ORDINANCE NO. 2015-809

AN ORDINANCE OF THE BOROUGH OF CLARION, CLARION COUNTY, PENNSYLVANIA REGULATING STREET OPENINGS AND EXCAVATIONS, PERMITS FOR SUCH ACTIVITY AND REMEDIES AVAILABLE TO THE BOROUGH FOR RECOVERY OF COSTS FOR VIOLATIONS

WHEREAS, Clarion Borough Council has determined that it is necessary to enact an ordinance which regulates the excavation and opening of any street, alley or other public way or right of way owned, controlled or maintained by the Borough of Clarion; and

Whereas, Clarion Borough Council desires to enact a streamlined permitting and enforcement policy,

NOW THEREFORE BE IT, AND IT IS HEREBY ORDAINED AND ENACTED by the Borough Council of the Borough of Clarion, Clarion County, Pennsylvania as follows:

Section 1 Short Title

This document is a street opening and excavation ordinance and shall be known and cited as the "Borough of Clarion Street Opening and Excavation Ordinance".

Section 2 Definitions

As used in this Ordinance, the following terms shall have the meanings indicated:

Excavation - any activity within the right-of-way of any street, alley or other public way or right of way which involves cutting, breaking or disturbing the surface thereof. The term "opening" shall have essentially the same meaning as excavation.

Person - any natural person, partnership, firm, association, organization, corporation, municipal authority or other entity.

Borough Street - any public street, avenue, road, square, alley, highway or other public place located in and owned, controlled or maintained by the Borough and established for the use of vehicles, but shall not include State highways.

Section 3 Permit Required

A. The opening of the surface of any street, alley or other public way or right-of-way owned, controlled or maintained by the Borough is prohibited unless a permit is obtained for that purpose in the manner hereinafter described. Such permit shall only be granted when the applying party files an application on a form approved by the Borough, pays the required fees, posts security as may be required, and otherwise complies with all other terms and conditions set forth herein.

B. Street opening permits are not required for the installation or replacement of a sidewalk provided that such installation in no way affects the street surface.

C. Street opening permits shall not be required for work performed by the Borough or by a person performing work under contract with the Borough. At the discretion of the Borough Council, permit fees may be waived for contractors performing work on behalf of the Borough. Such contractors are required to apply for a street opening permit, and to post a bond or other security, as set forth herein, or in accordance with the terms or conditions of any contract between the contractor and the Borough.

D. The Borough must be notified within twenty-four (24) hours of any street opening or excavation necessitated by an emergency. A person performing such emergency street opening must apply for the street opening or excavation permit, in accordance with this Ordinance, on the first business day following such emergency. Any person who commences any emergency street opening or excavation will be deemed to have impliedly consented to all of the provisions of this Ordinance including, but not limited to, those provisions dealing with fees, security and backfilling. In addition to the penalties set forth in §14 herein, as well as any and all remedies for penalties provided by law, the Borough is authorized to order the immediate cessation of any opening or excavation activity and the immediate repair and replacement of the surface to its original condition if the notice and application provisions set forth above are not complied with.

Section 4 Provisions for Granting of Permit

Street opening permits shall only be granted upon compliance with the following express provisions:

A. A written application, on a form approved by the Borough, shall be filed with the Borough Secretary or designee. Such application shall set forth the purpose for which such excavation is to be made, the site and location of the work, the full scope of work to be included in the project and the anticipated commencement and completion dates of the project, including refilling and resurfacing. The applicant shall furnish a drawing or plan of the proposed opening or excavation upon request by the Borough. In addition to the above, the applicant must set forth the estimated cost of the entire project. The Borough shall have the right to require production of written verifications of such cost as may be appropriate.

B. Prior to the issuance of such permit, every applicant shall pay to the Borough the amount required for the purposes specified.

C. No permit shall be granted to any applicant unless all moneys due the Borough for prior excavations made or for loss, damages or expenses in any manner occasioned by or arising from prior work done by the applicant are paid in full.

D. The written application shall contain a provision in which the applicant agrees to indemnify and hold harmless the Borough, its officers, employees and agents from

any and all costs, damages and liabilities which may accrue or be claimed to accrue arising out of any work.

E. Depending upon the size, scope and nature of the opening or excavation project applied for or upon the advice and recommendation of the Borough Solicitor, the applicant may be required to obtain and file with the Borough a certificate of insurance protecting the Borough against liability arising out of the work to be done. The amount of coverage shall be determined in accordance with the risk to the Borough, the scope and length of the project and other such factors. Failure of an applicant to secure such certificate of insurance shall be sufficient reason for denying a permit.

F. The applicant must comply with all applicable requirements of the Pennsylvania Workers' Compensation Act and provide proof of coverage to the Borough, if applicable.

G. If an application is denied, written notice of denial, together with reasons for denial, shall be given to the applicant.

Section 5 Bond Required

A. All public utility companies requesting a permit to open or excavate the surface of a street shall furnish a properly executed corporate surety bond.

Attorneys-in fact who sign bonds must file with each bond a certified and effective dated copy of their Power-of Attorney. Surety Companies executing bonds must be listed in the U.S. Treasury Department Circular 570, as currently amended, and be authorized to transact business in the Commonwealth of Pennsylvania.

B. All other persons may be required to furnish a corporate surety bond if, in the opinion of the Borough Secretary and/or Borough Council and based upon the size, scope and expected effect of a proposed excavation or opening, such security is necessary in order to guarantee surface replacement in accordance with the terms set forth herein.

C. The bond, when required, shall be in effect for a period of not less than two (2) years from the commencement date of the project. The amount of the surety bond shall be a minimum of twenty-five thousand ($25,000) dollars. If the cost of any street excavation, opening and required restoration exceeds such amount, additional bonding in an amount equal to one hundred (100%) percent of the estimated cost of the project shall be required.

D. Whenever any public utility or municipal authority which owns, controls or maintains underground facilities in the Borough reasonably anticipates more than one street opening or excavation per calendar year, it may post a bond for the calendar year or part thereof to cover any and all street openings anticipated. In such case, the amount of the bond shall be approved by the Borough Council and the applicant's initial

street opening permit in a calendar year will only be issued if the bond has been posted and the applicant has provided the Borough with an accurate and up-to-date map of its underground facilities. The approval of a calendar-year bond does not absolve the applicant of its obligation to obtain a separate street opening permit for each street opening to be performed by the applicant.

Section 6 Fees

Street opening fees will be established by a separate resolution of the Borough Council. The Borough Council reserves the right to review the fee schedule from time to time and amend the same.

Section 7 Revocation of Permit; Notice of Violation

A. All street opening permits are subject to revocation at any time by the Borough, upon recommendation of the Borough Council, for:

   1. Violation of any condition of the permit.

   2. Violation of any provision of this section or Ordinance or any other applicable ordinance or law related to the work.

   3. The existence of any condition or act constituting or creating a nuisance or endangering the welfare, safety, lives or property of others.

B. Written notice of such violation shall be served upon the applicant/permittee or person engaged in the work. Such notice shall contain a brief statement of the reasons for revoking such permit and/or may contain a time period and method by which the permittee may cure any such violation. Notice may be given either by personal delivery or by United States mail sent to the address listed on the original application.

C. No portion of the application fee shall be refunded if any permit is revoked.

Section 8 Request for Extension

If any permittee is unable to complete the street opening or excavation on or before the date specified in the permit, the permittee must file a written application for an extension of time with the Borough. Said application shall set forth the reasons for the request for the extension of time and shall contain an estimate of the additional time required to complete the project. A fee shall accompany the extension application to defer the cost of processing and filing the same.

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, PL. 852, §1 et seq., as 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 Backfilling and Restoration; Costs

A. The permittee shall be and remain responsible for backfilling and paving the opening and restoring the surface to its original condition and composition prior to the opening or cut. All backfilling and restoration shall be in accordance with the most current Pennsylvania Department of Transportation Publication 408 standards. In the event that the street excavation or opening or any required backfilling has not been completed prior to the date of expiration as set forth on the permit, the Borough may take steps to backfill the opening or excavation and to replace the street surface. The Borough shall invoice the permittee for all costs incurred by the Borough in the performance of this work plus ten (10%) percent. Payment not made within thirty (30) days will be charged against the posted bond, including all fees and costs involved in the collection of this payment.

B. All backfilling shall be done with mechanical compaction and shall consist of layers not to exceed eight (8) inches in depth between each compaction. Backfilling shall be placed to within ten (10) inches of the surface.

C. Replacement of bituminous paved area shall include saw cutting in straight lines and milling and repaving the entire road surface from curb to center line plus twelve (12) inches on each side of the street opening. In the event that the street opening extends beyond the center line of the street, pavement replacement shall consist of curb to curb and five (5) feet in each direction on either side of the street opening.

Section 11 Additional Requirements of Permittee

The following requirements must also be complied with by the permittee:

A. All stormwater drains or gutters shall be left open so as not to obstruct the free passage of water during any period of construction.

B. All sidewalks and footways must be kept in a safe and passable condition during construction.

C. All materials removed by the excavation, as well as backfilling materials, shall be stored in a safe place, as determined by the Borough, pending completion of the project and backfilling.

D. No opening or excavation in any street shall extend from the curb line into the street a distance greater than 1 foot 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.

E. No more than 100 feet longitudinally shall be opened in any street at any one time.

F. The work of excavation shall be so conducted as not to interfere with the water mains, sewers or their connections with the houses, 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.

G. No tunneling shall be allowed without the express approval of the Borough and permission therefor endorsed upon the permit. The backfilling of a tunnel excavation shall be made only in the presence of an inspector designated by the Borough, and shall be done only in a method approved by the Borough.

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

I. As may be deemed necessary by the Borough for the safety and welfare of all persons and property, the permittee shall install or cause to be installed all necessary warning lights, illumination, barricades or other safety devices.

J. Proper traffic control and warning signs must be in place and maintained in accordance with the current edition of Publication 213 of the Pennsylvania Department of Transportation.

K. If ten (10) excavations occur in one block within a one (1) year period, the applicant must mill and pave to Borough specifications the entire road surface within that block, during its required restoration. For purposes of this section a block is defined as an area of roadway between cross streets or nearest intersections.

L. Any and all conditions relating to the project imposed upon the applicant/permittee and set forth on the permit must be complied with.

M. 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 specifications, regulations and conditions as the Borough may prescribe.

Section 12 Guarantee and Maintenance of Work

Notwithstanding any bonding or other security requirements, the permittee shall guarantee and maintain the backfilling and restoration work for a period of twenty-four (24) months following completion. Within this twenty-four month period, upon notification from the

Borough of the necessary correction work required, the permittee shall correct or cause to be corrected all deficiencies within ten (10) working days of receipt of the notifications. Any work not completed within this ten day period may be completed by the Borough at the discretion of the Borough. The Borough shall invoice the permittee for all costs incurred by the Borough in the performance of this work, plus ten (10%) percent. Payment not made within 30 days of the invoice date will be charged against the posted bond, including all fees and costs involved in the collection of this payment.

Section 13 Conditions for Laying and Extending Utility Lines

No new water, sewer, steam or gas main, 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 until the plan therefor shall have been first filed with the Borough Secretary and such plan, and the exact location of such main or line, approved by Borough Council. Borough Council shall not approve the locating of any such main or line at a depth of less than thirty (30) inches from the surface of the street unless they shall be convinced that locating the same at a depth of more than thirty (30) inches from the surface is impossible or impractical.

Section 14 Violations and Penalties

A. Any person violating any provision of this Ordinance may, upon conviction thereof, be sentenced to pay a fine of not more than $1,000, costs and attorney fees incurred by the Borough in the enforcement of the Ordinance, to a term of imprisonment not to exceed 90 days, or all of the above. Each day that a violation of this Ordinance continues shall constitute a separate offense.

B. In addition to the penalties set forth in the preceding subsection, the Borough reserves the right to deny the issuance of any future street opening permit to any person or party who violates the provisions of this Ordinance.

C. Any person who commences any opening, cutting, excavation, other digging or disturbance of the improved or unimproved surface or adjacent area of any public roadway, alley or right-of-way, as defined in the applicable Ordinances, without first obtaining a valid permit from the Borough and paying the required fee, will be deemed guilty of a separate violation of said Ordinance, in addition to any other sanctions or penalties imposed therein. If said person, upon notice by the Borough, or its duly authorized or appointed officials, ceases all activity and applies for the applicable permit, the Borough shall have the discretion to issue same upon payment of a fee which shall be no less than double the usual, timely application fee. This provision shall apply only to a first offense by any person.

D. The above provisions may be enforced by the Borough, through its Secretary or through such other official designated by Council, for that purpose, in the usual and customary manner.

Section 15 Construal of Provisions

Nothing contained in this Ordinance or any provision thereof shall be interpreted as prohibiting or limiting any other right or cause of action the Borough may have, in law or in equity, against any party for any violation of the terms of this Ordinance or matters related thereto.

All other sections and provisions of previous ordinances which are not amended or changed by this Ordinance, and are not inconsistent with the terms and provisions set forth herein, are hereby ratified and reaffirmed and shall remain in full force and effect.

ENACTED AND ORDAINED this 6TH day of October, 2015, by the Borough Council in lawful session duly assembled.

ATTEST: CLARION BOROUGH COUNCIL

_____ By _____

SECRETARY PRESIDENT

THIS ORDINANCE examined and approved by me this _____ day of _____, 2015.

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MAYOR