

ORDINANCE NO. 2024-373

AN ORDINANCE OF MIDDLEBURG BOROUGH, SNYDER COUNTY, PENNSYLVANIA, REPLACING MIDDLEBURG BOROUGH ORDINANCE NO. 1985- 208 IN ITS ENTIRETY, DEFINING AND REGULATING STREET EXCAVATIONS AND OPENINGS, TO PROHIBIT ANY STREET FROM BEING EXCAVATED OR EXCAVATION FROM BEING LEFT OPEN FROM DECEMBER 1st TO MARCH 31st OF THE FOLLOWING YEAR.

WHEREAS, the Council of the Borough of Middleburg is empowered by the Pennsylvania Borough Code, to pass ordinances necessary for the proper management, care and control of the Borough and its finances and the maintenance of peace, good government, health and welfare of the Borough and its citizens, trade, commerce and manufacturers; and

WHEREAS, the Council of Middleburg Borough has proposed to replace Middleburg Borough Ordinance No. 1985–208:

NOW, THEREFORE, it is hereby ordained and enacted by the Council of the Borough of Middleburg as follows:

Section 1. Chapter 21, Part 3 of the Middleburg Borough Code, adopted via Ordinance No. 1985-208 is replaced in its entirety, and shall state the following:

§21-301 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

EXCAVATION. Any activity within the right-of-way of any street, alley, or cartway which involves cutting, breaking, or disturbing the surface thereof. In this chapter, the term **OPENING** shall have essentially the same meaning as **EXCAVATION**.

PERSON. Any natural person, partnership, firm, association, corporation, public utility commission or municipal authority. In this chapter, the singular shall include the plural and the masculine shall include the feminine and the neuter.

STREET. Any public street, avenue, road, alley, highway, or other public place located in the Borough of Middleburg, and, established for the use of vehicles, but shall not include state highways.

§ 21-302 PERMIT REQUIRED.

It shall be unlawful for any person to open or to make any excavation of any kind in any of the streets in the Borough without first securing a permit therefor as hereinafter provided.

§ 21-303 APPLICATION FOR PERMIT.

(A) Any person who shall desire to make any opening or excavation in any of the streets in the Borough shall make application to the Borough Administrator in writing for that purpose.

(B) Such application shall be made upon forms to be furnished by the Borough and shall set forth the name of the applicant, the exact location of the proposed opening or excavation, and the approximate size or depth thereof, and shall contain an agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Borough and the laws of the state in relation thereto, and that the applicant shall well and truly save, defend, and keep harmless the Borough from and indemnify it against any and all actions, suits, demands, payments, costs, and charges for or by reason of the proposed opening or excavation, and all damages to persons or property resulting in any manner therefrom, or occurring in the prosecution of the work connected therewith, or from any other matter, cause, or thing relating thereto.

§ 21-304 PERMIT FEE.

(A) Before any permit shall be issued to open or excavate any street in the Borough, the applicant shall pay a permit fee in the amount fixed according to a schedule established pursuant to resolution.

(B) When application shall be made to open or excavate any longitudinal opening or excavation in excess of ten feet, before any permit shall be issued so to open or excavate, the applicant shall pay in addition to such minimum fee an additional fee at the rate for each 100 feet or fraction thereof to be opened or excavated upon such street, pursuant to the fee schedule.

§ 21-305 ISSUANCE OF PERMITS RESTRICTED.

Permits shall be issued only to persons furnishing public utility services or the owner or owners of the real property adjoining the location where such opening or excavation is to be made.

§ 21-306 INFORMATION CONTAINED IN PERMIT.

Any permit issued hereunder shall specify the exact location where the opening or excavation is to be made, the approximate permitted size or depth thereof, and the time within which the work for which the permit is granted to be completed.

§ 21-307 PERMIT APPROVAL/DISAPPROVAL.

A permit may be issued to the applicant after all the requirements therefor have been filed. If the application is disapproved, written notice of disapproval together with reasons therefor shall be given to the applicant.

§ 21-308 RESPONSIBILITY TO CONTACT UTILITIES.

The work authorized by the permit is subject to all the provisions of the Act of December 10, 1974, Pub. Law 852, No. 287, §§ 1 *et seq.* (73 P.S. §§ 176 *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. A partial list of utilities providing services in the Borough and their office addresses may be obtained from the County Recorder of Deeds.

§ 21-309 REFILLING OF OPENING OR EXCAVATION; RESTORATION OF SURFACE.

(A) Any person who shall open or excavate any street in the Borough between April 1st and July 31st of the year in which the excavation is made shall thoroughly and completely refill the opening or excavation in such a manner as to prevent any settling thereafter, and shall restore the surface in accordance with §§ 21-321 and 21-322 and in accordance with the specifications of the state's Department of Transportation which are hereby adopted as specifications of the Borough for restoration of surfaces of streets in the Borough.

(B) Any person who shall open or excavate any street in the Borough on or after August 1st of the year in which the excavation is made shall thoroughly and completely refill the opening or excavation in such a manner as to prevent any settling thereafter, and shall restore the surface in accordance with §§ 21-321 and 21-322 and in accordance with the specifications of the state's Department of Transportation which are hereby adopted as specifications of the Borough for restoration of surfaces of streets in the Borough. By December 1st of the year in which the excavation is made, the surface shall be restored in accordance with § 21-320. After March 31st and before August 1st of the following year in which the excavation is made, the surface shall be restored in accordance with § 21-321.

(C) The restoration shall be completed before December 1st of the year in which the excavation is made.

(D) As restored, the surface shall conform to the proper grade and be of the same surface covering as the part of the thoroughfare immediately adjoining the opening. If within two years after the restoration of the surface as herein provided, defects shall appear therein resulting from defective backfilling by the applicant, the applicant shall reimburse the Borough for the cost of all necessary repairs to the permanent paving.

§ 21-310 RESPONSIBILITY OF PERMIT HOLDER FOR CERTAIN WORK.

All other work in connection with openings in any street, including excavation, protection, refilling, and temporary paving, shall be done by or for the person to whom or which the permit has been issued at his, her, or its expense, and all such work shall be subject to the provisions of this chapter and to the supervision and approval of the designated official, provided that the Borough Foreman may if he or she deems it necessary to the proper performance of the work, require that cutting of the surface of streets and the backfilling of all excavations therein shall be done by the Borough, in which event the applicant shall pay the actual cost of the work performed by the Borough.

§ 21-311 REQUIREMENTS FOR WORK.

(A) No opening or excavation in any street shall extend from the curb line into the highway a distance greater than one foot beyond the centerline of the street before being refilled and the surface of the highway restored to a condition safe and convenient for travel.

(B) No more than 500 feet longitudinally shall be opened in any street at any one time.

(C) 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.

(D) No tunneling shall be allowed without the express approval of the Borough Foreman and permission therefor endorsed upon the permit. The backfilling of a tunnel excavation shall be made only in the presence of the Borough Foreman or an

inspector designated by him or her, and shall be done only in a method approved by him or her.

(E) All openings or excavations shall be backfilled promptly and thoroughly compacted as shown on §§ 21-320 and 21-321.

(F) Temporary paving of cold patch premix, thoroughly bound and compacted, shall be installed flush with the surface of the adjoining paving and maintained for a period of 90 days.

(G) On concrete base streets, such base shall be replaced with concrete and the minimum size of the opening or excavation shall be 16 square feet.

(H) During the making of any excavation in the street, every necessary and reasonable precaution shall be taken by the applicant and the parties making the same to keep the street in a safe and passable condition both day and night by guards, barriers, lanterns, and other devices, and all excavating permits granted hereunder are granted under and subject to the express condition that the person to whom the same is issued shall indemnify, save, and keep harmless the Borough from any loss in damages, or otherwise whatsoever, which may or shall be occasioned at any time by the said excavation, or by any leak, explosion, or other injury from any pipe, apparatus, conduit, or any other matter placed in the said excavation.

(I) The applicant shall notify the Borough Foreman 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.

(J) In the event that any work performed by or for a permit holder shall, in the opinion of the Borough Foreman, be unsatisfactory and the same shall not be corrected in accordance with his or her instructions within the time fixed by him or her, or in the event that the work for which the permit was granted is not completed within the time fixed by the Borough Foreman the Borough may proceed to correct such unsatisfactory work or complete any such work not completed and charge the cost thereof, plus 20% to the applicant.

(K) Notwithstanding anything to the contrary herein, all work shall be performed in accordance with the state's Department of Transportation Publication No. 408, latest edition or revision.

(L) (1) Notwithstanding anything to the contrary herein, no excavation of a street shall occur between December 1st and March 31st of the following year, unless:

(a) The Borough Foreman determines that an emergency exists involving a hazardous condition endangering the property, life, health, or safety of individuals which necessitates opening or excavating the street; or

(b) The Borough Council determines that the property owner would suffer undue hardship not caused by the property owner's action, inaction, or unreasonable lack of foresight and that permitting the excavation of the street will not significantly reduce the normal life of the street. The Borough Council shall not make such a determination until it has received and reviewed a written application from the property owner: identifying the property, the street, and the scope of intended excavation; explaining the undue hardship; and requesting relief under this division (L).

(2) A permit for excavation of the street between December 1st and March 31st shall be issued only after express approval of the Borough Council.

§ 21-312 EMERGENCY OPENINGS.

(A) In the case of any leak, explosion, or other accident in any subsurface pipe, line, construction, or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, construction, or apparatus to commence an excavation to remedy such condition before securing a permit, provided that application for a permit shall be made immediately and not later than the next business day thereafter, and that all other provisions of this chapter are fully complied with.

(B) If any such emergency condition shall not be immediately attended to by the owner or person responsible for such pipe, line, construction, or apparatus, the Borough Foreman, after such notice as he or she shall deem necessary under the circumstances of the particular case, shall proceed to do the work necessary and required by such emergency, and charge the same on the basis of cost plus 20% to such owner or person.

§ 21-313 RESTRICTIONS REGARDING TREES AND SHRUBBERY.

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.

§ 21-314 TIMING OF STARTING WORK.

(A) The Borough shall give timely written notice to all persons owning property abutting on any street within the Borough about to be paved or improved, and to all public utility companies operating in the Borough, and all such persons and utility companies shall make all water, gas, or sewer connections, as well as any repairs thereto which would necessitate excavation of the said street within 30 days from the giving of such notice, unless such time is extended in writing for cause shown by the Borough Foreman.

(B) New paving shall not be opened or excavated for a period of five years after the completion thereof, unless:

(1) The Borough Foreman determines that an emergency exists involving a hazardous condition endangering the property, life, health, or safety of individuals which necessitates opening or excavating new paving; or

(2) The Borough Council determines that the property owner would suffer undue hardship not caused by the property owner's action, inaction, or unreasonable lack of foresight and that permitting the excavation of the new paving will not significantly reduce the normal life of the new paving. The Borough Council shall not make such a determination until it has received and reviewed a written application from the property owner identifying the property, the road, and the scope of intended excavation, explaining the undue hardship, and requesting relief under this division (B)(2).

(C) Any persons requesting to open or excavate a street within five years after the completion of the paving shall make written application to the Borough Council and a permit for such opening shall be issued only after express approval of the Borough Council.

§ 21-315 PERMITTEE RESPONSIBILITIES FOR FUTURE RELOCATION OF WORK.

If at any time in the future the roadway is widened, reconstructed, or the alignment or grades are changed, the permittee further agrees to change or relocate all or any part of the structures covered by this permit which interfere with the improvement of the roadway at his, her, or its own cost and expense.

§ 21-316 CONDITIONS FOR LAYING AND EXTENDING UTILITY LINES.

(A) 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 Foreman and such plan and the exact location of such main or line approved by him or her. The Borough Foreman shall not approve the locating of any such main or line at a depth of less than 30 inches from the surface of the street unless he or she shall be convinced that locating the same at a depth of more than 30 inches from the surface is impossible or impractical.

(B) In the event the proposed line crosses over, under, or is parallel to an existing sewer line of the Middleburg Municipal Authority, the plan of installation contemplated by this section shall be submitted to the Middleburg Municipal Authority and approved by it before a permit will be issued.

§ 21-317 BOND REQUIREMENT.

No company, corporation, or association shall dig up any street or alley without first giving to the Borough a bond with some acceptable trust or surety company as surety in the sum of \$10,000, conditioned for the faithful performance of those provisions and also for any and all damages, claims, demands, suits, costs, and counsel fees occasioned or arising from the digging up, opening, or closing of said streets and alleys. In lieu of a bond, a letter of credit in a form satisfactory to the Borough and issued by a financial institution acceptable to the Borough may be submitted.

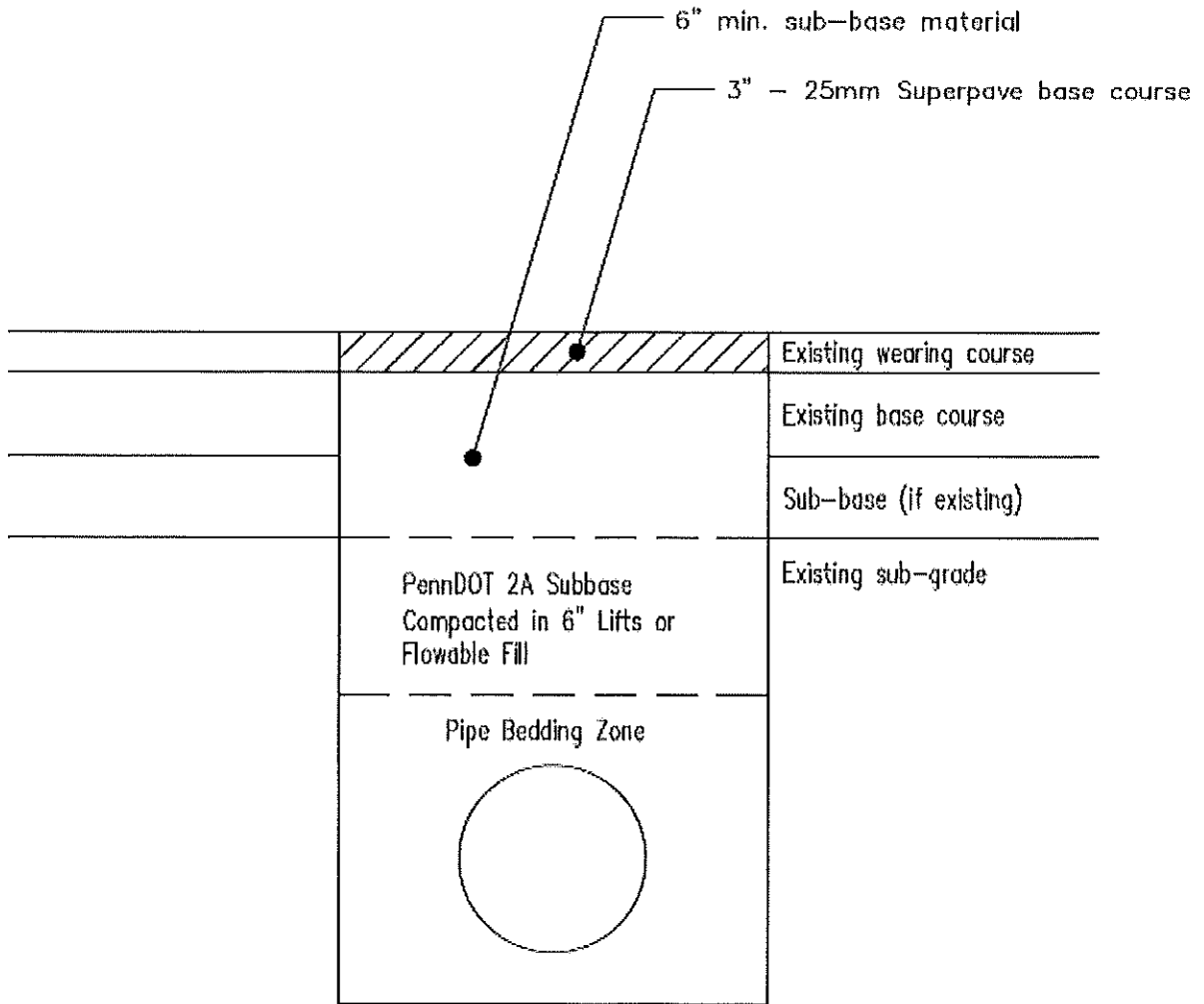
§ 21-318 PAYMENT OF WORK DONE BY THE BOROUGH.

Payment for all work done by the Borough under the provisions hereof shall be made by the person made liable therefor under the provisions hereof within 30 days after a bill therefor is sent to such person by the Borough. Upon failure to pay such charges within such time, the same shall be collectible by the Borough in any manner provided for by law.

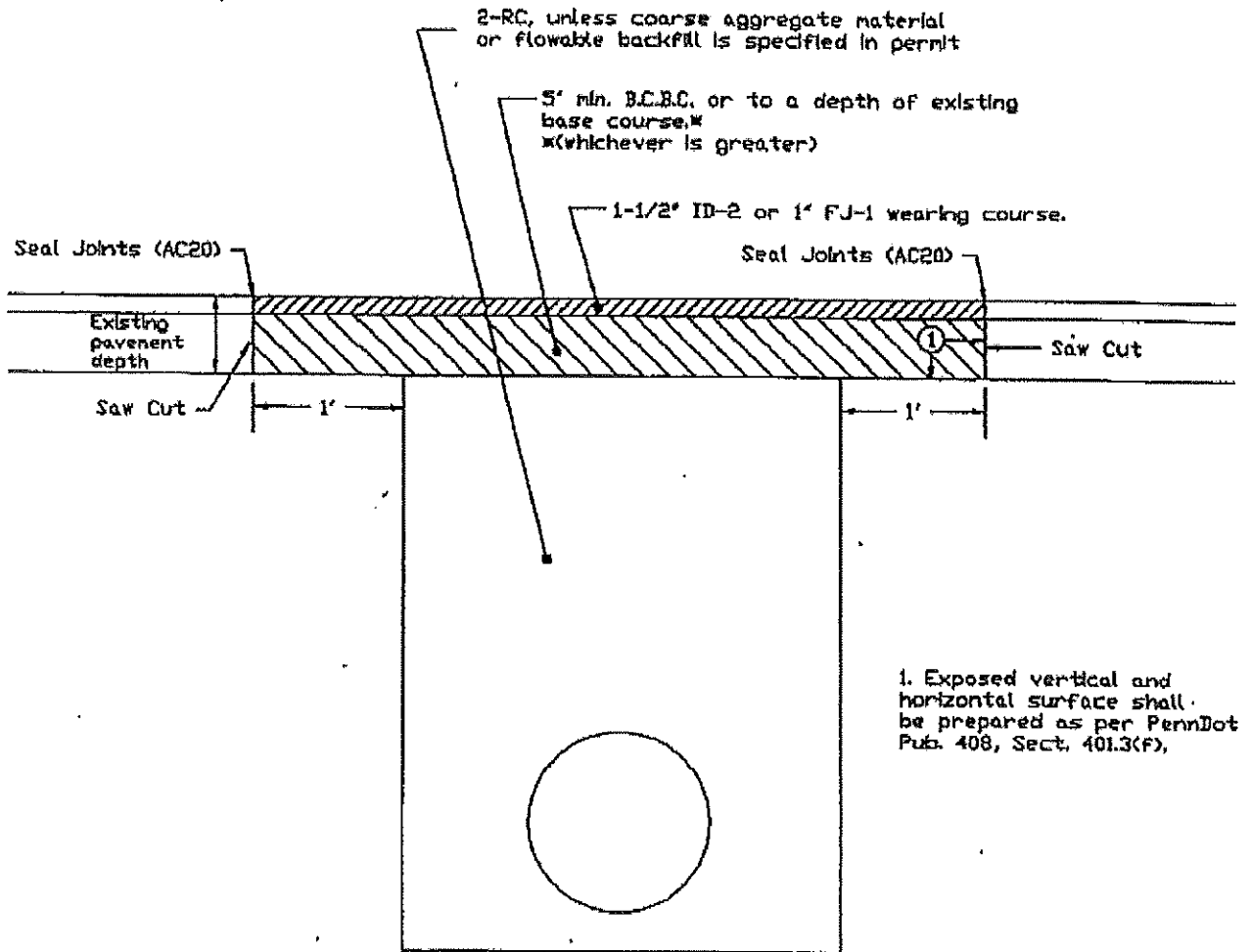
§ 21-319 APPLICATION.

The provisions of this chapter shall not apply to laying sidewalks or curbs.

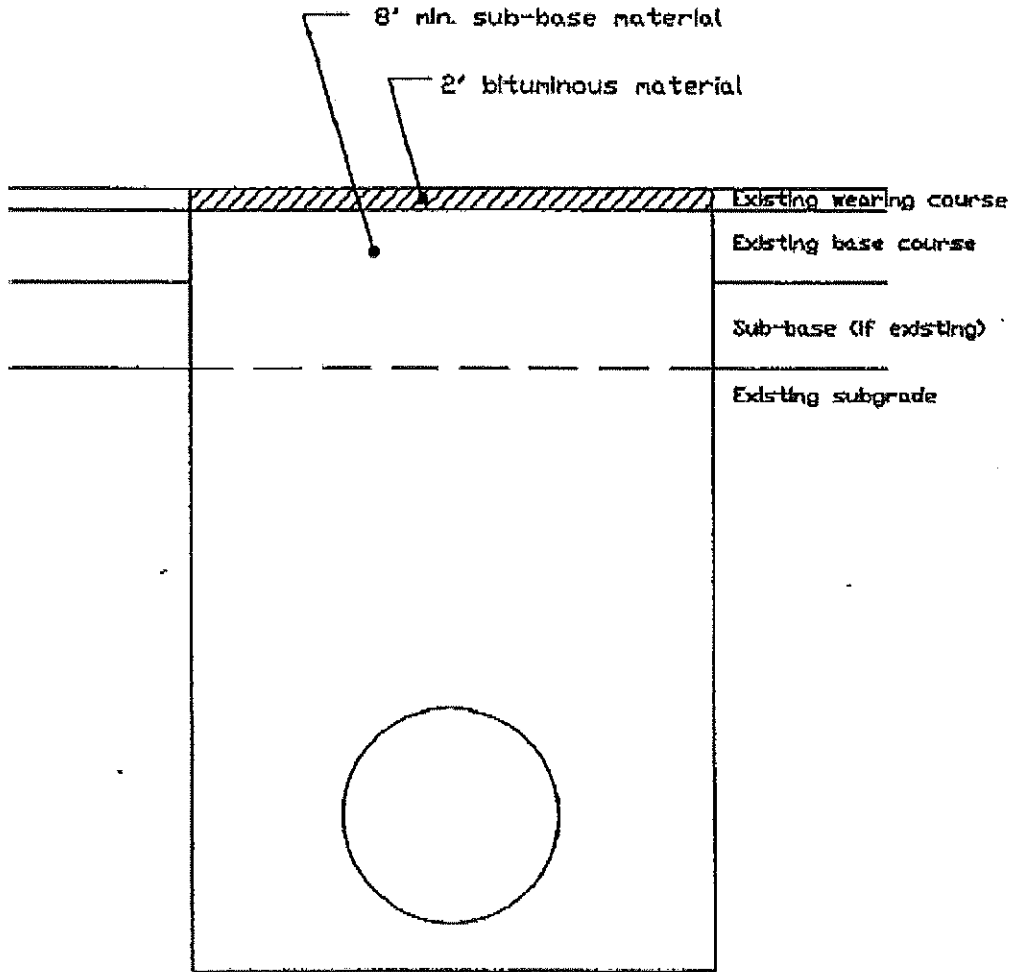
§ 21-320 TEMPORARY WARM/HOT PATCH RESTORATION.



§ 21-321 FLEXIBLE PAVEMENT RESTORATION.



§ 21-322 TEMPORARY RESTORATION.



§ 21-323 PENALTY.

Any person, firm, or corporation who shall violate any provision of this chapter shall, upon conviction thereof, be sentenced to pay a fine of not more than \$600. Each day that a violation of this chapter continues shall constitute a separate offense.

§ 21-324 SAVING CLAUSE.

Nothing in this Part shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this part.

§ 21-325 SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Part is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Part. The Borough of Middleburg hereby declares that it would have passed this Part, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsection, sentences, clauses and phrases be declared unconstitutional.

§ 21-326 DATE OF EFFECT.

This Part and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect immediately from and after the date of its final passage and adoption in accordance with laws and regulations.

§ 21-327 REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent that they are in conflict herewith.


DULY ENACTED AND ORDAINED this 10th day of December 2024, by the Council of the Borough of Middleburg, Snyder County, Pennsylvania, in lawful session duly assembled, after receiving public comment thereon and following proper notice of its intent to consider adoption of this Ordinance.

ATTEST:

BOROUGH OF MIDDLEBURG:



Elizabeth Paige
Administrator/Secretary
(Middleburg Borough Seal)

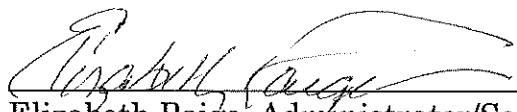
By: 
Donald Zechman, President

APPROVED AS AN ORDINANCE OF THE BOROUGH OF MIDDLEBURG,
SNYDER COUNTY, PENNSYLVANIA, THIS 10th DAY OF DECEMBER 2024.


Heidi Potter, Mayor

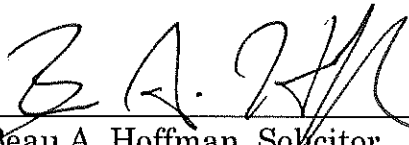
CERTIFICATE OF ADOPTION

AND NOW, this 10th day of December 2024, I hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Borough Council of the Borough of Middleburg, Snyder County, Pennsylvania, at a properly called and duly advertised meeting held on December 10, 2024 at which time a quorum was present.


Elizabeth Paige, Administrator/Secretary
(Middleburg Borough Seal)

CERTIFICATE OF PREPARATION

AND NOW, this 10th day of December 2024, I hereby certify that I prepared the foregoing Ordinance adopted by the Borough Council of the Borough of Middleburg, Snyder County, Pennsylvania, at a properly called and duly advertised meeting held on December 10, 2024.


Beau A. Hoffman, Solicitor