

CHAPTER XI

STREETS AND SIDEWALKS*

11-1 Excavations and Openings.

11-1.1 *Permit Required.* It shall be unlawful for any person to dig up or excavate any street, avenue, alley, lane, highway, road, sidewalk, curb, pavement or other public place, or any part thereof, within the borough for the purpose of laying down rails, pipes, mains, conduits, or for any other purpose, until a written application for a permit is made to and a permit is granted by the borough clerk with the authority and under the direction of the street committee of the borough.

11-1.2 *Contents of Application.* The written application shall be signed by the applicant and shall delineate and accurately describe the section to be dug up or excavated and the purpose, nature, scope, area and extent of the work and the length of time the work will require and in which the excavation and restoration will be completed. The application shall be supplemented by such other reasonable information as may be required by the borough council or street committee of the borough.

11-1.3 *Fees.* On receipt of the permit, the applicant shall deposit with the borough clerk, by cash or certified check, a sum equal to five (\$5.00) dollars per square yard to be excavated where there is no permanent hard surface and a sum equal to ten (\$10.00) dollars per square yard where the surface or treatment to be excavated is brick, asphalt, bituminous concrete, wood, block or other permanent surface or treatment. In lieu of a deposit by cash or certified check, the applicant may deposit a bond of an amount approved by the mayor and council. Where several permits are desired throughout the year, a blanket bond in a sum to be fixed by the borough council, based on the estimated number of permits to be issued, may be given in lieu of a separate bond or deposit for each separate permit, the bond to be renewed annually. No permit shall become effective until the deposit is made. Any permit issued may be on such other reasonable terms and conditions as the borough may require in the public interest. The deposit shall be retained by the borough until 30 days have elapsed from the date of completion by the applicant of the work of restoring, at least to its original condition and appearance, any

*The power to regulate streets is set forth in R.S. 40:67-1. The incidental power to perform work where a landowner has refused to do so and to recover the cost thereof is contained in R.S. 40:67-9.

section so excavated, and until that time shall be security for such restoration as well as security for any other damage or other loss the borough may incur or become subject to by reason of the excavation or any work connected therewith. In the event restoration is not completed within the time and on the terms and conditions set forth in the application or permit, or in the event such restoration is not completed in a workmanlike and approved manner and in accordance with standard practice, or in the event the borough incurs or becomes subject to any damage or other loss by reason of the work or excavation, then the deposit may be used and applied by the borough to the borough's work of restoration or to any such damage or loss, and if the deposit is insufficient, then the applicant shall become liable to the borough for any excess cost over the deposit. In the event the deposit is entirely sufficient and there is a surplus, the borough shall repay to the applicant any balance remaining.

11-1.4 *Openings Marked and Guarded.* No excavation shall remain open for more than 48 hours, and any excavation shall be properly fenced and marked with red lanterns or flares at night or with red flags or other proper warnings required by the borough during the day. The borough, in issuing such permit and after the same is issued and during the progress of the work, may relax or modify the requirements of this section or impose other requirements and conditions if it deems in the public interest to do so.

11-1.5 *Openings in Repaved Streets.*

a. *Notice.* When the borough intends to repave any street, written notice of the proposed repaving shall be given by the borough administrator to all persons owning property abutting that portion of the street to be repaved and to all public utilities and authorities operating in the borough. Such notice shall be sent by certified mail to the address of the property owners as shown on the official tax records of the borough and to the utilities or authorities at their principal place of business. It shall advise them of the nature of the proposed work and notify them that they have 15 days from the date of mailing to notify the borough if they intend to open or excavate the street within the next five years.

b. *Failure to Respond to Notice.* Following such notice, no permit to open or excavate a repaved street shall be issued by the borough clerk within five years of such repaving to any person receiving notice under this section unless the applicant can clearly demonstrate to the satisfaction of the borough engineer that the public health or safety requires that the proposed work be permitted, or unless an emergency exists. If a permit is issued pursuant hereto to open any repaved street less than five years old, a penalty charge shall be made for the opening

unless the work is of an emergent nature. The penalty charge shall be on a sliding scale and shall be equal to two percent of the cost of restoring the opening for each unelapsed month or fraction thereof of the five-year restricted period.

11-2 Overhanging Weeds and Brush.

11-2.1 *Owner To Remove.* The owner or tenant of lands abutting or bordering upon the public streets, roads or highways of the borough shall, upon ten days notice in writing, remove all grass, weeds, brush, overhanging hedge or other impediments located upon or protruding over the sidewalk between the property line and the side line or curb of the street, road or highway bordering upon their respective lands.

11-2.2 *Failure To Comply.* Upon the failure of the owner or tenant to comply with the notice, the chairman of the street committee shall cause the removal of the grass, weeds, brush, overhanging hedge or other impediments located upon or protruding over the sidewalk between the property line or curb of the street, road or highway of any such owner or tenant so notified, and shall certify the cost to the mayor and council who shall examine the statement of cost and, if found correct, shall cause the same to be charged against the land abutting or bordering upon the street, road or highway, and the amount so charged shall become a lien on the lands and shall be added to and become and form a part of the taxes next to be assessed and levied upon the lands, and the sum shall bear interest at the same rate imposed for the payment of delinquent taxes and shall be collected and enforced by the tax collector.

