

**ORDINANCE NO. 144-2015**

**TITLE: AMENDING BARBERTON CODIFIED ORDINANCES  
CHAPTER 1020 – EXCAVATIONS**

**AN ORDINANCE AMENDING CHAPTER 1020, “EXCAVATIONS,” OF THE  
BARBERTON CODIFIED ORDINANCES, AND DECLARING AN EMERGENCY.**

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Barberton, State of Ohio:

**SECTION 1.** That Chapter 1020, “Excavations,” of the Barberton Codified Ordinances, be amended by showing said amendment with a ~~strike through~~ for any deletions and **bold print** for any additions:

**1020.01 PERMIT REQUIRED; FEE; LIABILITY INSURANCE; EXEMPTION.**

(a) No person, other than a duly authorized officer or employee of the City, shall make an excavation **or boring** in any street, alley, sidewalk or public ground for any purpose whatever unless he or she has obtained a permit in writing therefor from the City Engineer and unless he or she has paid a uniform fee of ~~fifteen dollars (\$15.00)~~ **fifty dollars (\$50.00)** for each and every such permit issued. **A paid appropriate performance deposit in the amounts of \$70/sq. ft. (min of \$2,000) for asphalt roads and \$100/sq. ft. (min. of \$21,500) for concrete roads and main roads is required for each opening. Sidewalk deposit shall be \$10/sq. ft. (min. of \$1,000). If unpaved roadway, deposit to be \$1,000.**

(b) No person shall make an excavation **or boring** in any street, alley, sidewalk or public ground for any purpose whatever until such person has filed with the Director of Public Service a public liability policy, indemnifying the City and its officials, in the sum of three hundred thousand dollars (\$300,000) for the injury or death of any person and one hundred thousand dollars (\$100,000) for property damage. The only exemption will be homeowners doing their own sidewalk and/or driveway apron installation and/or repairs. Homeowners must sign a disclaimer acknowledging responsibility for damages to all public and private utilities.

**1020.02 CASH DEPOSIT REQUIRED.**

Any person to whom a permit is granted, under Section 1020.01, shall furnish a cash deposit **in the amount of \$70/sq. ft. (min. of \$2,000) for asphalt roads and \$100/sq. ft. (min. of \$2,500) for concrete roads and main roads is required for each opening. Sidewalk deposit shall be \$10/sq. ft. (min. of \$1,000). If unpaved, deposit to be \$1,000** ~~approved by the Director of Public Service~~ to cover the cost of filling such excavation and of restoring to its former condition such street, alley, sidewalk or public ground where the same has been excavated, and for the payment of all expenses, if any, incurred by the City in replacing or supplying the material disturbed or removed by such excavation.

**1020.03 RESPONSIBILITY OF PARTIES; STREET CLASSIFICATIONS; ~~RESTORATION CHARGES.~~**

(a) Street opening permits shall not be issued to a property owner unless such property owner is utilizing his or her own labor and equipment in making the street opening. If a contractor is to perform the work, it will be the responsibility of the contractor to obtain the necessary permit.

(b) Streets are divided into two classes only, as follows:

(1) Improved streets. This class includes all streets having a brick, concrete, asphalt, macadam or stabilized surface, as well as those streets which have received a seal coat or temporary surfacing.

(2) Unimproved streets. This class includes all streets having a dirt, cinder or gravel surface, even though such streets may have received applications of oil or calcium chloride for control of dust. Utility companies, contractors or individuals shall be charged a flat charge for such permits, based on the area of the opening to be made and the type of street surface.

(c) A flat charge shall apply to all street openings having an area of one to five square yards. Openings having an area of less than one square yard shall be considered as being one square yard and shall be charged accordingly. Openings having an area in excess of five square yards

shall be handled by mutual agreement between the utility, contractor or individual and the Director of Public Service, the City Engineer and the Superintendent of Streets. A permit charge of ~~fifteen dollars (\$15.00)~~ **fifty dollars (\$50.00)** shall be made for all applications for street openings as provided in Section 1020.01.

(d) The flat charge for restoration of street surfaces shall be as follows:

~~(1) Improved streets. A fifteen dollar (\$15.00) permit charge, plus three dollars (\$3.00) per square foot area of opening.~~

~~(2) Unimproved streets. A fifteen dollar (\$15.00) permit charge, plus two dollars (\$2.00) per square foot area of opening.~~

(e) All charges required to be deposited, pursuant to the provisions of this chapter, shall be deposited with the City Treasurer.

(f) Utility companies holding a franchise with the City are exempt from paying the ~~fifteen dollar (\$15.00)~~ **fifty dollar (\$50.00)** permit charge. They shall, however, pay the restoration costs as specified above

#### 1020.04 INSPECTION CHARGES.

(a) The Division of Engineering shall make an inspection charge in the case of restoration work done by a utility, contractor or individual, but no inspection charge shall be made on restoration work done by the City.

(b) On openings of such size that an inspector is required to be present continually, the permittee shall be charged as determined by the Director of Public Service.

#### 1020.05 CONTRACTS WITH CITY.

Contracts under the supervision of any City department which involve an opening in a street must contain as a part of their contract specifications a reference to this chapter, and such departments shall require their contractors to secure a permit and perform all work in connection with such an opening in accordance with the provisions of this chapter.

#### 1020.06 PREREQUISITES TO ISSUANCE OF PERMITS.

(a) ~~Street opening permits shall be issued by the Division of Engineering upon applications~~ **must be completed and turned into the Engineering Department along with payment of the permit fee and restoration charge deposit a minimum of 48 hours PRIOR TO CONSTRUCTION STARTING unless work is being done on an emergency basis and verified by the Engineering Department. Failure to follow any of these rules will result in forfeiture of permit and remedy of conditions by the City of Barberton at the applicants expense and will result in contractor losing ability to be considered a registered contractor in good standing. The City of Barberton reserves the right to mandate a preconstruction meeting prior to issuing a permit.**

(b) Permits shall be issued only for openings to be made within ~~thirty~~ **ten** days from the date of issue. The period of time allowed for closing the opening shall be ~~governed by its size, nature and location~~ **no more than five days. Additional time may be granted by the Service Director or his designated appointee and by pending unforeseen circumstances or** weather conditions. All applications ~~for mains, conduits, manholes and other subsurface structures of considerable magnitude~~ shall be accompanied by a plan and typical cross section, which shall show, as nearly as possible from records available, the location of the existing underground structures and the location of the proposed structure. A permit shall be issued when one of the following provisions is involved:

(1) The applicant has made **application, paid permit fee and paid** a cash deposit equal to ~~the charge for restoration and inspection as outlined in section 1020.02:~~

(2) The applicant is a contractor for the City on a contract involving the opening of streets, in which case he may obtain a permit without a cash deposit. However, the restoration work, if done by such contractor, must be approved by the Director of Public Service and all inspection charges must be paid before such contractor receives his final estimate. If the restoration work is done by the City, all such charges against the contractor must be paid before he receives his final estimate;

(3) The applicant is a City, County or State department or division whose functions require the installation and maintenance of underground structures; or

(4) The applicant is a corporation whose franchise authorizes it to make its own restoration. Such permits will be issued only when the restoration work keeps fully apace with the openings being made. Such corporation must pay promptly all bills for inspection by the City and all bills for restoration if it desires to avail itself of the facilities of the City for restoring pavements.

#### 1020.07 NOTIFICATION OF WORK; STREET CLOSINGS.

(a) The permittee shall notify the Division of Engineering **a minimum of 48 hours PRIOR**

to when the opening is to be made, when backfilling is to commence, when temporary restoration has been made and when permanent restoration can be made

(b) If it is necessary to close a street completely and detour traffic, at least forty-eight hours advance notice shall be given the Director of Public Service **and the Director of Public Safety**. The Police and Fire Divisions shall also be notified whenever a street is to be closed or whenever the work may interfere with their functions.

The permittee shall also notify all utility companies that may be concerned by reason of adjacent installations.

#### 1020.08 GENERAL PROCEDURE.

**The most recent revision of General Roadway Notes and Water Service Regulations for the City of Barberton must be adhered to for all work being completed in a City Road or Right of Way.**

(a) The permittee must carry out the work authorized by the permit **or define in the preconstruction meeting** in such a manner as to cause a minimum of interference with traffic of all kinds. On main thoroughfares and in the congested districts there must be sufficient traffic lanes open to permit a substantially normal traffic flow or else the work hours must be between 7:00 p. m. and 7:00 a. m. of the following day. In case of a special emergency, a serious leak or a major impairment of service, it will be necessary to make special arrangements so that police officers may be assigned to handle traffic **at the contractors expense**.

(b) When it is necessary to close a street completely and detour traffic, special arrangements with the Director of Public Service **and Director of Public Safety** must be made in advance. Every person making openings in City streets shall keep the Director **or his designee** informed as to whom to call in case of emergencies, such as settlements or washouts resulting from severe storms.

(c) Access to fire hydrants must be provided at all times. Gutters and catch basins must be kept open and drainage maintained as far as possible. When it is necessary to close a gutter or cut off a catch basin, drainage must be maintained by the use of pumps, flumes or culverts.

(d) Tools, equipment, shanties and materials must be stored at locations where they will cause the least inconvenience to traffic and adjoining property. Walks, driveways and entrances to buildings must be kept open. Steel plates of adequate size shall be furnished to cover small paving cuts and to provide crossings over trenches on main thoroughfares and at important intersections. The plates shall be securely fastened in place to prevent movement under traffic. If necessary, temporary walks or bridges shall be provided for pedestrians.

(e) ~~All openings in streets, alleys or other public places shall be protected by suitable barricades, fences or railings. Sufficient and suitable red or amber lights or torches shall be provided to indicate clearly all openings, equipment, materials or other hazards that might cause an accident.~~ **The work site shall be protected with bracing, barricades and lights per OSHA regulations and traffic control in accordance with Ohio Manual of Uniform Traffic Control Devices. The applicant shall save the City of Barberton and it's agents harmless from any and all damage or injury resulting from the prosecution of the work.**

(f) Slightly and sufficient sanitary conveniences for the use of workmen on the job, properly secluded from public observation, shall be provided and maintained in a sanitary condition.

(g) Excavated materials shall be promptly removed and disposed of when the materials are not suitable for backfill or when, due to the location of the work, there is not sufficient room to permit the storing of the excavated materials. When the storage of excavated materials is permitted at the site of the work, such materials shall be compactly piled, using plank bins or retaining walls if necessary, to prevent dirt from spreading over the pavements.

(h) Lawns, trees and other vegetation shall be protected from damage. Trees must not be removed or disturbed except with the approval of the Director and his instructions regarding the laying of pipes or conduits under trees shall be followed.

(i) Whenever it is necessary to cross over or under work close to other utility installations, such as tracks, mains, ducts, pipes, etc., notification must be given to that utility and it shall be the duty of the applicant to properly protect such other utility property in a safe condition so that the public may not be endangered or unnecessarily inconvenienced. All trenches and tunnels shall be braced to protect workmen, the public and property. This bracing shall be sufficient to protect all surface and subsurface structures and to prevent the undermining of adjacent pavement, curbs and sidewalks. House connections, water mains, gas mains, conduit lines and drain pipe shall be supported across trenches.

(j) A permit for drawing water from fire hydrants must be secured from the Division of Utilities.

(k) The permittee shall comply with the rules of the Division of Utilities governing the furnishing of water from the City mains.

**(l) In any case where this section is silent or presents conflict, the latest revision of the City of Barberton General Roadway Notes and Utility Regulations shall be followed.**

#### 1020.09 TRENCHING, TUNNELING AND BACKFILLING.

(a) The length, width and location of a trench and the manner in which the work is done shall be under the control of the City. **A detailed scope should be submitted at the time of application.**

(b) If, in excavating a trench or laying pipe and appurtenances, the pavement along the sides of the trench is or becomes undermined and unsupported, such pavement shall be broken down, removed and replaced at the expense of the permittee.

(c) The opening cut through the pavement must ~~be eight inches from the edges of the trench in all directions so that the new pavement base will have a suitable bearing on firm and undisturbed ground. If the sides of the trench cave in after the opening through the pavement has been made, such opening in the pavement shall be enlarged in order to provide the required eight inches of bearing surface.~~ **be in compliance with the latest version of General Roadway Notes.**

(d) Tunneling may be necessary in certain locations. However, the permittee shall not do any tunneling except by permission from the City. If City departments do the tunneling, they shall notify the Division of Streets of the same and shall be subject to the same requirements regarding backfilling as permittees.

(e) When tunneling has been done, the permittee shall backfill the tunnel, except *as* noted below, with a mixture of sand, gravel and cement in the proportion of one bag of cement to not over twenty cubic feet of aggregate. The mixture shall be of such consistency that it will hold together when formed into a ball in the hands.

(f) Around the pipe and for a distance of not more than twelve inches above the top of the pipe, fine material wetted and tamped or well compacted clay may be used.

(g) During the period from December 1 to March 31, or during freezing weather at any other time, the backfilling of all openings in paved streets or alleys shall be made with sand, bank run gravel or other fine granular material, all of which shall be free of frost or excess moisture and thoroughly compacted.

(h) During the period from April 1 to November 30, the excavated material, if suitable and in proper condition, may be used for backfilling.

(i) Under no circumstances shall wet clay, silt or similar material be used for back-filling within the area of any City street.

(j) Loose, broken rock shall not be considered suitable backfill material unless sufficient fine material is added to more than fill the voids.

(k) All backfilled trenches shall be consolidated either by flushing or power tamping, depending upon the nature of the material used.

**(j) In any case where this section is silent or presents conflict, the latest revision of the City of Barberton General Roadway Notes and Utility Regulations shall be followed.**

#### 1020.10 TEMPORARY AND PERMANENT RESTORATIONS.

(a) Temporary restorations shall be made by the permittee in accordance with the requirements of Section 1020.14, and the permittee shall be responsible for maintaining the backfilled opening in a safe and usable condition until such time as the permanent restoration can be made. Until the openings have been taken over by the Division of Streets for permanent restoration, each permittee shall, after each heavy rain and during thawing periods, check over all openings and temporary restorations made by him and shall make such repairs as may be necessary or, if such repairs cannot be promptly made, shall provide barricades and lights for the protection of the public. **The work site must always be protected with bracing, barricades and lights per OSHA regulations and traffic control in accordance with Ohio Manual of Uniform Traffic Control Devices.**

(b) Complete restoration, including pavement base and surface, ~~may be done by the Division of Streets~~ **must be completed** after the permittee has completed the backfill and made temporary restoration to the satisfaction of the Director of Public Service **or his designee.**

(c) Partial restoration up to and including the pavement base may be done by the permittee subject to the Director's approval. All such work must conform to the current edition of the State of Ohio, Department of Transportation, Construction and Material Specifications.

(d) Unless otherwise ordered, the permittee shall make complete restoration of all unpaved areas in accordance with the requirements of Section 1020.11.

~~(e) The permittee may, in some cases, be able to arrange for the Division of Streets to do the work referred to in subsection (d) hereof at the expense of the permittee.~~

#### 1020.11 RESTORATION OF UNPAVED AREAS.

Upon completion of the underground work, the permittee shall promptly, **within 5 days**, restore all unpaved areas to their former condition as far as possible. All excess dirt shall be removed and disposed of; all ditches shall be cleaned; drainage structures shall be restored and left in an operating condition; dirt streets shall be left in a smooth usable condition; cinder or gravel surfaces shall be restored; if surfaces have been treated with dust laying or other bituminous materials, the same shall be replaced; all lawn strips or sodded areas shall be replaced; and all sidewalks and driveways shall be replaced. Patching of sidewalk blocks is not permitted and the replacement of the entire block is required.

**In any case where this section is silent or presents conflict, the latest revision of the City of Barberton General Roadway Notes and Utility Regulations shall be followed.**

#### 1020.12 RESTORATION OF PAVED AREAS.

All paved areas, together with the adjacent curbs, manhole and valve box castings and any other appurtenances within the street, shall be restored by one of the methods mentioned in this chapter. So far as practicable, the restored base and surface shall be of the type existing before the openings were made except that when concrete is used for restoring the base course, the new concrete base shall not be less than eight inches thick, regardless of whether or not a base course of such thickness or mixture existed at the time the pavement opening was made.

In the case of streets having stabilized base courses or macadam base courses, the Division of Streets reserves the option of substituting penetration macadam base course and premixed bituminous surface course for restoration purposes or concrete base and bituminous surface course. In all other cases, the original type of surface material is to be used.

The permittee responsible for the opening shall be charged the actual cost plus fifteen percent of all labor, material and equipment required to restore the pavement and appurtenances. The City shall charge only for the area actually disturbed due to the pavement opening or for disturbances resulting therefrom.

When the permittee makes the backfill, he shall be held responsible for any settlement. No time limit shall be considered as releasing him from this obligation.

**In any case where this section is silent or presents conflict, the latest revision of the City of Barberton General Roadway Notes and Utility Regulations shall be followed.**

#### 1020.13 MATERIAL TO BE DEPOSITED SO AS NOT TO INCONVENIENCE PUBLIC.

In removing pavement or other material from streets, alleys, sidewalks or public grounds, for any purpose whatever, the material dug up must be deposited in such manner as to guard against inconvenience to the public by obstructing streets, alleys, sidewalks or public grounds.

#### 1020.14 RESTORATION OF SURFACE; COSTS.

All places where pavement or other material is removed from streets, alleys, sidewalks or public grounds shall be restored to their former condition **within 5 days or** as soon as practicable, either by the City or by the person causing such pavement to be removed, as may be directed by the Director of Public Service. The cost shall be paid by the person causing such pavement to be removed or, in default thereof, shall be deducted from the cash deposit referred to in Section 1020.02.

#### 1020.15 GUARDING EXCAVATIONS; SIGNAL LIGHTS.

No excavation or hole in any street, alley, sidewalk or public ground shall be left open and unguarded or without signal lights during the night time.

#### 1020.16 TRANSPORTATION OF MATERIALS OVER STREETS; DEPOSIT REQUIRED.

No contractor, hauler or builder shall transport earth, sand or gravel over any paved street of the City without first making a cash deposit with the Director of Public Service. Such deposit shall consist of cash, in an amount not exceeding one hundred dollars (\$100.00), to be determined by the Director, and shall be a guarantee that such contractor, hauler or builder will clean the street of any earth, sand or gravel which may fall from his vehicle. If such contractor, hauler or builder fails to clean such street, then the City will do so and deduct the cost of such work from the money deposited as herein required, returning the balance remaining, if any, to the contractor, hauler or builder making the deposit.

#### 1020.17 TRAFFIC CONTROL.

(a) No person shall commence the performance of any work involving the opening, closing, blocking, excavating, repairing, tearing up, digging or otherwise blocking of any street so as to change the normal course of traffic on the street without first obtaining, from the Chief of Police, a permit for traffic control thereon.

(b) Such person shall apply to the Chief for a permit to implement traffic control according to

a traffic control diagram which is to be submitted to the Chief and approved by the Chief prior to the issuance of such permit.

(c) Such traffic control diagram shall include therein a provision for the use of such flag persons or police officers as are necessary, in the judgment of the Chief, for the adequate and safe control of traffic at the construction site.

(d) Upon the issuance of such permit, the person to whom the permit is issued shall, at his or her own expense, install and maintain signs, warning devices, lights, barricades, drums, cones, flag persons or police officers, as shown on the traffic control diagram, and failure to install and maintain the same shall be grounds for the issuance of a stop order or revocation of the permit by the Chief and/or the revocation of any permit issued by the City.

(e) If travel and safety warrant it, the Chief of Police has the authority to request additional traffic control at the expense of the contractor.

(f) Authorized City repair workers are exempted from the provisions of this section.

1020.99 PENALTY.

Whoever violates any of the provisions of this chapter shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

**SECTION 2.** That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

**SECTION 3.** That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, for the reason that the amendment go into effect as soon as possible, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed \_\_\_\_\_ 2015

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
President of Council

Approved \_\_\_\_\_ 2015

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Mayor