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**EAST PROSPECT BOROUGH
YORK COUNTY, PENNSYLVANIA**

ORDINANCE NO.: 2010-1

**AN ORDINANCE REQUIRING PERMITS TO OPEN AND
EXCAVATE STREETS WITHIN THE BOROUGH, SETTING
CONDITIONS FOR SUCH PERMITS AND PROVIDING
PENALTIES FOR VIOLATIONS OF SUCH ORDINANCE.**

IT IS HEREBY ENACTED AND ORDAINED, by the Borough Council of East Prospect Borough, York County, Pennsylvania, as follows:

Section 1. The East Prospect Borough Code of Ordinances is amended by the addition of a new ordinance, to be entitled "Openings and Excavations in Streets", as follows:

OPENINGS AND EXCAVATIONS IN STREETS

§ 100. Short Title. This Ordinance shall be known as and may be cited to as the East Prospect Borough Street Opening Ordinance.

§101. Permit Required to Excavate in Street. It shall be unlawful for a person to make an excavation or opening in any street in the Borough without first having obtained a permit from the Borough. The permit shall be issued by the Secretary upon payment of an initial fee of Three Hundred dollars (\$300.00), which shall be for the use of the Borough, to cover or cover in part the cost of issuing the permit and of the supervision and inspection(s) by the Borough Engineer under this Ordinance. Borough Engineer costs in excess of the \$300 initial permit fee will be reimbursed to the Borough by the applicant. Further, prior to issuance of a permit, the applicant shall post security with the Borough in order to guarantee that the applicant shall refill the opening and restore the surface of the street disturbed by the work under the permit in accordance with this Ordinance. Such security shall be in cash or surety bond in an amount as required by Borough Council or the Borough Engineer and shall be subject to the following:

1. Cash Deposits. Any person applying for a permit hereunder shall deposit a sum in cash as a guarantee that the permit holder will complete and restore the street and its surface to the condition prior to disturbance by the permit holder. Upon completion of the work covered by the permit and upon satisfactory inspection by the Borough Engineer, one-half (1/2) of such cash deposit shall be promptly refunded by the Borough to the permittee. The balance of the cash deposit shall be held by the Borough for a period of one (1) year from the date of the expiration of the permit.

2. Surety Bond. The applicant shall provide to the Borough, a surety bond in an amount set by the surety bond naming the Borough as beneficiary in an amount equal to the difference between any cash deposit given and the amount set by the Borough Council. The Borough Council shall set the amount upon the recommendation of the borough Engineer employing information

provided by the applicant as to the scope of the project and sound engineering practice. The required surety bond shall:

1. Be with a surety company satisfactory to the Borough;
2. Be with a surety company authorized to transact business in the Commonwealth of Pennsylvania;
3. Be satisfactory to the Borough Solicitor in form and substance;
4. Be conditioned upon the permittee's compliance with this Ordinance and further conditioned upon filling, restoring and placing in good and safe condition as near as to the condition prior to disturbance by the permittee, and to the satisfaction of the Borough Engineer;
5. Be for a term that commences on the date of the permit and ends upon the expiration of one (1) year from the date of expiration of the permit.
6. In the event a public utility desires to apply for multiple street opening permits in a calendar year, said public utility may submit a blanket surety bond to the Borough sufficient to secure the refilling and restoration of all street openings made in the Borough in such calendar year. The amount of such surety bond shall be an amount determined by the Borough Engineer to be sufficient to secure registration in compliance with this Ordinance.

§102. Conditions of Permit. Every permit issued under this Ordinance shall state, as conditions of the permit: the purpose for which the opening or excavation is authorized; the location and approximate surface area of the opening; the dates when the work under the permits is to be commenced and to be completed; and the number of days for which the permit shall be valid. It shall be the duty of the permit holder to do all work under this Part in conformity with all these conditions, and a failure to comply with any of the conditions shall constitute a violation of this Ordinance.

§103. Duty of Permit Holder. It shall be the duty of the holder of every permit issued under this Ordinance:

1. To notify the Borough and the Borough Engineer at least forty-eight (48) hours prior to the start of work. In the event that the Borough and the Borough Engineer are not contacted as required, the Borough and/or the Borough Engineer may require any restoration not inspected to be removed and restored with inspection at the Permit Holder's expense.

2. At all times to take every necessary and reasonable safety precaution, including the installation and maintenance of guards, barriers, and warning signs, and, during hours of darkness and restriction visibility, warning lights or flares.

3. To backfill the excavation, with materials prescribed, compacted into layers and to resurface the portion of the street disturbed by the excavation, as set forth on the attached "Paving Maintenance and Restoration" schedule, which represent the minimum standards for completion of the work permitted.

4. Before the date of expiration of the permit, to remove all tools, equipment, debris and other material and articles used in connection with or accumulating by reason of the opening or excavation and the work pertaining to the excavation.

5. To save the Borough harmless from and indemnify it against all actions, suits, demands, payments, costs and charges for or by reason of the opening or excavation, and all damages to persons or property resulting in any manner from the opening or excavation, or occurring in the prosecution of the work connected with it or from any other matter, cause or thing relating to it at any time when the permit is in effect and for a period of one (1) year after the date of expiration of the permit. Provided: a permit holder who occupies a street under a franchise previously granted by the Borough shall also be responsible for adhering to any conditions contained in that franchise pertaining to the subject matter of this Part or to making, guarding or refilling openings or excavations in streets or restoring the surfaces of the street afterward.

6. To provide satisfactory written evidence that the permittee has in force and will maintain public liability insurance of not less than One Million (\$1,000,000.00) Dollars for any one person and Two Million (\$2,000,000.00) Dollars in the aggregate and property damage insurance of not less than Five Hundred Thousand (\$500,000.00) Dollars from a duly licensed insurance company authorized to do business in this Commonwealth.

7. To contact and comply with the Pennsylvania One Call Act.

8. To secure and clearly mark equipment or vehicles that remain overnight so as not to create a threat to the health, safety or welfare of any Borough resident or to anyone using streets located within the Borough.

§104. Authority of Borough to Complete a Rectify Work at Expense of Property Owner. If any work required under a permit issued under this Ordinance shall not be completed within the time required by the permit, or shall not be completed and maintained as required in Section 103 above by the permit holder, Borough Council, or the person designated for the purpose by Borough Council, shall have authority to have the work completed, or rectified, as the case may be, by Borough personnel or by any person or firm engaged by Borough Council for the purpose. Any settlement of the surface within the said One (1) year period shall be determined to be conclusive evidence of defective workmanship and the Borough may use any or all of the cash deposit or proceed against such bond to perform the necessary repair work. The cost of the work, with an additional charge of ten percent (10%) for administrative costs, shall be charged to and collected from the permit holder. The deposit or surety bond filed with the Borough under §101 shall be used as a source for the money due from the permit holder under this section, and if the deposit or bond is not sufficient, the amount remaining due shall be collected from the permit holder by the Borough. No subsequent permit shall be issued to any person who owes any amount to the Borough under this section.

§105. Emergency Opening or Excavation. In case of any emergency resulting from the breaking of any pipe or main, an explosion or other unforeseen occurrence, the person responsible for the maintenance of the pipe, main or other facility involved in the emergency may proceed with the opening or excavation of the street as necessary to remedy the condition and to make necessary repairs, without first having applied for and obtained the permit required under this Ordinance, but within seventy-two (72) hours after the occurrence of the emergency he shall apply for and obtain a proper permit, following the same procedures and adhering to all other requirements that would have applied had he applied for and obtained the permit in advance.

§106. Revocation of Permit.

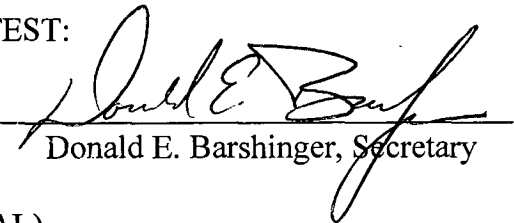
- A. Any permit issued under this article may be revoked by the Borough after notice for violation of any condition of the permit or violation or any provision of this Ordinance or any other applicable Ordinance or law relating to the work.

- B. In the event that any work performed by or for a permittee shall, in the opinion of the Borough Engineer, be unsatisfactory and the same shall not be corrected in accordance with the Borough Engineer's instructions within the time fixed by the Borough Engineer or in the event the work for which the permit is not completed within the time fixed by the Borough Engineer, the Borough may proceed to correct such unsatisfactory work or complete or cause to be completed any such work not completed and charge the costs thereof, plus Fifteen (15%) percent to the permittee or his surety. Written notice of such violation or failure to complete the work shall be served upon the permittee and his agent or employee engaged in performing the work. Such notice shall contain a brief statement of the reasons for revoking such permit. Notice may be given either by personal delivery or by United States Mail to such person(s) to be notified.

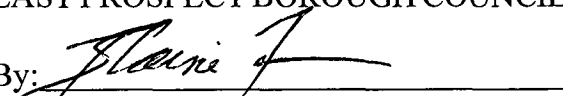
§107. Violations and Penalties. Any person violating any of the provisions of this Ordinance shall be determined guilty and, upon conviction thereof, shall be fined in an amount not to exceed \$1,000.00 or, in default of the payment thereof, be imprisoned in the county prison for a period not exceeding Thirty (30) days. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

ENACTED AND ORDAINED this 2 day of February, 2010.

ATTEST:

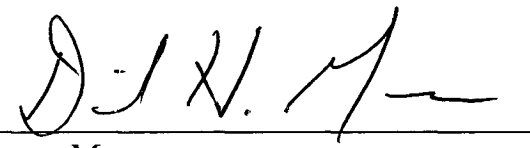
By: 
Donald E. Barshinger, Secretary

EAST PROSPECT BOROUGH COUNCIL

By: 
Blaine C. Garner, President

(SEAL)

APPROVED this 2 day of, 2010.



, Mayor

RESOLUTION PROVIDING FOR THE ESTABLISHMENT OF EAST PROSPECT BOROUGH AS AN ESTABLISHED SECONDARY GROWTH AREA

WHEREAS, East Prospect Borough recognizes the importance of comprehensive land use planning in guiding growth to maintain the quality of life for its citizens; and

WHEREAS, East Prospect Borough also believes that this relationship can be enhanced and facilitated by coordinating its comprehensive planning activities with those of adjoining municipalities and the County; and

WHEREAS, the York County Comprehensive Plan proposes the delineation of growth areas throughout the County as a tool for the identification of areas where growth and development are appropriate, and within which a full range of services and utilities are to be provided as appropriate; and

WHEREAS, the York County Comprehensive Plan proposes those areas not located within a growth area be designated as rural areas and include resource lands, villages, agricultural lands and/or other uses that are compatible with or supportive of a rural area; and

WHEREAS, the York County Comprehensive Plan also proposes that the final designation of growth and/or rural areas be the result of working jointly with municipalities to establish growth/rural boundary lines that are based on population projections, existing and planned availability of public facilities, the protection of important resource areas, and other factors/issues; and

WHEREAS, the designation of growth areas, as set forth on the map attached hereto and made part of this Resolution, resulted from the establishment of a growth/rural boundary line that has been jointly agreed upon by representatives of East Prospect Borough and the York County Planning Commission;

NOW, THEREFORE BE IT RESOLVED, that East Prospect Borough supports the inclusion of the jointly agreed upon Secondary Growth Area designation and the corresponding growth area boundary in the York County Comprehensive Plan by amendment.

THEREFORE BE IT ALSO RESOLVED, that East Prospect Borough will incorporate the jointly determined Secondary Growth Area delineation into municipal plans and/or ordinances as appropriate.

APPROVED AND ADOPTED this 5 day of October, 2010.

ATTEST:

David E. Boy
Secretary

EAST PROSPECT BOROUGH COUNCIL

Thaine [Signature]
Bob [Signature]
Walter [Signature]
Mandy A. [Signature]