

Article III — Street Excavations

§ 53-301	Permit Required.	53-20
§ 53-302	Application for Permit.	53-20
§ 53-303	Authority of Borough Engineer.	53-20
§ 53-304	Costs of Cleanup and Replacement of Surface.	53-20
§ 53-305	Safeguarding Site.....	53-20
§ 53-306	Permit Fee and Deposit.	53-21
§ 53-307	Emergency Excavations.....	53-21
§ 53-308	Exceptions to Deposit Requirement.	53-21
§ 53-309	Violations and Penalties.....	53-21
	(a) Civil Penalty.	53-21
	(b) Initial Determination of Violation.	53-21
	(c) Civil Enforcement Proceeding.....	53-22
	(d) Separate Offenses.....	53-22
	(e) Equitable Remedies.....	53-22

Article III — Street Excavations

§ 53-301 Permit Required.

It shall be unlawful for any person, firm, association or corporation to make or cause to be made any excavation within any street, avenue, alley, or lane within the Borough of Alburtis without having secured a permit granting authorization to do so.

§ 53-302 Application for Permit.

A signed application for the issuance of the permit to excavate within the Borough streets shall be filed with the Borough Manager upon forms furnished by the Borough for that purpose. The application shall set forth the location and purpose of the proposed excavation, the dates between which said excavation is to be made, the length, width, and depth of the trench, and the area of roadway surface to be affected.

§ 53-303 Authority of Borough Engineer.

All excavations of Borough streets within the Borough of Alburtis shall be made subject to the specifications and inspection of the Borough Engineer.

§ 53-304 Costs of Cleanup and Replacement of Surface.

The cost of all cleanup and replacement of street surface shall be borne by the person making application for a permit for excavation.

§ 53-305 Safeguarding Site.

It shall be the duty of the person making application for excavation to safeguard the site of the excavation by proper notice and barricade, if necessary, in order that adequate warning be given to persons using the Borough street of the existence of danger.

§ 53-306 Permit Fee and Deposit.

The base fee for a permit to excavate in a street shall be Twenty-five Dollars (\$25.00) per square yard to be excavated. In addition, a permittee shall deposit One Hundred Dollars (\$100.00) with the Borough at the time the permit is obtained. If the inspection, engineering, and legal costs actually incurred by the Borough with respect to the work covered by the permit exceed the base fee paid, the excess shall be charged to the permittee upon completion of the work, and may be recovered by the Borough out of the permittee's deposit. The permittee remains responsible for all amounts charged by the Borough, including amounts not covered by the deposit. Any balance of the deposit shall be refunded to the permittee.

§ 53-307 Emergency Excavations.

In the case of an emergency arising at night, Sundays, legal holidays, or at such times when the Borough Manager shall not be available and an immediate excavation shall be necessary for the protection of public or private property, application for permit shall be considered to be timely made if made upon the next day when the Borough Manager shall be regularly available for the issuance thereof. Under such emergency conditions, excavation may be made without the prior issuance of a permit.

§ 53-308 Exceptions to Deposit Requirement.

No deposit shall be required and no charge made for an excavation on the sidewalk where the same is made in connection with a permit granted for an excavation in the roadway, nor for excavations made under permits issued for the construction or repair of sidewalks, curbing, or gutters, or where permits have been granted for the erection of poles, nor for contracts executed for the Borough, but in all cases proper application shall be made and a permit secured as herein provided.

§ 53-309 Violations and Penalties.

(a) **Civil Penalty.** Any person who violates any provision of this Article shall be subject to a civil penalty of Three Hundred Dollars (\$300.00).

(b) **Initial Determination of Violation.** Council hereby delegates the initial determination of violations under this Article to the Borough Manager. The Borough Manager shall serve notice of the violation(s) upon the person determined to have violated this Article in person or by first class U.S. mail addressed to that person at his/her last known address. The notice shall include a description of the violation(s), the provision(s) of the Codified Ordinances violated (*i.e.* section, subsection, paragraph, etc.), the penalty imposed for each violation, and the time for payment prior to the commencement of a civil enforcement proceeding. Service shall be complete on the date of in-person service or the date of mailing.

(c) **Civil Enforcement Proceeding.** When the penalty imposed for a violation(s) of this Article is not voluntarily paid to the Borough within fifteen (15) calendar days after service of the violation notice under subsection (b), the Borough Manager shall initiate a civil enforcement proceeding in the name of the Borough before a magisterial district judge (or, where applicable under Borough Code § 3321(5), 53 PA. STAT. ANN. § 48321(5), the Lehigh County Court of Common Pleas). The civil enforcement proceeding shall be initiated by complaint or by such other means as may be provided by the Pennsylvania Rules of Civil Procedure. Any person found to have violated this Article in the civil enforcement proceeding shall be assessed court costs and reasonable attorney fees incurred by the Borough in the proceedings, in addition to the penalty provided.

(d) **Separate Offenses.** Each day or portion of a day that a given violation exists or continues shall constitute a separate offense, and each violation of a separate section, subsection, paragraph, or other division of this Article shall constitute a separate offense.

(e) **Equitable Remedies.** In addition to or in lieu of enforcement of this Article through a civil action, the Borough may enforce this Article through an action in equity brought in the Court of Common Pleas of Lehigh County. The Borough Solicitor shall have authority to commence the action in equity on behalf of the Borough without explicit authorization of Council in any situation where the Solicitor or the President of Council deems it advisable to act before the next regular Council meeting.