

BOROUGH OF TOPTON
BERKS COUNTY, PENNSYLVANIA

ORDINANCE NO. 6-2022

AN ORDINANCE OF BOROUGH COUNCIL OF THE BOROUGH OF TOPTON, BERKS COUNTY, PENNSYLVANIA, AMENDING CHAPTER 94 TITLED "STREETS AND SIDEWALKS", OF THE CODE OF ORDINANCES OF THE BOROUGH OF TOPTON, BERKS COUNTY, PENNSYLVANIA, AS AMENDED, TO (1) AMEND THE DEFINITIONS SECTION TO SUBSTITUTE THE CURRENT EDITIONS OF PENNDOT PUBLICATIONS 208 AND 408; (2) ADD A NEW SECTION 94.35(S) TITLED "RESTRICTIONS UPON OPENING NEWLY IMPROVED STREETS", TO RESTRICT OPENING NEWLY IMPROVED STREETS, EXCEPT IN CERTAIN SITUATIONS; (3) AMEND SECTION 94.41 TITLED "FEE SCHEDULE", TO ADD A NEW SUBSECTION A TITLED "BASE FEE FOR PERMIT", ESTABLISHING CERTAIN PERMIT FEES AND PROVIDING FOR AMENDMENT OF THE FEE SCHEDULE BY RESOLUTION OF BOROUGH COUNCIL; AND (4) AMEND SUBSECTION D OF SECTION 94.99 TITLED "PENALTY", TO INCREASE THE PENALTY FOR VIOLATION OF SECTIONS 94.30 THROUGH 94.41 OF THIS CHAPTER TO ONE THOUSAND DOLLARS (\$1,000.00).

BE IT ENACTED AND ORDAINED by Borough Council of the Borough of Tipton, Berks County, Pennsylvania ("Borough"), and it is hereby ENACTED and ORDAINED by the authority of the same, as follows:

Section 1. Section 94.31 titled "Definitions", of Subchapter titled "Excavations", of Chapter 94 titled "Streets and Sidewalks", of the Code of Ordinances of the Borough of Tipton, Berks County, Pennsylvania, is hereby amended and supplemented to remove the definition for Publication 203 and to substitute the most current version of PennDOT Publication 208 titled "Pennsylvania Work Zone Pocket Guide for Municipalities & Utilities" and to add to the definition for Publication 408 that the most current edition of Publication 408 shall be used, as follows:

PUBLICATION 208 (Current Edition). A PennDOT Publication containing information covering common conditions work crews may encounter during maintenance, construction, or utility work on or along Pennsylvania's roadways, including any amendment thereto or number change covering the same subject and any substitution or replacement thereof.

PUBLICATION 408 (Current Edition). A PennDOT Publication containing PennDOT's highway construction, specifications, including any amendment thereto or number change covering the same subject and any substitution or replacement thereof.

Section 2. Section 94.35 titled "General Conditions", of Subchapter titled "Excavations", of Chapter 94 titled "Streets and Sidewalks", of the Code of Ordinances of the Borough of Tipton, Berks County, Pennsylvania, is hereby amended and supplemented to add a new §94.35(S) restricting opening newly improved streets, except in certain situations, as follows:

(S) **Restrictions Upon Opening Newly Improved Streets.**

(1) No permit shall be issued by the Borough Manager which would allow an excavation or opening in a paved and improved street surface that is less than five (5) years old, unless the applicant can demonstrate clearly that: (1) the public health or safety requires that the proposed work be permitted, or (2) an emergency condition exists that requires that the work be performed.

(2) In either instance described in §94.35(S)(1) above, as a condition of any permit issued, the applicant shall be required to pave/restore/overlay a minimum twelve (12) feet width (or the entire cartway width, if deemed appropriate by the Borough Manager in his or her sole discretion), which width shall run the entire length of the opening, plus fifty feet (50') on each side of the two (2) sides of the length of the opening, and shall be accomplished in accordance with Borough specifications. Any financial security provided for in this Chapter shall reflect the increased dimension required by this section, if applicable.

Section 3. Section 94.41 titled "Fee Schedule", of Subchapter titled "Excavations", of Chapter 94 titled "Streets and Sidewalks", of the Code of Ordinances of the Borough of Tipton, Berks County, Pennsylvania, is hereby amended and supplemented to add a new Subsection A titled "Permit Fees", re-lettering the remains Subsections, and adding a new Subsection I titled "Amendment of Fee Schedule", to provide for amendment of the Fee Schedule from time to time by Borough Council resolution, as follows:

(A) **Base Fees for Permit.**

First 10 LF or 30 Sq Ft	\$25.00
If over 10 LF / 30 Sq Ft	+\$100.00
For each fraction of 10 LF / 30 Sq Ft over base	+\$100.00, plus actual inspection fee

Requirements for work:

If a street cut exceeds 10 linear feet in length, the entire area shall be milled and overlaid for a width of 1/2 the street/alley width, unless the repair crosses the center line of the street/alley, then the mill and overlay shall be for the full width of the street/alley.

If two street cuts are made less than 100 feet apart, the entire area between the two cuts and including the two cuts shall be milled and overlaid for a width of 1/2 the street/alley width, unless the repair crosses the center line of the street/alley, then the mill and overlay shall be for the full width of the street/alley.

If more than four cuts are made within a 500-foot span in the street/alley, the section must be milled and overlaid for 1/2 the width of the street/alley, unless the repair crosses the center line of the street/alley, then the mill and overlay shall be for the full width of the street/alley for the entire length of work.

Milling and overlay may also be required by the Borough Manager or the designee of the Borough Manager.

(B) **Permit Issuance Fees.** Issuance fees are used to defray 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.

Emergency permit card	\$5
Issuance fee	\$20
Supplement fee (each 6-month time extension) (each submitted change)	\$10

(C) **General Permit Inspection Fees.** General inspection fees are used to defray costs incurred by the Borough in spot inspection(s) of permitted work and/or subsequent inspection(s) after the permitted work has been completed, to ensure compliance with the permit and these regulations.

(1) **Underground Facilities (e.g., Pipelines, Buried Cable-With Pedestals, Conduit, Manholes, Headwall, Inlet and Grate).** This fee is calculated on the total linear feet of the facility or facilities being permitted within the right-of-way.

Physically connected facility or facilities (first 50 feet or fraction thereof) (each section)	\$20
Additional physically connected facilities (each 100 feet or fraction thereof)	\$5

(2) **Surface Openings.** Fifteen Dollars (\$15.00) (e.g., service connections performed independently of underground facility installation, pipe line repairs) (each opening).

(3) **Above-Ground Facilities (e.g., Poles, Guys and/or Anchors If Installed Independently of Poles).**

Up to 10 physically connected above-ground facilities (each continuous group)	\$20
Additional above-ground physically connected facilities (each pole with appurtenances)	\$2

(4) **Crossings (e.g., "Overhead" Tipples, Conveyors or Pedestrian Walk-Ways and "Undergrade" Subways or Mines).** Eighty Dollars (\$80.00).

(D) **Additional Inspection Fees.** If the Borough determines that the permitted work is of sufficient magnitude or importance to warrant assignment of one (1) or more inspectors to observe the said work, on more than a spot inspection basis, the permittee shall be charged for all salary, overhead and expenses incurred by each inspector and the Borough.

(E) **Temporary and Permanent Restoration Fees.** (Public utilities franchised in the Borough are exempt.)

(1) Restoration fees cover the cost for the Borough to make necessary temporary and permanent restoration of trenches. A deposit of the required fee by the applicant shall be held by the Borough to guarantee that the restorations have been made. If the restorations are to be made by the Borough, the deposit shall be used to cover the cost to make the restorations. The fees for the said restorations are as follows:

	<i>Less Than 50 Square Yards</i>	<i>More Than 50 Square Yards</i>
Flexible base paving	\$25/S.Y.	\$20/S.Y.
Other shoulders	\$8/S.Y.	\$5/S.Y.
Paved shoulder	\$18/S.Y.	\$13/S.Y.
Rigid concrete paving	\$40/S.Y.	\$30/S.Y.

(2) If the costs to the Borough to make the restorations and/or inspections exceed the amount on deposit, the applicant, upon written notification by the Borough, shall immediately reimburse the Borough for the costs incurred with the said inspections and/or restorations.

(3) If the applicant makes the said restorations, upon completion of final restoration and receipt of written notification by the Borough, the Borough shall within 45 days make a refund for the deposit portion of the cost of the restorations' guarantee to the applicant.

(F) Posting of Financial Security by Public Utilities.

(1) Public utility corporations operating within the Borough shall have on file with the Borough a bond or other approved form of financial security ("Financial Security") in the amount of \$5,000 each year, covering all openings or excavations made or to be made in a calendar year, or shall furnish Financial Security in the amount determined by the Borough covering the proposed openings or excavation set out in the application. Bonds shall have either corporate surety or surety approved by the Borough Solicitor and shall be conditioned to indemnify the Borough in the event of any loss, liability or damage that may result or accrue from or because of the making, existence or manner of guarding or constructing any such opening or excavation during the term of said bond.

(2) Financial Security shall be approved or disapproved by the Borough Solicitor, the proper fee determined by a duly adopted resolution of the Borough Council. The Financial Security shall then be filed with the Borough Manager, or placed in an escrow account.

(G) Borough Authorities Exempt. Any municipality authority created by the Borough shall be exempt from the permit fees, general permit inspection fees, additional inspection fees, temporary and permanent restoration fees and Financial Security of public utilities as provided herein. Borough authorities, however, are not exempted from obtaining a permit as provided for in §§ 94.30 through 94.41.

(H) **Blasting Financial Security Amounts.** When blasting will be required, a blasting Financial Security shall be provided in the following amounts:

<i>Length of Trench or Opening</i>	<i>Amount</i>
Less than 500 feet	\$50,000
500 to 1,000 feet	\$75,000
1,000 to 2,000 feet	\$150,000
Greater than 2,000 feet	\$200,000

(I) **Amendment of Fee Schedule.** The Fee Schedule established in this Section may be amended from time to time by Resolution of Borough Council.

Section 4. Subsection D of Section 94.99 titled "Penalty" of Subchapter titled "Excavations", of Chapter 94 titled "Streets and Sidewalks", of the Code of Ordinances of the Borough of Topton, Berks County, Pennsylvania, is hereby amended and supplemented to increase the penalty for violation of §§94.30 through 94.41 of this Chapter to One Thousand Dollars (\$1,000.00), as follows:

(D) Any person who shall violate any provision of §§ 94.30 through 94.41 shall upon conviction thereof in a summary proceeding before a magisterial district judge be sentenced to pay a fine of not more than One Thousand Dollars (\$1,000.00), together with costs of prosecution. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of a violation may be punished as provided above for each separate offense.

Section 5. If any provision, paragraph, word, section, or subsection of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, or subsection shall not be affected and shall remain in full force and effect, and shall not affect the validity of the remainder of the Ordinance.

Section 6. All relevant ordinances, regulations, and policies of the Borough not amended shall remain in full force and effect. Any Ordinance or part of an Ordinance conflicting with the provisions of this Ordinance shall be and the same is hereby repealed to the extent of such conflict.

Section 7. This Ordinance shall become effective on the earliest date permitted by law.

DULY ENACTED AND ORDAINED this 14 day of November, 2022, by the Council of the Borough of Topton, Berks County, Pennsylvania.

ATTEST:

By: Courtney M. Corona
Courtney M. Corona, Secretary

BOROUGH OF TOPTON

By: Michelle Lorah
Michelle Lorah, Council President

DULY APPROVED this 14 day of November, 2022.

By: Thomas A. Biltcliff, III
Thomas A. Biltcliff, III, Mayor