

Chapter 91 EXCAVATIONS

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[HISTORY: Adopted by the Council of the Borough of Berwick 1-12-1970 as Ch. 29 of the 1970 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Code enforcement and administration — See Ch. 9.
Building construction — See Ch. 70.

Streets and sidewalks — See Ch. 149.
Zoning — See Ch. 165.

§ 91-1. Permit required.

It shall be unlawful for any person, firm or corporation to make any opening or excavation in or under any street, alley or thoroughfare within the limits of the Borough of Berwick unless and until a permit therefor is secured from the Borough Secretary for each separate undertaking, such permit and the application therefor to be in the form prepared by the Secretary and to contain a statement that the applicant agrees to the terms of this chapter; provided, however, that no permit shall issue for an excavation in or under a street classified by the borough as a permanently surfaced street for a period of five years from the date of the completion of said permanent surfacing or resurfacing, except in a case of emergency as determined by the Borough Council of the Borough of Berwick, and provided further that notice of intention to install a permanent surface on any street shall be given by publication in a newspaper of general circulation in the Borough of Berwick once a week for three weeks. The police officers of the borough shall promptly prohibit any work being done without a proper permit or contrary to the terms hereof.

§ 91-2. Bond requirement.

No openings shall be made in the surface of any improved highway which is maintained by the Pennsylvania Department of Highways, and no opening shall be made in the surface of any improved street which is maintained by the Pennsylvania Department as a state highway, or any other street or thoroughfare in the Borough of Berwick, until and unless a permit has been obtained under this chapter and until a cash deposit or bond conditioned upon the proper

restoration of the surface in accordance with the adopted standards of the Department of Highways for the particular type of construction has first been supplied and filed with the Borough Secretary of the Borough of Berwick. The amount of the bond or the cash deposit, as the case may be, shall be fixed by schedule or schedules to be adopted by resolution of the Borough Council of the Borough of Berwick from time to time and kept on file with the Borough Secretary. The Borough Secretary shall be authorized in any case where the amount of the bond would be less than \$100 to require that a cash deposit be supplied instead of a bond. Any person, firm or corporation may, if he or it wishes, supply a bond on a yearly basis in an amount of not less than \$1,000 with corporate surety to cover the bond required under this chapter for excavations made by him or it during the term of said bond up to the amount of the said bond.

§ 91-3. Permit fees. [Amended 4-30-1984 by Ord. No. 1165; 9-21-1992 by Ord. No. 92-7; 10-17-1994 by Ord. No. 94-1]

The following is hereby established as the fee schedule for the issuance of a permit required by this chapter:

- A. When the proposed work involves cutting or distributing municipally maintained, paved or improved surfaces, the following schedule shall apply:
- (1) Basic permit: \$35, which includes any lengthwise opening up to 30 feet.
 - (2) More than 30 feet: basic permit fee of \$35, plus:
 - (a) Trench of more than 30 feet to 50 feet: \$52.50.
 - (b) Trench of more than 50 feet to 150 feet: \$140.
 - (c) Trench of more than 150 feet to 300 feet: \$210.
 - (3) No permit shall be issued for an opening exceeding 300 feet except upon prior written consent thereto granted by the Borough of Berwick Council, upon application filed by the person, firm or corporation seeking excavation permit, with drawings, plans, specifications and such other detail as Borough Council may require. Said application must include a permit fee of \$315, in addition to basic permit fees listed above.
 - (4) Whenever an excavation exceeds an area of more than 1/2 of the paved portion of the right-of-way, the permit application shall be treated as two separate applications and separate charges shall be computed and required for each half of the paved portion as per Subsection A(1), (2) and (3) above.
 - (5) Additional charges.
 - (a) Crossing streets.
 - [1] Crossing streets by trenching: \$50.
 - [2] Streets may be crossed by trenching only when the proper municipal officials are satisfied that unusual circumstances exist which, by their nature, require such method.
 - (b) Manholes or vaults with main: \$35.

- (c) Independent manholes or vaults: \$50.
- B. When the proposed work does not include cutting or disturbing municipally maintained, paved or improved surfaces, the following lengthwise schedule shall apply:
- (1) One hundred feet or less: \$20.
 - (2) More than 100 feet but less than 200 feet: \$25.
 - (3) More than 200 feet but less than 300 feet: \$35.
- C. In addition to the above-mentioned fees, all applicants shall deposit \$250 to cover any additional inspection or remedial work required by the borough in connection with the excavation.
- (1) Furthermore, each permittee must obtain a completion certificate from the Borough Engineer certifying that all excavation work has been performed in accordance with all applicable standards.
 - (2) Said completion certificate must be obtained within 180 days from the issuance of a permit under this provision, and if such a certificate is not obtained within this time frame, the deposit of \$250 mandated by this subsection shall be forfeited to the borough.
 - (3) Within 10 days after the timely issuance of a completion certificate, the borough shall provide each permittee with an itemization of any expenses incurred in connection with the remedial excavation inspection or remedial work, together with a refund of any portion of said \$250 not utilized therein.
 - (4) The permittee shall nonetheless remain responsible for all costs, above those required to obtain the permit, to restore the excavation site to its original integrity prior to the permitted excavation and may be cited by the Enforcement Officer under this section for such failure to comply.

§ 91-4. Work done by borough; payment.

Where the work is done by the borough, after the street is resurfaced the borough shall bill the applicant for the permit for the total cost, including repairs, materials, equipment rental and all other proper charges for the resurfacing, plus an additional charge of 10% of the total cost, plus an additional 20% thereof to cover future repairs caused by the excavation, which bill must be paid by the applicant within 15 days of the mailing thereof by the borough.

§ 91-5. Charge for street closed to traffic.

An additional charge of \$1 shall be paid by the applicant for each day that the street is closed to traffic by reason of said excavation or work on the street by said applicant.

§ 91-6. Adequate protection required.

It shall be the duty of any person or persons, firm or corporation to whom a permit is issued or by whom any opening or excavation is made as aforesaid to provide and maintain proper and adequate guards, barriers and lights to prevent accidents, and said person or persons, firm or corporation shall assume all risks and be liable for all damages by reason of the openings and the excavations and by reason of any failure to properly fill the hole or trench and maintain the surface disturbed in a safe condition.

§ 91-7. Filling; pounding and ramming.

It shall be the duty of any persons, firm or corporation causing an opening or excavation to be made to thoroughly and completely fill the same, pounding and ramming as to prevent any settling thereafter.

§ 91-8. Filling standards.

If the work in opening or in filling shall not be properly or shall be unskillfully or improperly or incompletely done, the Borough Engineer or any other person designated by Council may cause the same to be done in the manner he deems to be proper and the expense thereof, including any overhead expense, shall be charged to the person, firm or corporation by whom the opening or excavation was made, together with 50% additional. This charge shall also be a claim under the bond as hereinbefore specified. No permit shall be issued to any person, firm or corporation in default under this section until the cost and penalty herein provided are paid, and no further permit shall be granted to any person, firm or corporation unless and until the openings or excavations already caused by him or it have been properly filled as aforesaid, in a safe condition and at the proper grade, of which the said Engineer or other person designated by Council shall be the judge.

§ 91-9. Charge or care of excavations by borough.

In no case shall any opening or excavation made by any person, firm or corporation be considered in the charge or care of the borough or any officer or person employed by the borough, and no officer or employee is authorized to, in any way, take or assume any jurisdiction over any such opening or excavation. However, if the person, firm or corporation causing the opening to be made deems it to his or its advantage to employ the same workmen who are employed by the borough in their off time, he or it may do so.

§ 91-10. Violations and penalties. [Amended 4-30-1984 by Ord. No. 1165]

- A. Any person, firm, corporation, association or other form of organization who violates this chapter, in proceedings before the District Justice, shall pay a fine of not more than \$300 plus cost of proceedings, including engineering and attorney's fees. Each day that such condition continues to exist shall constitute a separate offense, and notice to the offender shall not be necessary to constitute an offense.

- B. Further, any person, firm, corporation, association or other form of organization who shall fail or neglect to comply with restoration or any other notices given by the Borough of Berwick under this chapter or any amendments, in proceedings before the District Justice, shall be subject to an additional fine of \$300 for each such failure or neglect, and each day such condition continues to exist shall constitute a separate offense.

§ 91-11. Administrative and enforcement duties. [Amended 4-30-1984 by Ord. No. 1165]

If for any reason the duties prescribed in this chapter or any amendments thereto cannot be promptly performed by the Borough Secretary, Borough Engineer, Borough Code Enforcement Officer or their delegate, they may be performed by and under the direction of the Mayor and the Chairperson of the Street Committee of Council.

