

**ORDINANCE NO. 2023-1204**

AN ORDINANCE OF THE BOROUGH OF WAYNESBORO,  
FRANKLIN COUNTY, PENNSYLVANIA, AMENDING ORDINANCE NO 1166  
REGULATING OPENINGS AND EXCAVATIONS IN OR UNDER THE STREETS  
AND HIGHWAYS OF THE BOROUGH OF WAYNESBORO

**WHEREAS**, Section 1202 of the Borough Code, 8 Pa.C.S. § 101, *et seq.*, authorizes the Borough of Waynesboro to regulate the streets within the Borough of Waynesboro (“Borough”); and

**WHEREAS**, the Borough Council of the Borough of Waynesboro, Franklin County, Pennsylvania has promulgated regulations governing entities who desire to create openings or excavations within the public rights-of-way of the streets of the Borough in order to ensure that the health, safety and public welfare of the Borough’s residents is maintained; and

**WHEREAS**, the Borough Council desires to amend Ordinance No. 1166 to clarify that all utilities shall be at the depth of at least three (3) feet beneath the surface elevation of the street except where it is clearly and convincingly proven to the Borough that locating the same at a depth of at least 3 feet from the surface is impossible or impractical as determined in the Borough’s discretion.

**BE IT ENACTED AND ORDAINED**, by the Mayor and Borough Council of the Borough of Waynesboro, Franklin County, Pennsylvania, and it is hereby enacted and ordained as follows:

**SECTION 1. Recitals.** The above recitals are incorporated herein.

**SECTION 2.** Ordinance No. 1166 of the Borough of Waynesboro, Franklin County, is hereby amended by replacing Section V entitled, “Financial Security and Insurance Required” with the following:

**SECTION V. FINANCIAL SECURITY AND INSURANCE REQUIRED**

- A. Before an excavation permit is issued, the applicant shall deposit with the Borough Manager, security in the form of a performance bond, irrevocable letter of credit, certified check, cash, or other security acceptable to the Borough, to be held without interest, in the amount as set forth in the Borough Schedule of Fees and amended from time to time by Resolution of the Borough Council for the Borough of Waynesboro, and also a certificate or other evidence to the Borough Manager from an insurance company certifying that the permittee has comprehensive general liability insurance. The required security shall be conditioned upon completion of all work required as a result of the excavation which was made in the street and upon payment by the permittee of all costs incurred by the Borough and/or others as a result of such work. The

security shall remain in place for two years to allow for two years of seasonal temperatures prior to a final inspection. Prior to the Borough releasing the bond, the Head of Engineering Services shall inspect the excavation and determine whether all work was properly completed.

- B. The general liability insurance shall be written on a comprehensive form, including explosion coverage (if any blasting is to be involved), and hold the Borough and its officers harmless against any and all claims arising from the excavation permit or for which the Borough, Borough Council or any Borough officer may be made liable by reason of any accident or injury to persons or property through the fault of the permittee either in not properly guarding the excavation or for any other injury resulting from the negligence of the permittee. Recovery on such bond for any injury or accident shall not exhaust the bond, but it shall in its entirety cover any or all future accidents or injuries during the excavation work for which it is given. In the event of any suit or claim against the Borough by reason of the negligence or default of the permittee, upon the Borough's giving written notice to the permittee of such suit or claim, any final judgment against the Borough requiring it to pay for such damage shall be conclusive upon the permittee.
  
- C. The aforesaid insurance policy for general liability is to protect the Borough and others against damage or claims arising out of the work, and the certificate of insurance shall provide that the policy shall be in force at the time of the application and cannot be canceled without 30 days prior notice to the Borough. Said bond and insurance certificate need not be submitted until the Head of Engineering Services has indicated a permit may be issued, but no permit shall be issued until said bond and certificate are submitted.

**SECTION 3.** Section VII of Ordinance No. 1166 of the Borough of Waynesboro, Franklin County, entitled, "PROTECTIVE MEASURES" is hereby amended by adding a new subsection D to read as follows:

- D. All work within the Borough of Waynesboro street right-of-way is to be performed to be consistent with the following PennDOT requirements:
  - 1. Publication No. 408, Specifications
  - 2. Publication No. 35, Approved Construction Materials (Bulletin 15)
  - 3. Publication No. 72, Standards for Roadway Construction
  - 4. Title 67, Chapter 459 of the Pennsylvania Code
  - 5. Any additional specifications established by Resolution of the Borough, which specifications shall supersede the above.

Note that Title 67, Chapter 459 references PennDOT design manual, Part 5 which requires utilities to be at a depth of three (3) feet. Utility depths of less than three (3) feet shall only be permitted upon written approval from the Borough Engineering Department where it is clearly and convincingly proven that locating the same at a depth of at least 3 feet below the surface elevation of

the street is impossible or impractical, as determined in the Borough's discretion.

Prior to the placement of base course, the existing pavement is to be saw cut one foot (1.0 ') outside of the edge of the opening in a neat straight line to the top elevation of the aggregate subbase or stone base course and the detached material shall be removed. The security shall not be released or reduced unless the Borough's Engineer has, in writing, certified the completion or partial completion of the street excavation. The Permittee shall pay any inspection costs related to inspection made by the Head of Engineering Services.

**SECTION 4. Repealer.** All prior ordinances or parts of ordinances inconsistent herewith are hereby repealed. Except as expressly amended, nothing herein shall be deemed to affect or alter other provisions of Ordinance No. 1166 of the Borough of Waynesboro.


**SECTION 5. Savings Clause.** In all other respects, the Borough Ordinances shall remain as previously enacted and ordained.

**SECTION 6. Severability.** The provisions of this Ordinance are severable, and if any of its sections, clauses, or sentences shall be held illegal, invalid, or unconstitutional, such provision shall not affect or impair any remaining sections, clauses, or sentences of the same.

**SECTION 7. Effective Date.** This Ordinance shall be effective immediately.


**DULY ENACTED AND ORDAINED** this 19<sup>th</sup> day of July, 2023  
by the Borough Council of the Borough of Waynesboro, Franklin County, Pennsylvania,  
in lawful session duly assembled.

WAYNESBORO BOROUGH COUNCIL

By:   
Council President, C. Harold Mumma

ATTEST:

  
Melinda Knott, Secretary

  
Richard Starliper, Mayor

