

BILL NO.: 6
INTRODUCED: November 17, 2020
BY: Councilman Tom Karpiak
ENACTED: DECEMBER 15, 2020
ORDINANCE NO.: 1552

**CITY OF CONNELLSVILLE
STREET CUTTING AND DIGGING ORDINANCE**

AN ORDINANCE OF THE CITY OF CONNELLSVILLE FURTHER AMENDING AND RESTATING ORDINANCE NO. 999, ENACTED JULY 10, 1967; ORDINANCE NO. 1110, ENACTED NOVEMBER 12, 1974; ORDINANCE NO. 1214, ENACTED DECEMBER 28, 1981; ORDINANCE NO. 1247, ENACTED OCTOBER 11, 1985; ORDINANCE NO. 1457, ENACTED FEBRUARY 13, 2007; AND ORDINANCE NO. 500, ENACTED JULY 18, 2013; THE CITY'S STREET CUTTING AND DIGGING ORDINANCES; EXEMPTING ADJACENT PROPERTY OWNERS FROM THE REQUIREMENT OF OBTAINING A PERMIT TO DIG OR EXCAVATE CITY SIDEWALKS AND GRASSPLOTS AND INCREASING THE PENALTY FOR VIOLATIONS.

WHEREAS, opening, digging, trenching, excavating, boring, or other disturbance beneath streets and public alleyways in the City of Connellsville affects the public right of way, could destabilize the subsurface support of the public right of way, could result in costs or liabilities to the City of Connellsville, and result in other negative consequences for the City of Connellsville and its residents; and

WHEREAS, pursuant to the Third Class City Code, 11 Pa.C.S.A. § 12445, "Council may consent to a person using city streets and other properties, whether the use is within, on or over the streets or public property in question, for transportation purposes or for the purpose of installing and maintaining pipes, wires, fibers, cables or any other utility or service medium. Council may define a reasonable district within which all electric or telephone wires, cables or any other utility or service medium are to be placed underground;" and

WHEREAS, 15 Pa.C.S.A. § 1511(e) provides that "[a] public utility corporation shall have the right to enter upon and occupy streets, highways, waters and other public ways and places for one or more of the principal purposes specified in subsection (a) and ancillary purposes reasonably necessary or appropriate for the accomplishment of the principal purposes, including the placement, maintenance and removal of aerial, surface and subsurface public utility facilities thereon or therein. Before entering upon any street, highway or other public way, the public utility corporation shall obtain such permits as may be required by law and shall comply with the lawful and reasonable regulations of the governmental authority having responsibility for the maintenance thereof;"

WHEREAS, 53 P.S. § 1991 provides that “[t]he proper corporate authorities of such municipality shall have the right to issue permits determining the manner in which public service corporations or individuals shall place, on or under or over such municipal streets or alleys, railway tracks, pipes, conduits, telegraph lines, or other devices used in the furtherance of business; and nothing herein contained should be construed to in any way affect or impair the rights, powers, and privileges of the municipality in, on, under, over, or through the public streets or alleys of such municipalities, except as herein provided;”

WHEREAS, the City of Connellsville desires to exercise its authority to protect and preserve its public rights of way by requiring permits for opening, digging, trenching, excavating, boring, or other disturbance beneath any street or public alleyway.

BE IT ENACTED AND ORDAINED by the City Council of the City of Connellsville, Fayette County, Commonwealth of Pennsylvania, and it is hereby enacted and ordained as follows:

Section 1. Permit Required Making Openings or Excavations in Streets and Alleys.

(a) Permit Required. Whenever it is necessary for the digging or opening of trenches or excavations or boring (hereinafter defined as an “opening”) in any part of the public streets or alleys of the City of Connellsville, which shall include any part of the entire width of such public street or alley, including cartway, caraway, gutter, curb, driveway, inlet, shoulder, grass-plot, and/or sidewalk, (hereinafter defined as a "public street or alley") a permit shall be secured from the City Clerk of the City. The application shall pay to the City Clerk such fee or fees as shall be prescribed in the schedule outlined in Section 14 of this ordinance or as set by ordinance or resolution of City Council. The title owner of a property immediately adjacent to and bordering any grass-plot or sidewalk to be dug, opened, excavated, trenched, or bored shall not be required to obtain a permit for the digging or opening of trenches or excavations or boring of such grass-plot or sidewalk, but shall be required to notify the City code enforcement officer(s) at least three (3) days in advance of any digging or opening of trenches or excavations

(b) Form and Execution. An application for a street opening permit shall be in writing and on forms to be supplied by the City. Such form shall be completed, signed and verified by the person requesting such permit or, in the alternative, by a person duly authorized to act for and on behalf of a person, firm, corporation, organization, entity, utility, or authority for whose use and benefit the excavation or opening is to be made.

(c) Emergency Openings. Any person, firm, corporation, organization, entity, utility, or authority maintaining pipes, lines or other underground facilities in or under the surface of any street may proceed with an opening without a permit when emergency circumstances would pose a threat to the public health, safety and welfare, would demand that work be done immediately and that the permit could not reasonably and practically have been obtained beforehand. In the event an emergency opening occurs, the person, firm, corporation, organization, entity, utility, or authority making such excavation shall thereafter apply for a permit on the first regular business day upon which the City of

Connellsville conducts business and said permit shall be retroactive to the date that the work was commenced.

(d) State Roads. Where any digging or opening of trenches or excavations or boring shall be made in any improved street or alley maintained by the Pennsylvania Department of Transportation, a Highway Occupancy Permit must be obtained from the Department of Transportation.

(e) Record Keeping by City. The City Foreman, his deputy or authorized agent, shall keep a record of the Permit Application, the date of issuing such permit and of the place, character and extent of the excavation to be performed. Upon issuing any permit, the City Foreman shall forthwith notify the City Clerk, the Police Chief, the Fire Chief and any other appropriate emergency service provider of the place, character and extent of the proposed excavations.

(f) Minimum Sizing. When calculating the size of any digging, opening, trenching, excavation, or boring, a minimum trench, opening, excavating, or boring width of two (2) feet shall be used.

(g) Requests for Two or More Openings. Requests for opening, digging, trenching, excavating, or boring more than one street cannot be combined into one (1) permit. Individual permits will be issued for each street.

Section 2. Restoration of Openings; Backfilling. An opening, digging, trenching, excavation, or boring (the "opening") shall be backfilled by the permittee in accordance with the following:

(a) The opening may first be backfilled with fine aggregate material, or granular material to protect the facility, placed to a height not to exceed 1 foot over the top of the facility, if the material is compacted in not more than 4-inch loose layers or as authorized by the City Foreman. To help protect its facility from future excavations, the permittee is encouraged to place a permanent colored ribbon at least 1 foot above its facility. If the facility is nonmetallic, the permittee is also encouraged to place a metallic ribbon at a depth from which the ribbon can be sensed by typical metal locating instruments.

(b) The opening shall then be backfilled with select granular material, unless retained suitable material is authorized by the City Foreman, or other coarse aggregate material that may be specified in the permit. All backfilling shall be in compliance with the backfilling design drawing prepared by the City Foreman and attached hereto as Exhibit "C" unless otherwise specified by the City Foreman. Select granular material or other aggregate material will be required for use as backfill of openings in pavements, paved shoulders and improved (i.e. oil and chip) shoulders as well as unimproved (i.e. stabilized or earth surface) shoulders within 3 feet of the edge of the pavement. Retained suitable material will normally be authorized for use as backfill of openings outside shoulders and in unimproved shoulders more than 3 feet outside the edge of pavement and up to within 3 feet of the surface.

- (c) Backfill shall be compacted as follows:
 - (i) General rule. Except as provided in subparagraph (ii) material shall be placed in loose layers not to exceed 6 inches if vibratory compaction equipment is used or as authorized by the City Foreman. Each layer shall be thoroughly compacted to preclude subsidence.
 - (ii) Compaction outside pavement and shoulders. At least 15 days prior to the start of work, the applicant may submit its written compaction plan to the City Foreman requesting backfill in an opening outside the pavement and shoulder to be placed in layers thicker than 6 inches prior to compaction.
 - (iii) The compaction plan shall include full details on equipment, materials and work methods as well as the permittee's acknowledgment of its obligation and commitment to regularly monitor the restored surface until 2 years after the acknowledged completion of the permitted work and to promptly correct failure or subsidence of the highway. The City Foreman may condition their approval of a compaction plan on the execution of a bond, if a part of the opening is within the approved area.
 - (iv) Existing pavement elevation. Compaction shall be completed to the bottom elevation of the existing pavement.
- (d) Test holes shall be backfilled, as soon as safely possible, with existing type material or other material authorized by the City Foreman, and sealed under the Ordinance.

Section 3. Replacement of Pavement and Surfacing.

- (a) General Requirements. All public streets and alleys where disturbed by the trenching, digging, cutting, excavating, or boring operations, shall be restored by the permittee or the title owner of property immediately adjacent to and bordering the disturbed public street or alley who had the trenching, digging, cutting, excavating, or boring operations performed and shall be repaved, resurfaced, or rebuilt using the same type of construction and surfacing as was in the original, except as otherwise specified herein. The requirements of this section shall not apply to streets maintained by the Pennsylvania Department of Transportation, where on such streets specifications of such Department shall be followed.
- (b) Materials Requirements. All paying materials and paving methods used in the work covered by this section shall conform to the requirements contained in the current edition of the Pennsylvania Department of Transportation Specification Form 408.
- (c) Restoration of Flexible Base Pavements. Base and surface restoration of flexible base pavements shall be performed under this subsection and as specified in the permit. Prior to replacement of the base course, 1 foot outside of each edge of the opening, excavation, or boring shall be sawed, in a neat straight line, to the top elevation of the existing aggregate subbase or stone base course, and the detached

material shall be removed. Other surface opening methods such as cutting may be authorized if the methods result in the opened pavement having a neat straight vertical line.

- (i) Exposed vertical and horizontal surfaces shall be prepared under §401.3(f) of PennDOT Publication No. 408.
 - (ii) The base course shall consist of bituminous concrete meeting the requirements of Section 305 PennDOT Publication 408 or other base course material authorized by the City Foreman. The base course material shall have a minimum depth of 5 inches or a depth equal to the existing base course, whichever is greater.
 - (iii) If required, the binder course shall consist of ID-2 material meeting the requirements of Section 421 of PennDOT Publication 408. The binder course shall have a minimum depth of 2 inches or a depth equal to the existing binder course, whichever is greater.
 - (iv) The wearing course shall consist of ID-2 material meeting the requirements of Section 420 of PennDOT Publication 408 or FJ-1 material meeting the requirements of Section 422 of PennDOT Publication 408. The wearing course shall have a minimum depth of 1 1/2 inch ID-2, or 1 inch FJ-1, or a depth equal to the existing wearing course, whichever is greater.
- (d) Restoration of Brick and Unique Surfaces. In the event the scope of work calls for excavation of a brick, cobblestone or other unique surface, then backfilling and the restoration of that surface shall be accomplished as follows:
- (i) At the time of application for a permit, the permittee shall submit a restoration plan for approval by the City Foreman;
 - (ii) Restoration of the surface shall be accomplished by the reuse of as much of the existing brick, cobblestone or original surface material as possible.
 - (iii) The restoration plan shall include the manner in which subsurface restoration and backfilling shall occur.
 - (iv) The City Foreman shall review the restoration plan prior to the issuance of the street opening permit, and may modify the proposed restoration plan to ensure that the surface is properly restored.
 - (v) No permit shall be issued for opening a brick, cobblestone or other unique surface without the prior approval of the Applicant's restoration plan by the City Foreman.

(e) Restoration of Plain or Reinforced Cement Concrete. Base and surface restoration of plain or reinforced cement concrete pavements shall be performed under this subsection and as specified in the permit. Drilling is not permitted where sawing or cutting is required.

- (i) Prior to replacement of the pavement, 1 foot outside of each edge of the opening shall be sawed the full depth of pavement in a neat straight line. The detached material shall be removed without damaging the adjacent pavement. The use of a pavement breaker is prohibited. The permittee may partially saw cut the pavement to a depth of at least 3 inches and cut the remaining pavement with a jackhammer weighing no more than 90 pounds, if:
 - (a) The restored opening does not exceed 6 feet in either length or width.
 - (b) The restored opening is at least 2 feet from a pavement edge or joint.
 - (c) The highway average daily traffic (ADT) does not exceed 5,000 vehicles per 24-hour period.
- (ii) The replacement pavement shall consist of high early strength concrete equal in depth to the original concrete pavement or to a depth of 8 inches, whichever is greater.
- (iii) On existing reinforced cement concrete pavements that are opened for more than 6 feet in either length or width, reinforcing steel, expansion tie bolts and load transfer devices shall be placed in accordance with PennDOT Roadway Construction Standard RC-26 (relating to concrete pavement maintenance).
- (iv) The permittee may be required to restore the structural integrity of a damaged cement concrete pavement by:
 - (a) Replacing the opened pavement transversely the full lane width.
 - (b) Replacing the opened pavement longitudinally to a transverse joint or opening within 6 linear feet of the opening.
- (v) The surface shall be restored as follows:
 - (a) After surface corrections have been completed and before the concrete becomes non plastic, the surface shall be given a textured finish that matches the existing adjacent surface. The surface shall be cured Section 501.3(k) of PennDOT Publication 408.
 - (b) Restoration of the binder and wearing courses of a cement concrete pavement which has a bituminous surface shall be done under

subsection (c) (relating to the restoration of flexible base pavements).

(f) Shoulder Restoration. Shoulder restoration shall be performed under this subsection and as specified in the permit.

- (i) Paved shoulders. Paved shoulders shall be reconstructed and restored to a serviceable condition, of the same type as existed before the start of work, under Section 651, 653, 654, 656, 657 or 658 of PennDOT Publication 408, and PennDOT Roadway Construction Standard RC-25.
- (ii) Other shoulders. Other shoulders shall be restored as follows:
 - (a) The surface shall be restored with at least 2 inches of select granular material, or as authorized by the City Engineer.
 - (b) If the length of the open shoulder exceeds 100 linear feet, the shoulder shall be graded, rolled and--unless excused--penetrated with bituminous material specified in Section 461 of PennDOT Publication 408, at a minimum rate of 20 gallon per square yard and chipped or lightly sanded to prevent tracking of oil onto the pavement.
- (iii) Outside existing shoulder. If the disturbed area extends outside the existing shoulder, the disturbed area outside the restored shoulder shall be properly graded and a ditch line shall be constructed wherever necessary to maintain highway drainage.

(g) Temporary Pavement Restoration. Permanent restoration of a pavement or paved shoulder shall be required immediately upon completion of the work specified in the permit. However, temporary restoration of a pavement or paved shoulder may be permitted by the City Foreman prior to permanent restoration, under and subject to the following:

- (i) The base shall consist of compacted select granular material with a surface of 2-inch bituminous material. If the existing pavement structure includes a course of subbase material, it shall be replaced to a depth equal to the existing course depth with material meeting the requirements of Section 350.2 of PennDOT Publication 408.
- (ii) Temporary pavement restoration shall be completed before traffic is allowed to travel on the disturbed area. The temporary pavement may be kept in place for up to 6 months or as specified in the permit, if it is properly maintained.
- (iii) The temporary pavement shall be removed and permanent restoration performed under subsection (c), (d) or (e) herein.

- (iv) For all unpaved public streets or alleys or other unpaved areas used as streets driveways or walks through which excavation has been made, the Zone 2 backfill shall be extended to the ground surface and shall be considered the final surface.
- (vi) At joints between existing pavements and repaving work, the edges of the existing pavements shall be cut back parallel with the trench in straight lines and right angles, neatly trimmed and as approved by the Engineer. In all cases, pavement and replacement shall be extended as specified in PennDOT Publication 408.
- (vii) When paving and compaction is completed, all joints shall be sealed as specified in PennDOT Publication 408 or as approved by the City Engineer.

Section 4. Timeframe for Replacement and Restoration. The pavement or surface replacement as specified above shall be installed within twenty (20) working days after backfilling is completed. The permit property immediately adjacent to and bordering any affected public street or alley who had the operation performed will be responsible for the excavation during this time period and shall visit the site daily to address any complaints or unsafe conditions and correct any complaints or unsafe conditions. If it is not possible to install the permanent pavement or surfacing after backfilling or example, during the winter months, then temporary pavement or surfacing shall be installed. The temporary pavement should be complete no more than one business day after the backfill is complete. The temporary pavement shall be 4 inches of bituminous cold patch or with the approval of the City Foreman, 2-A modified stone. In emergency situations when outside temperature is below freezing 2-B modified stone may be used on a temporary basis. The temporary pavement shall be thoroughly compacted. All temporary pavements shall be removed and replaced with permanent pavement by May 15,

All disturbed areas requiring seeding shall be seeded and mulched and soil supplements applied, as required by PennDOT Publication 408. The requirement of this section shall not apply to streets maintained by the Pennsylvania Department of Transportation, but on such streets, specifications of such Department shall be followed.

Section 5. Tunneling Restricted: Openings in Paved Streets. No part of an opening, digging, 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 opening, digging, trench, or excavation, exempting in such cases as may be approved by the City Engineer. The charges, however, shall be the same as if the surface has been removed. This section does not restrict approved methods of boring.

Section 6. Extension of Permit to Cover Additional Work. Whenever more of the public streets or alleys shall be dug up than specified in any permit, the party or parties to whom such permit shall have been issued shall notify the City Clerk and secure an extension of the original permit and shall pay for the extra square feet of surface removed, over and above the amount specified in the

original permit at the costs mentioned or referenced in Section 1 and Section 14 of this Ordinance. Such person or persons violating the provisions of this section shall, in addition to paying the fees provided in Section 1 and Section 14 of this Ordinance, pay to the City an additional administrative and inspection fee of \$200.00 to cover the costs of identifying any violation, documenting such violation, and inspecting such violation to ensure further conformity with this Ordinance. Furthermore, in cases where excavations are made in streets maintained by the Pennsylvania Department of Transportation an increased cash deposit or bond shall be filed as set forth in Section 1 and Section 14 hereof.

Section 7. Information Given in Permit. When such permit is issued, it shall designate the locality at which the opening, digging, trenching, excavation, or boring is to be made, the kind of street surfacing and the approximate square feet of surface to be removed.

Section 8. Responsibilities of Permit Holder, Adjacent Property Owner, and City.

(a) The party or parties to whom or for whom a permit may be issued or the title owner of property immediately adjacent to and bordering the opening, excavated, or bored public street or alley who had the excavations or borings operation performed shall assume all responsibility for the excavation made, for filling the same, repairing the improved surface and for repairs, damages that may arise from the digging of such trenches, excavations, or borings. The permittee or such title owner of adjacent and bordering property will maintain such openings, trenches, excavations, or borings.

(b) With the exception of emergency situations, the City must be notified, in advance, of backfilling and paving operations, so that the city may inspect the performance of the work.

(c) The party or parties requesting a street opening permit shall make such request to the City at least three (3) days in advance of the proposed excavations, except that in an emergency situation, the excavations may be made, provided however, that the permit request be made within a reasonable time after the excavation is started. In all such emergency situations, the party or parties wanting to perform the excavations should make an effort to notify the City prior to performing the excavations.

(d) Provided further that in any case where the digging of such trenches or excavations or boring occurs in an improved street maintained by the Pennsylvania Department of Transportation, then in such event said parties shall assume all responsibility for restoring the same in accordance with the adopted standards of the Pennsylvania Department of Transportation for the particular type of construction.

(e) The permittee shall provide and maintain public liability and property damage insurance in an amount sufficient to indemnify and save harmless the City from all liability for damages or injury done to persons or property which may be incurred by reason for such opening or any failure to properly protect, maintain, barricade, light, backfill and/or properly effect the same. The insurance shall not be in an amount less than \$1,000,000.00

for injury to persons and \$3,000,000.00 for injury to property. The permittee shall name the City as additionally insured and provide proof of said insurance to the City.

Section 9. Fees Payable Prior to Issuance of Permit. Before the issuance of any permits under the provisions of this Ordinance, there shall be filed on a record in the office of the City, a receipt signed by the City Treasurer that all of the fees required by the provisions of this Ordinance and set forth in the application for a permit shall have been first paid to the City Clerk and no permit shall be issued or valid unless the provisions of this section shall have been fully complied with, except where prior arrangements have been made by utility companies or authorities to pay for total excavations on a monthly basis.

Section 10. Verification of Extent of Opening, Digging, Excavations, and Borings. In all instances where the City Engineer and the City Council may grant permission to open, dig, trench, excavate, or bore within or below public streets and alleys, the City Engineer shall verify the extent of the disturbance.

Section 11. Permit Holder to Remove and Dispose of Excess Excavated Materials. All excess of excavated materials on any street shall be promptly removed from the street by the party or parties receiving the permit and such title owner of adjacent or bordering property, and they shall deliver and dispose at their expense to a permitted disposal area the City or its residents.

Section 12. Correlation with Other Ordinances. The provisions of this Ordinance shall nowise impair the provisions of any ordinance or ordinances providing for the giving of bonds to the City by any party or parties for breaking ground or occupying any of the streets, roads, avenues, lanes or alleys within the City, except that no bond shall be exacted for repairing the street or keeping it in repair, other than these portions of this Ordinance applicable to streets maintained by the Pennsylvania Department of Transportation.

Section 13. Penalty for Violation. Any person who violates any provision of this Ordinance shall be guilty of a summary offense and upon conviction thereof shall be sentenced to pay a fine not exceeding six hundred dollars (\$600.00) and/or imprisonment not exceeding ninety (90) days for each offense, in addition to any other penalties provided by law and/or under this Ordinance. Each day that a violation of this Ordinance continues or each section of this Ordinance which shall be found to have been violated shall constitute a separate violation and offense. For purposes of this Ordinance, the term "person" shall include any natural person, utility, authority, organization, entity, partnership, firm, corporation, company, or association or any such agent, representative, or employee of any such entity.

Section 14. Schedule of Permit Fees.

- (a) The required permit fee must accompany the Street Opening Permit Application unless being paid on a monthly basis.
- (b) Fee Schedule. The fee shall be \$500.00 per opening, trenching, digging, excavation, or boring, with a refund of \$200.00 after sixty (60) days upon completion of

all requirements, provided, however, that the fee for an opening, trench, digging, excavation, or bore in excess of 2,000 square feet shall be negotiated between the city and the permittee based on the proportionate size of the opening, trench, digging, excavation, or bore with respect to 2,000 square feet.

Section 15. Inspections. Any authorized employee of the City, including, without limitation, the City Foreman and the City Clerk, or the City Engineer shall have the right to observe and inspect all work done on any public street or alley or under the street opening permit and shall see that all terms and conditions of this Ordinance are enforced.

Section 16. Repealer. Any ordinance or parts of ordinances inconsistent herewith, including, without limitation, Ordinance No. 999, Ordinance No. 1110, Ordinance No. 1214, Ordinance No. 1247, Ordinance No. 1457, and Ordinance No. 500 are hereby repealed.

Section 17. Effective Date. This Ordinance shall take effect upon enactment and shall be effective immediately pursuant to the authority of the City Council of the City of Connellsville at 11 Pa.C.S.A. § 11050(b)(1)(ii), (b)(3)(i)-(ii), and (b)(6)(ii).

ENACTED AND ADOPTED this 15TH day of December, 2020.

CITY COUNCIL OF THE CITY OF CONNELLSVILLE:

BY: 

Mayor and President of Council

ATTEST:



City Clerk