

**BOROUGH OF WIND GAP
COUNTY OF NORTHAMPTON
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE NO. 475

AN ORDINANCE REGULATING THE DIGGING OF OR THE CREATING ANY OPENINGS, HOLES, TRENCHES, BORINGS AND EXCAVATIONS IN THE STREETS OF THE BOROUGH OF WIND GAP, NORTHAMPTON COUNTY, PENNSYLVANIA AND REQUIRING THE REFILLING OF THE STREET AND RESURFACING THE STREET AND ESTABLISHING PERMIT PROCEDURES, PROVISIONS FOR THE POSTING OF FINANCIAL SECURITY AND PAYMENT OF PERMIT FEES AND PENALTIES FOR VIOLATION

WHEREAS, the Borough of Wind Gap is a duly constituted and organized municipality, borough and political subdivision within the Commonwealth of Pennsylvania with offices located at 29 Mechanic Street, Wind Gap, Northampton County, Pennsylvania; and,

WHEREAS and pursuant to the PA Borough Code, the Borough has the power to inter alia regulate the streets and alleys. See 53 P.S. Section 46202(17); and,

WHEREAS and pursuant to the PA Borough Code, the Borough also has the general power and authority to make and adopt all such ordinances for inter alia the safety and welfare of the Borough and its residents. See 53 P.S. Section 46202(74); and,

WHEREAS, the Borough has determined that the digging of any openings, holes, trenches and other excavations within the streets of the Borough need to be properly repaired, re-filled and re-surfaced in order to promote the health, safety and welfare of the Borough, its residents and the traveling public.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, AND IT IS HEREBY ORDAINED AND ENACTED, by the Council of the Borough of Wind Gap, County of Northampton and Commonwealth of Pennsylvania, as follows:

SECTION 1. Permit Required to Dig or Open Street or Alleys.

Whenever it is reasonable and necessary to dig or create any openings, holes, trenches, excavations or openings or diggings of any type in, on, under, through, of or to the streets of the Borough of Wind Gap, a permit shall first be procured from the Wind Gap Borough Zoning Officer. Before issuance of said permit, there shall first be paid to the Borough Zoning Officer by the person(s) applying for such permit the fees as determined by Borough Resolution to be reasonable and necessary to defray the administrative costs of issuing such permit, the administrative processing of the permit and the cost of inspection of such disturbed site.

SECTION 2. Financial Security and Inspection

A. Completion Performance Guarantee as Prerequisite To Street Opening

- a. The Borough Council shall furnish the permittee with a signed copy of a resolution or official letter indicating approval of a street opening or digging or excavation permit contingent upon the developer posting a financial security with the Borough. The resolution or official letter shall expire immediately and be deemed to be revoked if the financial security is not posted with the Borough prior to any earth moving on the project.
- b. Without limitation as to other types of financial security which the Borough may approve, Federal or Commonwealth chartered

lending Institution irrevocable letters of credit, surety bonds (with sureties in good standing authorized to do business in Pennsylvania on the U.S. Treasury List of Approved Sureties) and restrictive or escrow accounts in such lending Institutions shall be deemed acceptable financial security for the purposes of this section.

- c. Such bond or other security shall provide for, and secure to the public, the completion of any street opening or repair which may be required by the permit.
- d. The amount of financial security required shall be based upon an estimate of the cost of completion of the required Improvements to the street, submitted by the permittee an applicant and certified by its planning professional to be a fair and reasonable estimate of such cost. The Borough, upon the recommendation of the Borough Engineer, may either accept such estimate or refuse to accept such estimate. If the permittee and the Borough are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the Borough and the permittee. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen,

fees for the services of said engineer shall be paid equally by the Borough and the permittee.

- e. If the party posting the financial security requires more than one year from the date of posting of the financial security to complete the improvements, the amount of financial security may be increased by an additional 10% for each one-year period beyond the first anniversary date from posting of financial security or to an amount not exceeding 110% of the cost of completing the improvements as reestablished on or about the expiration of the preceding one-year period by using the above procedure.

B. Release From Financial Security

- a. When the permittee has completed all of the improvements as shown on the permit, the permittee shall notify the Borough Council, in writing, by certified or registered mail (return receipt requested – RRR), of the completion of the aforesaid improvements and shall send copies of the notice and certification to the Borough Engineer. The Borough Council shall, within ten (10) days after receipt of such notice, direct and authorize the Borough Engineer to inspect all of the aforesaid Improvements. The Borough Engineer shall thereupon file a report, in writing, the Borough Council and shall promptly mail a copy of the same to the permittee by certified or registered mail (RRR). The report shall be made and mailed within thirty (30)

- days after receipt by the Borough Engineer of the aforesaid authorization from the Borough Council. Said report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part, and if said improvements or any portion thereof shall not be approved or shall be rejected by the Borough Engineer, said report shall contain a statement of the reasons for such non-approval or rejection. Improvements shall not be considered completed unless the permittee can demonstrate compliance with the requirements of the permit issued pursuant to this Ordinance, and all other applicable ordinances, statutes *and* regulations
- b. The Borough Council shall notify the permittee within fifteen (15) days of receipt of the Engineer's Report, in writing, by certified or registered mail (RRR), of its action with relation thereto. Upon completion of the project and after inspection of the project by the Borough Engineer (who shall certify his inspection in writing that there has been compliance with the permit and this Ordinance) and upon approval by Borough Council, the security shall be returned to the permittee.
- c. If any portion of the said improvements shall not be approved or shall be rejected by the Borough Council, the permittee shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined herein, shall be followed.

C. Inspection During Construction

- a. The Borough shall inspect the Improvements during construction. The permittee shall pay the cost of any such inspection in accordance with the provisions the ordinance or resolution. The permittee shall provide at least twenty-four (24) hours notice prior to the start of construction of any improvements that are subject to inspection. All inspections of completed Items shall be requested, in writing, at least forty-eight (48) hours In advance of the Inspection time and date.

SECTION 3. Period for Permit Issuance.

No permit for the digging of or the creating of any openings, holes, trenches or excavations in the streets of the Borough shall be issued during the period from November 1 to April 1 of any year except in case of new installations or except in case of emergency of which the Borough Engineer with the approval of the Borough Roadmaster or Assistant Roadmaster shall be sole judges.

SECTION 4. Method and Manner of Digging or Opening or Disturbance.

Any person digging or creating any openings, holes or disturbance in any of the streets of the Borough for any purpose whatsoever shall see that the openings in the surface of said streets shall be made in the following manner: If the Street is blacktopped, macadamized or if the street is paved with amiesite, concrete or similar material, a saw shall be used and only square or rectangular openings shall be made; test holes in any paved street shall be opened by use of a drill.

SECTION 5. Method and Manner of Repair.

A. Before commencing any repair to the street, permittee shall notify the Borough Engineer so that the Borough can arrange to inspect the work as it progresses.

B. Any person digging or creating any holes, openings or disturbance in any of the streets of the Borough for any purpose whatsoever shall refill same in the manner following. If the Street be unimproved or consists of natural ground or other ordinary earthen material, the opening, hole, trench or excavation shall be filled with the material excavated and the surface restored to its natural ground cover. If the street is macadamized, stone-surfaced or paved with amiesite, concrete or similar material, the hole, opening, trench or excavation shall be refilled only with select materials conforming to PennDOT form 408 and Appendix "A" (Trench Restoration and Paving Detail). All excavated material shall be removed and disposed of as specified in Section 10 of this Ordinance.

C. In no case shall the broken stone, macadam, amiesite, concrete or similar material be used to refill any excavation. All material replaced in any opening, hole, trench, or excavation shall be compacted in layers not to exceed eight (8) inches in depth by adequate machine tamping. It shall be unlawful to puddle or water fill in lieu of such tamping. Where temporary patching is necessary, the permittee shall be required to remove said patching materials and replace them with a permanent surface source within one hundred and twenty (120) calendar days after the work on the project has been completed. In this regard, when the completion of work has occurred shall be determined by the Borough of Engineer with the approval of Borough Council.

D. If the street so excavated be macadamized, stone-surfaced, or paved with amiesite, concrete or similar material, the permittee shall, under the direction of the Borough Engineer, and at the cost and expense of the permittee, restore the portion of the street so dug up, opened or disturbed by repairing it in accordance with Appendix A.

E. In order to eliminate cracks or open joints in the street surface, the wearing course shall overlap the existing pavement and shall be tapered and rolled in order to form a smooth even travelling and riding surface.

G-1. Re-paving/overlaying of streets is required. Should any trenching project commenced pursuant to this Ordinance consist of ten (10) or more lineal feet of trench, any person digging or opening such trenches in any of the streets of the Borough for any purpose whatsoever shall be responsible for re-paving or overlaying the pavement of said Borough street, in accordance with Appendix B of this Ordinance. The re-paving or overlaying work done by the permittee shall be performed under the direction of the Borough Engineer, at the sole cost and expense of the permittee.

G-2. Should any digging project commenced pursuant to this Ordinance consist of five (5) or more holes being dug within one thousand foot (1000') portion of a street, the same re-paving or overlaying requirements set forth above in subsection G-1 shall apply, subject to the same standards and supervision provisions therein above set forth.

SECTION 6. No Tunneling.

Except for boring operations, no part of any digging, opening, hole, trench or excavation shall be tunneled or undermined so as to leave the surface undisturbed;

but, all material shall be removed to the full length, width and depth of the excavation, except in such cases, as may be approved by the Borough Engineer; however, the basis of the fee in such cases to be the same as if the surface had been removed.

SECTION 7. Times And Days When Work Is Restricted.

There shall be no work allowed on any street on a Sunday or after 8 o'clock in the evening (p.m.) on any day except in an emergency of which the Borough Engineer shall be the sole judge. No steel ball or hydro-hammer shall be used for breaking any street surface in the Borough.

SECTION 8. Information Contained on Permit.

An application for a permit must be completed on a Borough form to be supplied and must contain (at the minimum) the following information:

- The name, address and telephone of the person (as "person" is defined herein) making the application for the permit. This will be the "permittee".
- The date the permit is issued.
- A plan of work including the specific reason for the road opening why there is no alternate way to accomplish the work required, the location of the opening, the type of street surface, the type of opening or digging, the approximate number of hours of supervision and inspection expected to be performed by the Borough Engineer; and, prior to any digging or opening, confirmation that a "One Call" was made by the permittee.
- Scheduled dates and times for the opening of the road.

- The scheduled dates and times for the closing of the opening.
- How much of the road is to be opened.
- If the road is to be closed to traffic; and, if so, details as to dates, times, locations and traffic control.
- How long will the area of the road be in an open and hazardous condition.
- The name, address and telephone number of the person who will be performing the actual work.
- The equipment to be used.
- The type and source of backfill material to be used and the method of compaction.
- The name, address and telephone number of a person who will be on that site and in charge of the work to be performed.
- If any items are to be buried in the road, a full description of the items, whether any of those items are hazardous, flammable or otherwise dangerous along with a description of the material for the metal, concrete, piping, wiring, cabling so forth to be buried.
- Detailed safety plan including the opening, digging, trenching or boring methods to be used and the shoring to be used including a plan for flagging, plan for barricades and the name and address and telephone number of a contact person in the case of emergency or if on-site problems arise.

- Within ten (10) calendar days after the project has been completed, a scaled and dimension drawing showing the location, depth, size and identity of whatever has been buried under the entire road right-of-way (not just the cartway) shall be delivered to the Borough for its records.
- A statement that the permittee understands and agrees to be bound by the provisions of this Ordinance.
- The signature of each permittee (and any other person receiving the permit if different than the permittee).

SECTION 9. Responsibility Of Permit Holder.

The person to whom and for whom a permit is issued shall assume all responsibility for the digging or the creation of any openings, holes, trenches or excavations made in, on, under, of, or to the street for repair, reconstruction, refilling and repaving the street; for payment of the proper permit fee; and for all damages that may arise by reason of the digging or the creating of any openings, holes, trenches or excavations in the street.

SECTION 10. Removal of Excess Material.

All excess excavated or removed material shall be promptly removed from the street by the permittee. He shall remove such material at his sole cost and expense or deliver same, at Borough's option, and at his cost and expense at any reasonable location or place within the Borough limits designated by Borough Council.

SECTION 11. Responsibility following Completion of Work.

After the opening or digging has been completed and after same has been fully and completely inspected by the Borough Engineer and approved by Borough Council pursuant of this Ordinance and after any additional fees due and owing have been paid to the Borough pursuant to this Ordinance or resolution, the permittee shall remain responsible to the Borough of Wind Gap for the structural integrity of the street and any defect in the quality of the work or the materials used. This responsibility and liability shall remain upon the permittee for a period of one (1) year from the date that the Borough Engineer reports completion of the repair of the project to Borough Council and Borough Council approves same. In the event that any lack of structural integrity or defect occurs during this one (1) year time period, any and all remedies contained in this Ordinance shall remain available to the Borough.

SECTION 12. Penalties and Remedies For Violation.

A. Any person who violates or permits a violation of the Ordinance shall, upon conviction in a summary proceeding brought before a District Judge under the Commonwealth of Pennsylvania Rules of Criminal Procedures, be guilty of a summary offense and shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00), plus costs of prosecution. In default of payment thereof, the person may be sentenced to imprisonment for a term not exceeding thirty (30) days. Each day or portion thereof that such violation continues or is permitted to continue shall constitute a separate offense, and each section of this Ordinance that is violated shall also constitute a separate offense.

B. In addition to the above, whenever a permittee shall fail to properly repair, reconstruct, refill or repave a street in accordance with the provisions of this

Ordinance, the Borough Council may cause the street to be properly repaired, reconstructed, refilled and/or repaved and the cost thereof, together with an additional penalty amount of ten per cent (10%), may be collected by the Borough from the permittee in any manner provided by law.

C. Failure of a permittee to pay an additional permit, square footage, test hole, supervision or inspection fee as required by this Ordinance shall, in addition to the above penalties, subject the permittee to the costs and expenses of collection of such additional fees, plus ten per cent (10%) of the total amount, which shall be collected for use of the Borough in any manner provided by law.

D. In addition to the above penalties, the Borough reserves the right to seek any and all civil or equitable remedies and to institute any appropriate action or proceeding (injunctive or otherwise) to enjoin, prevent, restrain, abate or correct any violation of this Ordinance including a mandatory injunction to compel compliance with this Ordinance.

E. Such penalties and remedies in this Ordinance shall be considered cumulative and not exclusive.

SECTION 13. Terms and Recitals.

The singular shall mean plural and vice versa. This masculine shall include female and neuter. All recitals on page one are herein incorporated by reference.

SECTION 14. Repealer.

Ordinance No. 365 enacted and adopted on November 6, 1989, is hereby repealed along with any other ordinances or parts of ordinances inconsistent herewith.

SECTION 15. Severability

In the event any Part of this Ordinance shall found to be illegal, unenforceable or unconstitutional, the remaining parts of the Ordinance shall survive and remain in full force and effect.

SECTION 16. Borough Exemption from Liability

The Borough of Wind Gap, Borough Council, the Mayor and/or its/their servants, agents, officers, officials, boards, committees, employees or representatives shall not, under any circumstances, be liable or responsible for damages (whether property, injury or death) caused to or suffered by any person or entity by reason of the provisions of this ordinance or by reason of the conduct of any street projects in compliance (or non-compliance) with the terms, conditions and provisions hereof. Moreover, compliance with this ordinance shall not constitute a representation, guarantee or consent of any kind by the Borough, Borough Council, the Mayor (and/or any of its/their servants, agents, officers, officials, boards, committees, employees or representatives) of the practicality, safety or fitness of any particular purpose of any kind regarding the quantity or quality of any street repair, reconstruction, re-filling or re-paving pursuant to the Ordinance.

SECTION 17. Definitions

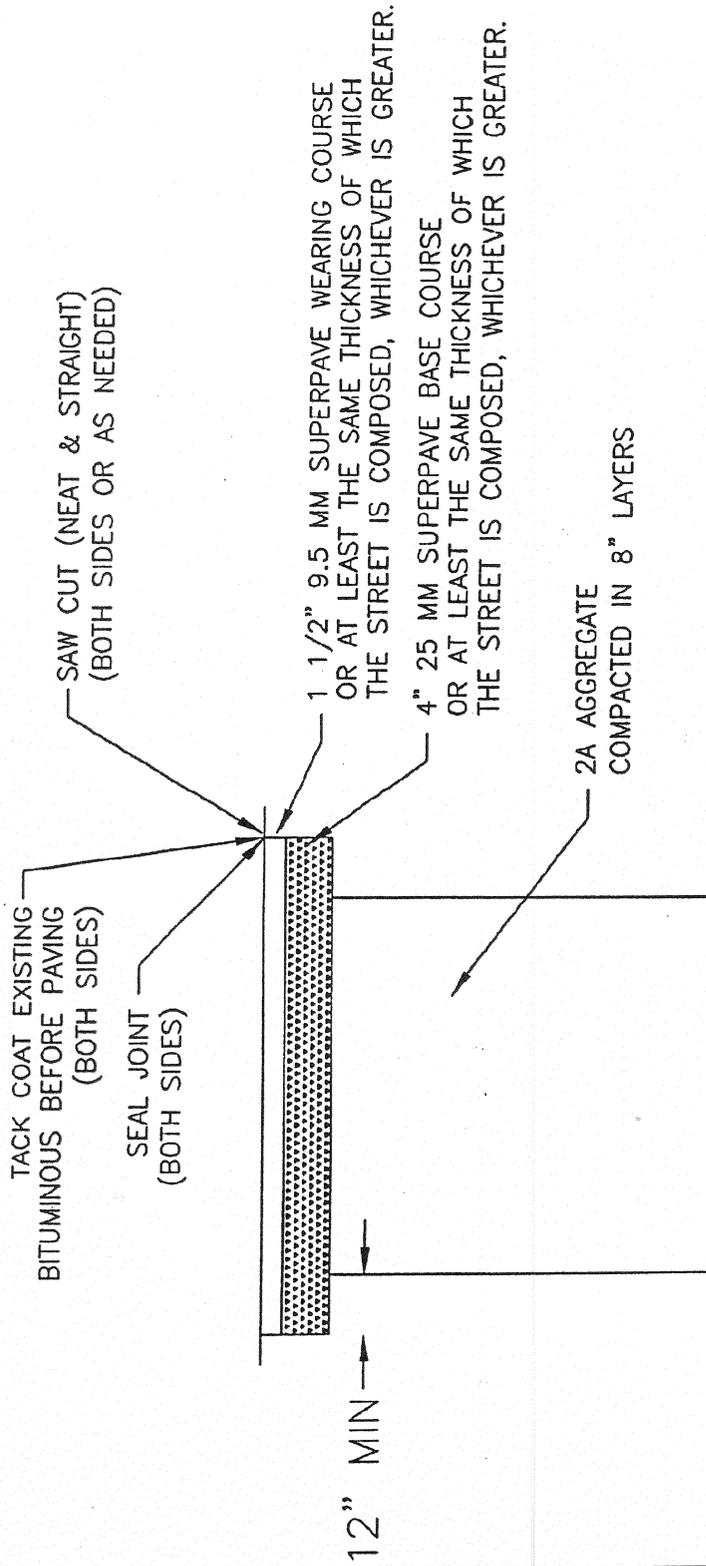
- BORING – a method of digging that does not disturb the surrounding earth, it does not interfere with the road surface and generally does not involve settlement of earth or dirt. It is sometimes referred to as “jacking”.

- DAYS – calendar days except if last day is on a weekend or federal holiday, then last day jumps to the next business day following the weekend or holiday.
- DEFECT - settling, cracking, sinking of the street or failure of the repair or paving materials or any failure of the structural integrity of the street or defect in any of the work performed which may result following completion of the work
- DIGGING – the opening or creation of any hole, dig, ditch, trench, excavation or other disturbance of, in, under, on, through, of or to any street.
- DISTURBANCE – any opening or digging.
- EXCAVATION – any opening or digging.
- HIS – means his, her, its.
- HOLE – any opening or digging.
- OPENING – the digging or creation of any hole, dig, ditch, trench, excavation or other disturbance of, in, under, on, through, of or to any street.
- PERMITTEE – any person applying for and/or receiving a permit under this ordinance including any developer, applicant, or landowner.
- PERSON – any individual, firm, partnership, corporation, limited liability company, limited partnership, association, institution, cooperative enterprise, municipality, municipal authority,

governmental entity or agency, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

- REFILL – the process of completely replacing the material that was taken out of an opening or digging.
- REPAIR – the reconstruction, refilling, repaving, overlaying resurfacing or the process of returning the street to the same condition, with the same material, to the same extent and in as good a condition as it was prior to any disturbance of, in, under on or to the street.
- REPAVE, RESURFACE OR OVERLAY – shall mean the same as the term “repair”.
- STREET - a street, avenue, boulevard, roadway, highway, freeway, parkway, lane, alley, viaduct and any other way used or intended to be used by vehicular or pedestrian traffic provided that such street (as defined herein) has been dedicated to the Borough and the Borough has accepted said dedication.
- TRENCH – any opening or digging.

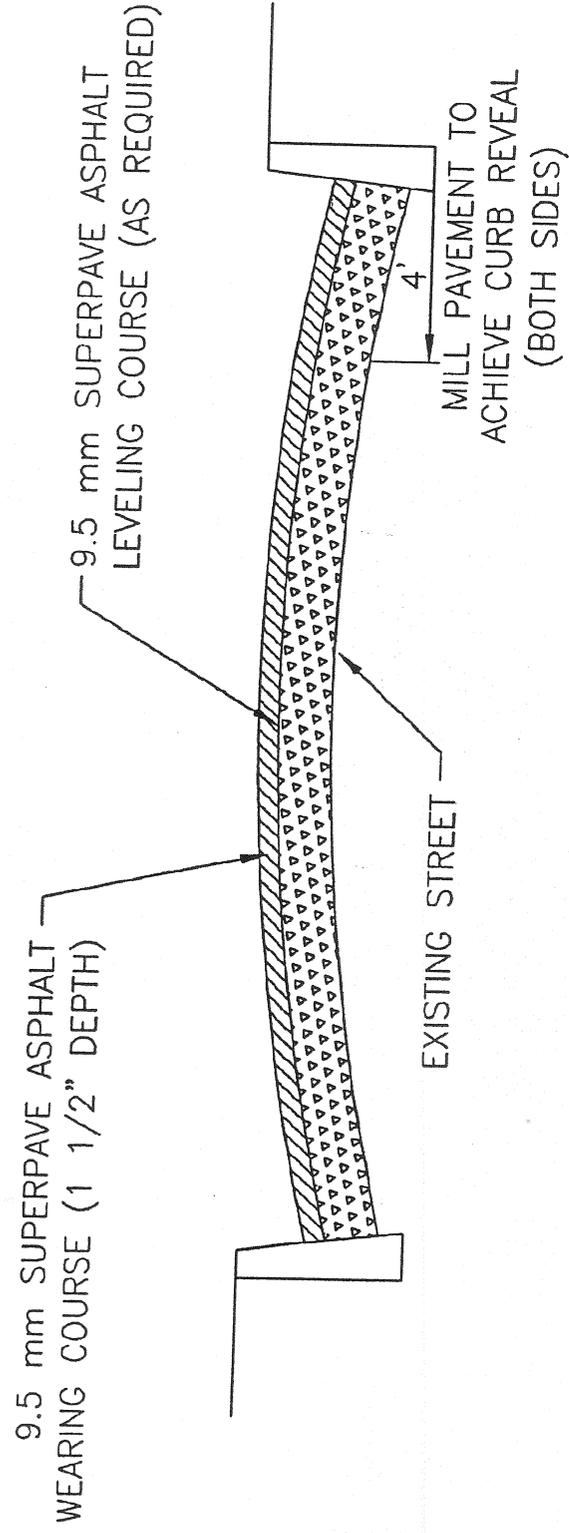
APPENDIX A



NOTE: ALL MATERIALS AND WORK SHALL BE IN ACCORDANCE WITH PENNDOT FORM 408

TRENCH RESTORATION & PAVING DETAIL
(VIEW N.T.S.)

APPENDIX B



NOTE: ALL MATERIALS AND WORK SHALL BE IN ACCORDANCE WITH PENNDOT FORM 408

FULL STREET OVERLAY DETAIL
N.T.S.

ORDAINED AND ENACTED into an Ordinance this 18th day of October, 2011.

ATTEST:

BOROUGH OF WIND GAP

Louise Firestone
Louise Firestone, Secretary

By: Scott Parsons
Scott Parsons, President

APPROVED this 18th day of October, 2011.

ATTEST:

Louise Firestone
Louise Firestone, Secretary

By: James Shoemaker
James Shoemaker, Mayor