

LAUREL MOUNTAIN BOROUGH  
WESTMORELAND COUNTY, PENNSYLVANIA

ORDINANCE NO. 1-2023

**AN ORDINANCE OF LAUREL MOUNTAIN BOROUGH, COUNTY  
OF WESTMORELAND, COMMONWEALTH OF PENNSYLVANIA,  
ESTABLISHING STREET OPENING REGULATIONS**

**WHEREAS**, pursuant to the authority vested in Laurel Mountain Borough (hereinafter ABorough@) by the Pennsylvania Borough Code (53 P.S. '46008), the Borough desires to enact an Ordinance establishing street opening regulations.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED**, by the Borough Council of Laurel Mountain Borough, Westmoreland County, Pennsylvania, as follows:

**STREET – See 1982 street dedication with changes**

A public street, public easement, right-of-way, public highway, public alley, public way or public road accepted or maintained by the municipality or open for travel and use by the public, whether or not so accepted or maintained, including the entire area within the right-of-way thereof.

**PERMIT REQUIRED.**

It shall be unlawful for any person to make any tunnel, opening, or excavation of any kind in or under the surface of any street without first securing a permit from the Borough's designated municipal representative for each separate undertaking; provided, however, any person maintaining pipes, lines or other underground facilities in or under the surface of any street may proceed with an opening without a permit when emergency circumstances demand the work to be done immediately, provided the permit could not reasonably and practically have been obtained beforehand. The person shall thereafter apply for a permit on the first regular business day on which the office of the Borough's designated municipal representative is open for business, and said permit shall be retroactive to the date when the work was begun. In all cases where emergency openings are necessary, the Borough's designated municipal representative shall be notified prior to such opening. All inspections of permitted work shall be concluded by the Borough's designated municipal representative or its designee, as appropriate.

**STREET OPENINGS LIMITED.**

No person to whom a permit has been granted shall perform any of the work authorized by such permit in any amount greater than that specified in the permit, except that, where the permittee desires to perform additional work not in excess of an amount greater than 10% of the amount specified in the permit, the permittee may apply to the Borough's designated municipal representative for an amended permit to permit additional work. If the additional work desired to be performed by the permittee exceeds 10% of the amount

specified in the original permit, an application for a new permit shall be made. Any deposit or bond posted in connection with the original permit shall be deemed to cover any such additional work as may be added pursuant to the issuance of an amended permit within the limit specified herein.

### **COMMENCEMENT OF WORK.**

Work for which a permit has been issued shall commence within 30 days after the issuance of the permit therefor. If not so commenced, the permit shall be terminated automatically unless the permittee applies for an extension of time within which to commence work. If such an extension is granted, the original permit shall remain in force for the period of time specified in the extension. Permits which terminate by reason of failure to commence work within 30 days after issuance or within any extension of time granted hereunder may be renewed only upon the payment of an additional permit fee as originally required. Permits shall be issued for a period not to exceed one year, and any application to renew an expired permit shall be treated as a new application, including the payment of a new permit fee.

### **PERMITS NON-TRANSFERABLE.**

Permits are not transferable from one person to another, and the work shall not be performed in any place other than the location specifically designated in the permit.

### **EXPIRATION OF PERMITS.**

Every permit shall expire at the end of the period of time which shall be set out in the permit. If the permittee shall be unable to complete the work within the specified time, he shall, prior to expiration of the permit, present in writing to the Borough's designated municipal representative a request for an extension of time, setting forth therein the reasons for the requested extension. If the Borough's designated municipal representative finds that the failure to complete the work under the permit within the time specified therein was due to circumstances reasonably beyond the control of the permittee and that an extension of time to complete the work under the permit is necessary and not contrary to the public interest, the permittee may be granted additional time for the completion of the work.

### **RIGHTS OF MUNICIPALITY.**

Every permit shall be granted subject to the right of the municipality or of any other person entitled thereto to use the street for any purpose for which such street may lawfully be used not inconsistent with the permit.

## **REVOCAION OF PERMITS.**

A Any permit may be revoked by the Borough's designated municipal representative or its duly authorized representative, after notice to the permittee, for:

- (1) Violation of any condition of the permit or of any provision of this chapter;
- (2) Violation of any other applicable provisions of the Borough's designated municipal representative, or any law relating to the work;
- (3) Existence of any condition or the doing of any act constituting or creating a nuisance or endangering the life or property of others.

B. A permittee shall be granted a period of three (3) days from the date of the notice to correct the violation and to proceed with the diligent prosecution of the work authorized by the permit before said permit is revoked.

C. Written notice of any such violation or condition shall be served upon the permittee or his agent engaged in the work. The notice shall contain a brief statement of the reasons for revoking the permit. Notice may be given either by personal delivery thereof to the person to be notified or by certified or registered United States mail addressed to the person to be notified.

D. When any permit has been revoked and the work authorized by the permit has not been completed, the Borough's designated municipal representative shall do or cause to be done such work as may be necessary to restore the street or part thereof to as good a condition as before the opening was made. All expenses thereby incurred by the municipality shall be recovered from the deposit or bond the permittee has made or filed with the municipality.

## **APPLICATIONS AND PERMITS**

### **DUTIES AND RESPONSIBILITIES OF APPLICANTS.**

It shall be the duty and responsibility of any applicant to:

A. Make written application for such permit with the Borough's designated municipal representative on such form as he shall prescribe. No work shall commence until the Borough's designated municipal representative has approved the application and plan and issued a permit and until the permittee has paid and provided all required fees, deposits, certificates, and bonds.

B. Upon request of the Borough, furnish in triplicate the plan showing the work to be performed under said permit. Two (2) copies of such plan shall be returned to the

applicant at the time the permit is granted. One (1) copy of the permit shall remain on-site with the construction crew.

C. Agree to save the municipality, its officers, employees and agents harmless from any and all costs, damages and liabilities which may accrue or be claimed to accrue by reason of any work performed under said permit. The acceptance of a permit shall constitute such an agreement by the applicant whether the same is expressed or not.

### **DUTIES AND RESPONSIBILITIES OF PERMITTEES.**

It shall be the duty and responsibility of any person receiving a permit to:

A. Pay a minimum permit fee in an amount specified by the Borough's designated municipal representative in accordance with a schedule of fees, charges and expenses determined by the municipality. Said fee at the time of passage of this section shall be \$250.00. Said Schedule of Fees shall be posted on the Borough's webpage. The municipality may alter the fee schedule from time to time by resolution adopted at any public meeting of the municipality; provided, however, that public utility companies may elect to be billed monthly for such fees as they accrue, upon written notice to the Borough's designated municipal representative.

B. Furnish a performance bond as required by this ordinance.

C. Furnish a maintenance bond as required by this ordinance.

D. Furnish a certificate of insurance as required by this ordinance, unless otherwise excepted from such requirement by the provisions of ordinance.

E. Present evidence, when required, that all materials, labor and equipment which are needed to complete such work as authorized by the permit are available.

F. Keep the original copy of the permit and an approved copy of the plan at all times which such work is in progress at the location for which such permit was granted and show such permit and/or plan upon demand by the Borough's designated municipal representative.

### **STEET OPENING REGULATIONS**

#### **OPENING AND EXCAVATION RESTRICTIONS.**

A. No more than 250 feet measured longitudinally shall be opened or excavated in any street at any one time, except by special permission of the Borough's designated municipal representative. At the end of the workday, all trenches shall be either backfilled or plated.

B. All utility facilities shall be exposed sufficiently or define location be determined ahead of trench excavation work to avoid damage to those facilities and to permit their relocation, if necessary. Strict adherence to PA One Call rules and regulations is required. Any such facilities damaged by the permittee shall be repaired and/or replaced by the permittee.

C. Pipe drains, pipe culverts, or other facilities encountered shall be protected by the permittee. Any such facilities damaged by the permittee shall be repaired and/or replaced by the permittee.

D. Monuments of concrete, iron, or other lasting material set for the purposes of locating or preserving the lines of any street or property subdivision, or a precise survey reference point or a permanent survey bench mark within the municipality shall not be removed or disturbed or caused to be removed or disturbed unless permission to do so is first obtained, in writing, from the Borough's designated municipal representative for adjacent property owner if privately owned. Permission shall be granted only upon condition that the permittee shall pay all expenses incident to the proper replacement of the monument.

E. When work performed by the permittee interferes with the established drainage system of any street, provision shall be made by the permittee to provide proper drainage.

F. When any earth, gravel, or other excavated material is caused to accumulate any street creating an unsafe condition or disturb the free flow of stormwater, the permittee shall cause adjustment of same from the street within four (4) hours after deposit to permit safe flow of traffic and water. In the event the earth, gravel, or other excavated material so deposited is not adjusted as specified, the Borough's designated municipal representative shall cause such removal and the cost incurred shall be paid by the permittee.

G. Safety requirements.

a. Every permittee shall place around the project such barriers, barricades, lights, warning flags and danger signs as shall be determined by the Borough's designated municipal representative to be necessary for the protection of the public. Additional safety requirements may be prescribed by the Borough's designated municipal representative, and, where applicable, as set forth in the Pennsylvania Department of Transportation publications which are applicable thereto.

b. No person shall willfully move, remove, injure, destroy, or extinguish any barrier, warning light, sign, or notice erected, placed or posted in accordance with the provisions of this section.

H. Work authorized by a permit shall be performed between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, unless the permittee obtains written consent for

the Borough's designated municipal representative to do the work at an earlier or later hour in the case of an emergency or in the event the work authorized by the permit is to be performed in traffic congested areas.

I. In granting any permit, the Borough's designated municipal representative may attach such other conditions thereto as may be reasonably necessary to prevent damage to public or private property or to prevent the operation from being conducted in a manner hazardous to life or property. The conditions may include but are not limited to the following:

- a. Limitations on the period of the year in which the work may be performed;
- b. Restrictions as to the size, weight, and type of equipment;
- c. Designation of routes upon which materials may be transported;
- d. Designation of the place and manner of disposal of excavated materials;
- e. Requirements as to the laying of gravel; and
- f. Regulations as to the use of streets in the course of the work.

#### **BACKFILLING AND RESTORING OPENING.**

A. The Borough's designated municipal representative shall be notified by the permittee during the forty-eight-hour period preceding beginning of backfilling of the site and approximate time at which backfilling will be begun.

B. The permittee shall restore the streets using compacted # 1/2A mix within the utility trench, dress and grade the roadway surface including restoration of all stormwater ditches by reshaping, cleaning all debris and lining with R-3. With exception of paved entrances at Walnut and from Route 30. Restoration to be paved with PennDOT approved blacktop.

C. After excavation is commenced, the work of making and backfilling the same shall be prosecuted with due diligence.

D. Inspections of all work authorized by a permit shall be made by the Borough's designated municipal representative at such times and in such manner as required to ensure compliance with the provisions of this ordinance.

E. All inspection costs shall be borne by the permittee. Such costs shall be based upon a schedule of charges on file in the office of the Borough's designated municipal representative. Additionally, the Borough's designated municipal representative shall

establish the amount of the bond to be paid at the time the application for a street opening permit is submitted based on the scope of the work to be commenced.

F. If any settlement in a restored area occurs within a period of two years from date of completion of the permanent restoration and permittee fails to make such correction after notification, any expense incurred by the municipality in correcting such settlement shall be paid by the permittee or recovered from its bond, unless the permittee submits proof satisfactory to the Borough's designated municipal representative that the settlement was not due to defective backfilling.

G. In no case shall any opening made by permittee be considered in the charge or care of the municipality, or any of its officers or employees, and no officer or employee of the municipality is authorized in any way to take or assume any jurisdiction over any such opening, except in the exercise of the police power, which it is necessary to protect life and property.

#### **DEFAULT IN PERFORMANCE.**

Whenever the Borough's designated municipal representative finds that a default has occurred in the performance of any term or condition of the permit, written notice thereof shall be given to the principal and to the surety on the bond. Such notice shall state the work to be done, the estimated cost thereof, and the period of time deemed by the Borough's designated municipal representative to be reasonably necessary for the completion of such work.

#### **COMPLETION OF WORK.**

After receipt of such notice, the surety must, within the time therein specified, either cause the required work to be performed, or, failing therein, indemnify the municipality for the cost of doing the work as set forth in the notice.

#### **LIABILITY INSURANCE**

##### **INSURANCE REQUIREMENTS.**

Each applicant, upon the receipt of a permit, shall provide the municipality with an acceptable certificate of insurance indicating that he is insured against claims for damages for personal injury as well as against claims for property damage which may arise from or out of the performance of the work, whether such performance be by himself, his subcontractor, or anyone directly or indirectly employed by him. Such insurance shall cover collapse, explosive hazards, and underground work by equipment on the street, and shall include protection against liability arising from completion operations. The amount of the insurance shall be prescribed by the Borough's designated municipal representative in accordance with the nature of the risk involved; provided, however, that the liability insurance for bodily injury shall be in an amount not less than \$250,000.00 for

each person and \$500,000.00 for each accident and for property damages in an amount not less than \$100,000.00, with an aggregate of \$300,000.00 for all accidents. Public utility companies and authorities may be relieved of the obligation of submitting such a certificate if they submit satisfactory evidence that they are insured in accordance with the requirements of this chapter or have adequate provision for self-insurance. Public utility companies and authorities may file an annual certificate of insurance in lieu of individual certificates for each permit.

### **OPENINGS IN NEW STREETS**

#### **NOTICE TO PROPERTY OWNERS AND TENANTS ABUTTING PROJECT.**

A. If the work to be undertaken by the permittee is such that it will affect the use of properties abutting or adjoining the project, the Borough's designated municipal representative may require the permittee to submit a list of owners and/or tenants and/or addresses of all properties abutting the area where the work authorized by the permit is to be performed. Upon receipt of such list, the Borough's designated municipal representative shall notify the affected property owners and/or tenants of the proposed work to be done.

B. If the work to be undertaken by a permittee will affect other subsurface installation(s) in the vicinity of the proposed opening, the Borough's designated municipal representative shall notify the owner(s) of such facilities of the proposed work.

### **PENALTIES FOR VIOLATION**

#### **FAILURE TO COMPLY; VIOLATIONS AND PENALTIES.**

A. Penalties. Any person, as defined by this ordinance, who fails to comply with any of the requirements or provisions of this ordinance or refuses to comply with any notice, order of direction of the Borough or its designee or any other authorized employee of the Borough shall pay a civil penalty not to exceed \$600.00 per violation. A separate offense shall arise for each day or portion thereof in which a violation is found to exist or for each section of this ordinance which is found to be violated.

B. Enforcement, The Borough's designated municipal representative of the Borough at his/her sole discretion, may issue a written notice to the person(s) responsible for the violation requiring the payment to the Borough of a penalty of \$300.00 per violation. In the event the person(s) who has/have received notice of the penalty imposed for violation of this ordinance does not voluntarily pay to the Borough the penalty set forth in said notice, the Borough shall institute a civil proceeding before a Magisterial District Court. The civil enforcement proceedings shall be initiated by a complaint or by such other means as may be provided for by the Pennsylvania Rules of Civil Procedure. In any case where a penalty for violation of a Borough ordinance has not been timely paid and the person upon whom the penalty was imposed is found to have been liable therefor in a civil proceeding, the violator shall be liable for the penalty imposed, including additional

daily penalties for continuing violations, plus court costs and reasonable attorney's fees incurred by the Borough in the enforcement proceedings.

C. In addition to or in lieu of a civil action before the Magisterial District Court, Laurel Mountain Borough may enforce this chapter in equity.

ENACTED AND ORDINAED into law this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

LAUREL MOUNTAIN BOROUGH COUNCIL:

BY: \_\_\_\_\_  
Robin Roberts, *Secretary*

By: \_\_\_\_\_  
Susan Crouse, *President of Council*

By: \_\_\_\_\_  
Ross Dixon, *Mayor*