

**STREETS AND SIDEWALKS  
CHAPTER 21**

**ORDINANCE NO. 96-23**

**AN ORDINANCE OF THE BOROUGH OF CLARKS SUMMIT  
DEFINING AND REGULATING STREET EXCAVATIONS  
AND OPENINGS; SETTING FORTH REQUIREMENTS FOR  
PERMIT APPLICATIONS, FORMS, FEES AND THE  
APPROVAL AND ISSUANCE OR DISAPPROVAL THEREOF;  
REQUIRING NOTIFICATION OF UTILITIES; FIXING  
RESPONSIBILITY FOR RESTORATION OF OPENINGS  
AND SURFACES AND DEFECTS THEREFROM;  
ESTABLISHING REQUIREMENTS AND SPECIFICATIONS  
FOR WORK DONE UNDER PERMIT; AUTHORIZING  
EMERGENCY WORK; PROHIBITING REMOVAL AND  
DESTRUCTION OF TREES AND SHRUBBERY;  
ESTABLISHING LIMITATIONS UPON EXCAVATIONS  
AFTER STREET IMPROVEMENTS AND CONDITIONS FOR  
LAYING AND EXTENDING UTILITY LINES;  
AUTHORIZING THE BOROUGH OF CLARKS SUMMIT TO  
DO WORK AND COLLECT COSTS; REQUIRING POSTING  
OF BONDS; PRESCRIBING PENALTIES FOR  
VIOLATION.**

The Borough Council hereby ordains:

**Section 1. Definitions and Interpretation.** The following words, when used in this ordinance, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise:

**EXCAVATION** - any activity within the right-of-way of any street/alley/cartway which involves cutting, breaking, or disturbing the surface thereof. In this ordinance, the term **OPENING** shall have essentially the same meaning as excavation.

**STREET** - any public street, avenue, road, square, alley, highway, or other public place located in the Borough of Clarks Summit and established for use of vehicles, but shall not include state highways.

**PERSON** - any natural person, partnership, firm, association, corporation or municipal authority.

In this ordinance the singular shall include the plural, and the masculine shall include the feminine and neuter.

**Section 2. Permit Required to Make Excavation or Opening.** It shall be unlawful for any person to open or to make any excavation of any kind in any of the streets in the Borough of

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Clarks Summit without first securing a permit therefor, as hereinafter provided.

**Section 3. Exception to Permit Requirement.** No permit, as established by this Ordinance, shall be required of the Borough of Clarks Summit, or a contractor to the Borough of Clarks Summit, opening and/or excavating streets relating to a utility owned by the Borough of Clarks Summit.

**Section 4. Application for Permit.** Any person who shall desire to make any opening or excavation in any of the streets in the Borough of Clarks Summit shall make application to the Borough Manager/Secretary in writing for that purpose. Such application shall be made upon blanks/forms to be furnished by the Borough of Clarks Summit and shall set forth the name of the applicant, the exact location of the proposed opening or excavation, and the approximate size and/or depth thereof, and shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Borough of Clarks Summit and the laws of the Commonwealth of Pennsylvania in relation thereto, and that the applicant shall well and truly save, defend and keep harmless the Borough of Clarks Summit from and indemnify it against any and all actions, suits, demands, payments, costs and charges for or by reason of the proposed opening excavation, and all damages to persons and/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.

**Section 5. Permit Fee.** Before any permit shall be issued to open or excavate any street in the Borough of Clarks Summit the applicant shall pay a permit fee in the amount fixed according to a schedule established by Borough Resolution; except that licensed and regulated public utilities may establish another form of permit payment to the Borough. When application shall be made to open or excavate any longitudinal opening or excavation in excess of ten (10) feet, before any permit shall be issued so to open or excavate, the applicant shall pay in addition to such minimum fee, an additional fee at the rate, for each one hundred feet (100') or fraction thereof to be opened or excavated upon such street, pursuant to the fee schedule.

**Section 6. Issuance of Permits Restricted.** Permits shall be issued only to persons furnishing public utility service or the owner or owners of the real property adjoining the location where such opening or excavation is to be made.

**Section 7. Information Contained on Permit.** Any permit issued hereunder shall specify the exact location where the opening or excavation is to be made, the approximated permitted size and/or

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depth thereof and the time within which the work for which the permit is granted to be completed.

**Section 8. Permit Approval/Disapproval.** A permit may be issued to the applicant after all the requirements therefor have been filed. If the application is disapproved, written notice of disapproval together with reason(s) therefor shall be given to the applicant.

**Section 9. Responsibility to Contact Utilities.** 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, as amended by Act 38 of 1991, et seq., and as further amended or supplemented from time to time. It shall be the permittee's responsibility to contact the utilities that have recorded their facilities in compliance with said Act.

**Section 10. Refilling of Opening or Excavation; Restoration of Surface; Responsibility for Defects Occurring Within 2 Years.** Any person who shall open or excavate any street in the Borough of Clarks Summit shall thoroughly and completely refill the opening or excavation in such manner as to prevent any settling thereafter, and shall restore the surface to same condition as it was before the opening or excavation, and such restoration shall be in accordance with the current specifications of the Department of Transportation of the Commonwealth Pennsylvania which are hereby adopted as specifications of the Borough of Clarks Summit for restoration of surfaces of streets in the Borough of Clarks Summit, as restored; the surface shall conform to the proper grade and be of the same surface covering as the part of the thoroughfare immediately adjoining the opening. If within two (2) years after restoration of the surface as herein provided, defects shall appear therein resulting from defective backfilling by the applicant, the applicant shall reimburse the Borough of Clarks Summit for the cost of all necessary repairs to the permanent paving.

**Section 11. Responsibility of Permit Holder for certain Work; Right of the Borough of Clarks Summit to Do Certain Work; Charges Therefor.** All other work in connection with openings in any street, including excavation, protection, refilling and temporary paving, shall be done by or for the person to whom or which the permit has been issued at his or its expense, and all such work shall be subject to the provisions of this ordinance and to the supervision and approval of the designated official, provided that the Borough Manager/Secretary, or his designee, may if he/she deems necessary to the proper performance of the work, require that cutting of the surface of streets and the backfilling of all excavations therein shall be done by the Borough of Clarks Summit, in which event the applicant shall pay

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the actual cost of the work performed by the Borough of Clarks Summit.

**Section 12. Requirements for Work; Correction of Unsatisfactory Work; Completion of Incomplete Work.**

1. No opening or excavation in any street shall extend from the curb line into the highway a distance greater than one foot (1') beyond the center line of the street before being refilled and the surface of the highway restored to a condition safe and convenient for travel.
2. No more than five hundred feet (500') longitudinally shall be opened in any street at any one time.
3. The work of excavation shall be so conducted as not to interfere with the water mains, sewers or their connections with the houses, gas lines, or any other subsurface lines or constructions, until permission of the proper authorities in connection with such subsurface lines or constructions shall have been obtained.
4. No tunneling shall be allowed without the express approval of the Borough Manager/Secretary, or his/her designee, and permission therefor endorsed upon the permit. The backfilling of a tunnel excavation shall be made only in the presence of the Borough Manager/Secretary, or an inspector designated by him/her, and shall be done only in a method approved by the Borough Engineer.
5. All openings or excavations shall be backfilled promptly with modified 2A stones and thoroughly compacted in layers, each of which layers shall not exceed eight inches (8") in depth. Backfilling shall be placed to within ten inches (10") of the surface.
6. A temporary paving of coldpatch premix, thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving and maintained for a period of ninety (90) days.
7. On concrete base streets, such base shall be replaced with concrete and the minimum size of the opening or excavation shall be sixteen (16) square feet.
8. During the making of any excavation in the street, every necessary and reasonable precaution shall be taken by the applicant and the parties making the same to keep the street in a safe and passable condition both day and night by guards, barriers, lanterns or other devices, as approved

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by PennDOT specifications, and all excavating permits granted hereunder are granted under and subject to the express condition that the person to whom the same is issued shall immediately indemnify, save and keep harmless the Borough of Clarks Summit from any loss in damages, or otherwise whatsoever, which may or shall be occasioned at any time by the said excavation, or by any leak, explosive or other injury from any pipe, apparatus, conduit, or any other matter placed in the said excavation.

9. The applicant shall notify the Borough Manager/Secretary when the opening or excavation is ready for backfilling **before** any backfilling is done, when backfilling work is completed, when temporary paving has been installed and when the street has been permanently restored so that inspections may be made.

10. In the event that any work performed by or for a permit holder shall, in the opinion of the Borough Manager/Secretary, or his/her designee, be unsatisfactory and the same shall not be corrected in accordance with his/her instructions within the time fixed by him/her, or in the event the work for which the permit was granted is not completed within the time fixed by the Borough Manager/Secretary, or his/her designee, the Borough of Clarks Summit may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost thereof, plus twenty percent (20%) to the applicant.

**Section 13. Emergency Openings.** In the case of any leak, explosion or other accident in any subsurface pipe, line, construction or apparatus, it shall be lawful for the person owning or 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 ordinance 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 Manager/Secretary, after such notice as he/she 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 twenty percent (20%) to such owner or person.

**Section 14. Restrictions Regarding Trees and Shrubbery.** 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 legal right-of-way except under

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specifications, regulations and conditions as the Borough of Clarks Summit may prescribe on such permit. Such requests shall be a part of the permit application, and may be granted or denied by the Borough of Clarks Summit.

**Section 15. Work Necessitating Opening or Excavation to be Done Prior to Street Improvement and Not Until 5 Years Thereafter; Exception.** The Borough Manager/Secretary shall give timely notice to all persons owning property abutting on any street within the Borough of Clarks Summit about to be paved or improved, and to all public utility companies operating in the Borough of Clarks Summit, and all such persons and utility companies shall make all water, gas and other connections, as well as any repairs thereto which would necessitate excavation of the street within sixty (60) days from the giving of such notice, unless such time is extended in writing for cause shown by the Borough Manager/Secretary. New paving shall not be opened or excavated for a period of five (5) years after completion thereof, except in case of emergency, the existence of which emergency and the necessity for the opening or excavating of such paving to be determined by the Borough Manager/Secretary.

**Section 16. Permittee Responsible for Future Relocation of Work.** If at any time in the future the roadway is widened, reconstructed or alignment or grades are changed, the permittee further agrees to change or relocate all or any part of the structures covered by this permit which interfere with the improvement of the roadway at its own cost and expense.

**Section 17. Conditions for Laying and Extending Utility Lines.** No new water, gas main, stream 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 of the streets of the Borough of Clarks Summit until the plan therefor shall have been first filed with the Borough Manager/Secretary and such plan, and the exact location of such main or line, approved by him/her. The Borough Manager/Secretary shall not approve the locating of any such main or line at a depth of less than thirty-two inches (32") from the surface of the street unless he/she shall be convinced that locating the same at a depth of more than thirty-two inches (32") from the surface is impossible or impractical.

**Section 18. Bond Required.** No company, corporation or association shall dig up any street, alley or cartway without first giving to the Borough of Clarks Summit a bond with some acceptable trust or surety company as surety in the sum determined by the schedule of fees, conditioned for the faithful performance of these provisions and also for any and all damages, claims, demands, suits, costs and counsel fees occasioned or

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arising from the digging up, opening or closing of said streets and alleys.

**Section 19. Payment for Work Done by the Borough of Clarks Summit.** Payment of all work done by the Borough of Clarks Summit under the provisions hereof shall be made by the person made liable therefor under the provisions hereof within thirty (30) days after a bill therefor is sent to such person by the Borough of Clarks Summit. Upon failure to pay such charges within such time, the same shall be collectible by the Borough of Clarks Summit by action in assumpsit or in the manner provided by law for the collection of municipal claims to include legal and court costs associated therewith.

**Section 20. Penalties.** Any person, firm or corporation who shall violate any provision of this ordinance shall, upon conviction thereof, be sentenced to pay a fine of not more than three hundred dollars (\$300.00), and in default of payment, to imprisonment for a term not to exceed thirty (30) days. Every day that a violation of this ordinance continues shall constitute a separate offense.

**Section 21. Applicability.** The provisions of this ordinance shall not apply to laying sidewalks or curbs.

**Section 22. Repealer.** All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed; specifically repealed are:

Ordinance 50-6, dated June 24th, 1950  
Ordinance 56-2, dated September 5th, 1956

Code of Ordinances Borough of Clarks Summit; Chapter 21,  
Part 1, dated November 2nd, 19983

**Section 23. Severability.** If any sentence, clause, section, or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Clarks Summit Borough Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

**Section 24. Effective Date.** This ordinance shall become effective ten (10) days after adoption by the Clarks Summit Borough Council.

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**EDWARD M. BUSH, SR.  
President of Council**

**APPROVED:**

Approved this 4th day of December, 1996:

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**ANTHONY PERRY  
Mayor**

**ATTEST:**

Adopted at a Borough of Clarks Summit Special Council  
Meeting conducted on Wednesday, December 4th, 1996.

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**JAMES G. VONES, SR.  
Borough Manager/Secretary**

SEAL