of the date of the notice, the Borough may elect, but is not obligated, to perform the work and invoice the permittee for all costs and expenses incurred by the Borough to be paid within thirty (30) days of receipt. If invoice is not satisfied, the Borough has the option to seek relief from permittee's posted surety bond and seek reimbursement in conformance with this section and §§ 21-210 and §§ 21-212.

1. All work in connection with openings or excavations in any street, including protection, refilling, and temporary paving, shall be done by or for the permittee at his expense, and all such work shall be subject to the provisions of this Part and to the supervision and approval of the Borough Official. Such supervision and control shall not in any way impose liability upon the said Borough, nor relieve the permittee from liability.
2. The permittee shall save the Borough, its agents, employees and elected and appointed officials harmless from and against all claims, damages, losses and expenses, including reasonable attorney's fees, sustained on account of any suit, judgment, execution, claim or demand whatsoever arising out of the construction, leasing, operation or maintenance of the permittee's equipment, facilities, and services specified by this Part, whether or not any act or omission complained of is authorized, allowed and/or prohibited by this Part and the rights granted thereunder.
3. Insurance and Indemnification Requirements.
  - A. The permittee shall obtain and maintain in full force and effect throughout the term of this Part insurance with an insurance company licensed to do business and doing business in the Commonwealth of Pennsylvania and acceptable to the Borough. All companies will be required to be rated A-VH or better by A.M. Best or A or better by Standard and Poors. The permittee shall provide Borough with proof of such insurance so required.
  - B. All expenses of the insurance coverage and submitting evidence of insurance coverage shall be paid at the permittee's sole expense.
  - C. The permittee shall obtain and maintain in full force and effect insurance coverage in the following types and minimum amounts:
    1. Workers' compensation insurance or its equivalent with statutory benefits as required by any state or Federal law, including standard "other states" coverage; employers liability insurance with minimum limits of:
      - \$ 100,000 each accident for bodily injury by accident;
      - \$ 100,000 each employee for bodily injury by disease; and
      - \$ 500,000 policy limit for bodily injury by disease
    2. Commercial general liability insurance or its equivalent to include coverage for premises operations, independent contractors, products/completed operations, bodily injury, personal injury, contractual liability, and explosion, collapse and underground property damage, where exposure exists, with minimum limits of:
      - \$ 2,000,000 combined single limit for bodily injury and property damages per occurrence or its equivalent
    3. Comprehensive vehicle insurance for owned/leased vehicles, non-owned vehicles, and hired vehicles covering liability arising out of the ownership, maintenance or use of any vehicle, including loading and unloading, within minimum limits of:
      - \$ 1,000,000 combined single limit for bodily injury and property damages per occurrence or its equivalent
  - D. All insurance certifications shall contain the following required provisions:

1. Name the Borough of Hatboro and its elected and appointed officials, officers and employees as additional insureds as to all applicable coverage (except worker's compensation)
  2. Contain the following endorsement: Should any policies of insurance be cancelled, not renewed, coverages be reduced, or other material change before the expiration date of said policies of insurance, the issuer shall deliver 60 days' advance written notice, to the Borough via registered mail.
  3. Provide that all provisions of this Part concerning liability, duty, and standard of care, including the indemnity provisions, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies, subject to policy terms and conditions.
- E. Companies issuing the insurance policies shall have no recourse against the Borough for payment of any premiums or assessments which all are set at the sole risk of the permittee. Insurance policies obtained by permittee shall provide that the issuing company waives all right of recovery by way of subrogation against the Borough in connection with any damage covered by these policies.
4. Bond Requirements.
    - A. No applicant shall open or excavate in any right-of-way without first giving to the Borough a surety bond, with a surety company authorized to do business in the Commonwealth of Pennsylvania and acceptable to the Borough, in the amount of 15% of the estimated costs to perform all work in connection with openings or excavations in any right-of-way, including protection, refilling, temporary paving, final paving, and restoration of pavement markings and other features existing prior to the work authorized by the permit, to secure permittee's performance of obligations and faithful adherence to all requirements of this Part.
    - B. All expenses of the bond shall be paid at the permittee's sole expense.
    - C. The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be cancelled by the surety nor any intention not to renew exercised by the surety until 60 days after receipt by the Borough of Hatboro, by registered mail, of written notice of such intent.
    - D. The bond shall be in effect until at least 18 months after the Borough Official's final acceptance of the work to account for the maintenance period.
  5. No action, proceeding or exercise of a right with respect to such insurance and/or bond shall affect the Borough's rights to demand full and faithful performance under this Part, the Borough's rights to any damages recovered, excuse faithful performance by the permittee, or limit permittee's liability for damages, either to the full amount of the bond or otherwise.

**§ 21-211. Emergency Openings, Restrictions and Special Conditions. [Ord. 785, 6/1/1987, § 11]**

1. In the case of any leak, explosion, or other accident in any subsurface pipe line, construction,

or apparatus, it shall be lawful for the owner or person 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 Part 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 Official, 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.

2. The permission herein granted does not confer upon the permittee or its contractors the right to cut, remove or destroy trees or shrubbery within the right-of-way except under specifications, regulations, and conditions as the Borough Official may prescribe.
3. No new water, sewer, steam or gas main, or electric, telephone, or other utility line shall hereafter be laid or constructed, and no such existing main or line shall be extended, in any right-of-way of the Borough until the plan therefor shall have been first filed with and approved by the Borough Official. The location of any such main or line shall be at a depth of no less than 30 inches from the surface unless the locating of the main or lines at a depth of more than 30 inches from the surface is impossible or impractical.

**§ 21-212. Violations and Penalties. [Ord. 785, 6/1/1987, § 12; as amended by Ord. 820, 12/18/1989, § 12; and by Ord. 907, 9/23/1996, § 21-212]**

1. In the event that any work performed by or for a permittee shall, in the opinion of the Borough Official, be unsatisfactory and the same shall not be corrected in accordance with the Borough Official's 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 Official, the Borough may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost thereof, plus 10% to the permittee.
  - A. Payment for all work done by the Borough under the provisions hereof shall be made by the owner or person made liable therefor under the provisions hereof within 30 days after a bill therefor is sent by the Borough.
  - B. Upon failure to pay such charges within such time, the same shall be collectible by the Borough by an action in assumpsit or in the manner provided by law for the collection of municipal claims.
2. In addition to all other rights, remedies and powers reserved and/or retained by the Borough under this Part or otherwise, the Borough reserves the right to bring a civil action to collect any sums due to the Borough by applicant and/or permittee and/or forfeit or revoke all privileges of grantee under this Part in the event of willful or repeated violation of this Part.
3. Any person, firm, or corporation who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than \$1,000, plus all costs including court costs and reasonable attorneys' fees incurred by the Borough. Each day that a violation of this Part continues shall constitute a separate offense.