

**CITY OF WILKES-BARRE  
PENNSYLVANIA**



# **CITY COUNCIL AGENDA**

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CITY COUNCIL

APRIL 11, 2024

PLEDGE OF ALLEGIANCE

ROLL CALL

CONSENT AGENDA (RESOLUTIONS/MINUTES)

PRESENTATIONS BY COUNCIL MEMBERS

PUBLIC DISCUSSION

ADJOURNMENT

CITY COUNCIL  
APRIL 11, 2024

CONSENT AGENDA (RESOLUTIONS/MINUTES)

**RESOLUTIONS**

Authorizing the proper city officials to sign all necessary documents related to awarding the contract to the lowest responsible bidder, SRI, in the amount of \$11,800 (eleven thousand eight hundred dollars) for the demolition of 67 Prospect Street.

Authorizing the proper city officials to sign all necessary documents related to awarding the contract to the most qualified service, Franchelli Enterprises, Inc., for the City of Wilkes-Barre One Call Service for a flat rate of one hundred (\$100.00) dollars per hour.

Authorizing tax forgiveness on parcel H9SE4-022-014 and transferring properties 38-46 Carey Avenue (H9SE4-022-013), (H9SE4-022-014) and (H9SE4-022-015) to the Wyoming Valley Habitat for Humanity.

Authorizing the provisions of Section 20-4 of the Wilkes-Barre Code of Ordinances (open consumption of alcoholic beverages) be temporarily suspended and not enforced for the Fine Arts Fiesta (wine tasting area) from May 15, 2024 – May 19, 2024.

Authorizing the proper city officials to take any and all necessary actions related to contracting with Glick Fire Equipment Company, Inc., a Costars vendor, for the purchase of a 2024 Pierce Enforcer Custom 1500 GPM Pumper (i.e. Fire Engine), for a purchase price of \$850,000.00.

Appointing Ron Slusser to the Police Civil Service Commission.

Appointing Jack Nolan to the Zoning Hearing Board.

**MINUTES**

Of the Wyoming Valley Sanitary Authority Meeting of February 20, 2024.

Of the Planning Commission of February 21, 2024

Of the Zoning Hearing Board of February 21, 2024.

Of the Traffic Committee meeting of February 22, 2024.

Of the Regular Session of City Council of March 21, 2024.

CITY COUNCIL  
APRIL 11, 2024

**ORDINANCE**

**FILE OF COUNCIL NO. 1 OF 2024** – AN ORDINANCE OF THE CITY OF WILKES-BARRE,  
PENNSYLVANIA REPEALING ARTICLE III OF CHAPTER 26 ENTITLED “PAVE CUTS”  
REPLACING IT WITH THIS ORDINANCE. (FIRST READING)



Resolution No. \_\_\_\_\_

Wilkes-Barre, PA \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

WHEREAS, the demolition of 67 Prospect Street was publicly advertised on March 6, 2024.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wilkes-Barre that the proper City officials are hereby authorized to sign any and all necessary documents related to awarding the contract to the lowest responsible bidder, SRI, in the amount of **\$11,800 (Eleven thousand eight hundred dollars, zero cents)** for the Demolition of 67 Prospect Street.

Submitted by \_\_\_\_\_

ROLL CALL



Resolution No. \_\_\_\_\_

Wilkes-Barre, PA \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

WHEREAS, the City of Wilkes-Barre advertised for proposals for professional services under the solicitation for the City of Wilkes-Barre One Call Service within the boundaries of the City of Wilkes-Barre on February 9, 2024.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wilkes-Barre that the proper city officials are hereby authorized to sign any and all necessary documents related to awarding the contract to the most qualified service, Franchelli Enterprises Inc., for the City of Wilkes-Barre One Call Service for a flat rate of One Hundred (\$100.00) Dollars per hour.

Submitted by \_\_\_\_\_

**ROLL CALL**



Resolution No. \_\_\_\_\_

Wilkes-Barre, PA \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

WHEREAS, the City Council of the City of Wilkes-Barre recently approved the transfer of three (3) parcels of vacant land known collectively as 38-46 Carey Avenue (H9SE4-022-013, H9SE4-022-014, and H9SE4-022-015) to the Wyoming Valley Habitat for Humanity ("WVHFH");

WHEREAS, one (1) of the conditions of the transfer is that the properties be conveyed with good and marketable title free of any liens or other encumbrances;

WHEREAS, a title search by WVHFH revealed unpaid taxes from years 2000-2007 on one (1) of the three (3) parcels (H9SE4-022-014);

WHEREAS, no real estate taxes have been paid on this parcel since 2000;

WHEREAS, after acquisition, WVHFH intends to construct several taxable homes on the property;

WHEREAS, by resolving the above-referenced outstanding tax issues and transferring the properties to WVHFH, new homes will be constructed on the properties and subsequently conveyed to private, taxable owners;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Wilkes-Barre that any and all unpaid city taxes on H9SE4-022-014 are hereby forgiven.

BE IT FURTHER RESOLVED that said tax forgiveness will be contingent upon the other taxing authorities forgiving any and all back taxes owed on the same parcel.

Submitted by \_\_\_\_\_

ROLL CALL



Resolution No. \_\_\_\_\_

Wilkes-Barre, PA \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

WHEREAS, the City Council of the City of Wilkes-Barre hereby directs that the provisions of Section 20-4 of the Wilkes-Barre Code of Ordinances pertaining to the open consumption of alcoholic beverages be temporarily suspended and not enforced for the following events:

Event:	Fine Arts Fiesta (wine tasting area)
Sponsor:	Blue Mountain Vineyards
Designated Area:	Eastern Corner of Public Square
Dates:	May 16, 2024- May 19, 2024
Time:	3:00 p.m. until close
Limitation:	The suspension shall only apply to wine and not malted or brewed beverages or liquors

The within temporary suspension applies only to the above-referenced events and area. All other regulations related to intoxicating beverages in the City of Wilkes-Barre shall remain in full force and effect. A copy of this resolution shall be provided to the Wilkes-Barre Police Department.

Submitted by \_\_\_\_\_

ROLL CALL



Resolution No. \_\_\_\_\_

Wilkes-Barre, PA \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

RESOLVED, that the proper City officials are hereby authorized to take any and all necessary actions related to contracting with Glick Fire Equipment Company, Inc., a Costars vendor, for the purchase of a 2024 Pierce Enforcer Custom 1500 GPM Pumper (i.e., Fire Engine) for a purchase price of \$850,000.00.

Submitted by \_\_\_\_\_

ROLL CALL





Resolution No. \_\_\_\_\_

Wilkes-Barre, PA \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

WHEREAS, Section 5:08 of the City Charter of the City of Wilkes-Barre authorizes the Mayor, with the advice and consent of City Council, to appoint by members of Boards, Commissions and Authorities served by the City;

WHEREAS, it is the desire of the City of Wilkes-Barre to appoint the person referenced below to the Police Civil Service Commission of the City of Wilkes-Barre;

NOW, THEREFORE, BE IT RESOLVED, that the following person is hereby appointed as a member of the Police Civil Service Commission of the City of Wilkes-Barre:

Name

Term Expires

Ron Slusser  
80 Birch Street  
Wilkes-Barre, PA 18702

December 31, 2027

\*Mr. Slusser is replacing William Barrett who resigned as a member of the Commission.

Submitted by \_\_\_\_\_

**ROLL CALL**



Resolution No. \_\_\_\_\_

Wilkes-Barre, PA \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

WHEREAS, Section 1401 of the Zoning Ordinance of the City of Wilkes-Barre allows the Mayor, with the advice and consent of City Council, to appoint by resolution residents of the City of Wilkes-Barre to serve as members of the Zoning Board;

WHEREAS, it is the desire of the City of Wilkes-Barre to appoint the person referenced below to the Zoning Hearing Board;

NOW, THEREFORE, BE IT RESOLVED, that the following person is hereby appointed as a member of the Zoning Hearing Board:

Name

Term Expires

Jack Nolan  
42 Lawrence  
Wilkes-Barre, PA 18702

January 24, 2029

\*Mr. Nolan is being appointed to replace Rod Kaiser who no longer resides in the city.

Submitted by \_\_\_\_\_

ROLL CALL

**FILE OF COUNCIL**

NO. \_\_\_\_\_ of 2024

**AN ORDINANCE**

**OF THE CITY OF WILKES-BARRE, PENNSYLVANIA REPEALING ARTICLE  
III. OF CHAPTER 26 ENTITLED "PAVE CUTS" REPLACING IT WITH THIS  
ORDINANCE.**

NOW, THEREFORE, IT IS HEREBY ORDERED AND ENACTED BY THE CITY  
COUNCIL OF THE CITY OF WILKES-BARRE THAT ARTICLE III. OF CHAPTER 26.  
ENTITLED "PAVE CUTS" IS HEREBY REPEALED AND AMENDED TO ADOPT THIS  
ORDINANCE.

**ARTICLE III. – PAVE CUTS**

**SECTION 1.**            *Definitions.*

Word usage. The following words, terms and phrases when used in this Article shall have the same meanings ascribed to them in this section, except where the context clearly indicates a different meaning. "The word "shall" is always mandatory and not merely directory. Whenever in this article the words "directed", "required," "permitted", "ordered", "designated", or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the DPW Supervisor, Designated City Engineer, or other Designated City Officer or their representatives or agents is intended; and similarly, the words "approved", "acceptable", "satisfactory" or words of like import shall mean "approved by," "acceptable to" and "satisfactory to" the DPW Supervisor or which shall mean for the purposes of this Ordinance the Designated City Engineer or other Designated City Officer or their representatives or agents.

Definitions. As used in this Article, the following terms shall have the meaning indicated:

**APPLICANT.**            Any person who applies for a permit.

**APPLICATION FOR A PAVE CUT PERMIT.**            A form provided to the utility by the city, noting pertinent data for the purposes of inspection and control by the city and constituting a receipt for services performed by the city.

**CAPITAL IMPROVEMENT.** Preplanned to improve or upgrade an existing system, or to install a completely new system, and/or providing new or additional service(s),

**COMMONWEALTH.** The Commonwealth of Pennsylvania.

**ENGINEER.** The duly appointed City Designated Engineer of the city or his/her authorized representative.

**EMERGENCY REPAIR.** Work necessitated by the rupture or sudden malfunction of existing underground facilities.

**EXCAVATE.** Any activity within the right-of-way of any street or public way which involves cutting, breaking, drilling, grading, digging, scooping, or removing earth or other material, or disturbing the surface thereof. In this ordinance, "open" shall have essentially the same meaning as excavation.

**FACILITIES.** All the plant and equipment of a public utility, including all tangible and intangible, real and personal property without limitations, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, controlled, furnished or supplied for, by or in connection with the business of any public utility; provided, however, that no property owned by the Commonwealth of Pennsylvania or any municipal corporation thereof at the date when this Article becomes effective shall be subject to any of the terms of this Article, except as elsewhere expressly provided herein.

**INSPECTION.** A careful or critical investigation not necessarily conformed to optical observation but is understood to embrace tests and examination for the purpose of ascertaining quality and compliance as prescribed in this Article and discovering and correcting errors.

**MUNICIPAL CORPORATION.** All cities, towns, or counties of this commonwealth and also any public corporation, authority or body whatsoever created or organized under any law of this commonwealth for the purpose of rendering any service similar to that of a public utility. For this Article, "municipal corporation" shall mean the City of Wilkes-Barre.

**OPEN.** To cut, drill, dig or otherwise penetrate through the surface of any street.

**PAVE CUT LOG.** A chronological record of pave cuts as reported to the city containing pertinent data as required by the city for the purpose of inspection and control.

**PAVEMENTS.** Roadway surfaces of machine-laid asphalt over a base of concrete, brick, Belgian block, crushed stone, bituminous concrete or oil and stone.

**PERSON.** Includes any natural person, partnership, firm, association, organization, company, corporation, or city. Individual, municipal corporation, or authority, or any utility public or private.

## **PUBLIC UTILITY.**

(1) Persons or corporations now or hereafter owning or operating in this commonwealth equipment or facilities for:

- (a) Producing, generating, transmitting, distributing, or furnishing natural or artificial gas, electricity or steam for the production of light, heat or power to or for the public for compensation.
- (b) diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.
- (c) Conveying or transmitting television or radio signals by cable to the public for compensation.
- (d) Sewage collection, treatment or disposal for the public for compensation,

(2) The term "public utility" shall not include:

- (a) Any person or corporation, not otherwise a "Public utility," who or which furnishes services only to himself or itself.
- (b) Any bona fide cooperative association which furnishes services only to its stockholders or members on a nonprofit basis.
- (c) Any producer of natural gas not engaged in distributing such gas directly to the public for compensation.

**SERVICE.** Used in this Article in its broadest and most inclusive sense, and includes any and all acts done, rendered or performed, and any and all things furnished or supplied and any and all facilities used, furnished or supplied and any and all facilities used, furnished or supplied by public utilities in the performance of their duties under this Article to their patrons, employees, other public utilities and the public, as well as the interchange of facilities between two(2) or more of them.

**STREET.** Any public street, avenue, road, square, alley, lane, court, cul-de-sac, public way, public square, highway, or other public place located in the city and established for the use of vehicles.

**CITY.** City of Wilkes-Barre, Luzerne County, Pennsylvania.

**UTILITY CORRIDOR.** An area within any public right-of-way, usually underground but not limited to the same, reserved for and assigned to a specified utility for placing and operating its facilities for transmitting and distributing its commodity or service.

**UTILITY RELOCATION.** Includes the adjustment, replacement or relocation of utility facilities as required by a street construction or repaving project, such as removing or reinstalling the facility, acquiring the necessary right-of-way, moving or rearranging existing facilities,

changing the type of facility and any necessary safety and protective measures. It shall also mean the construction of a replacement facility functionally equal to the existing facility, where necessary for the continuous operation of the utility service, the project economy or sequence of street construction.

**WORK.** The furnishing of all materials, labor, equipment, and other incidentals necessary or convenient to the successful completion of the project and the fulfillment of all duties and obligations imposed by this chapter.

## **SECTION 2. PERMIT REQUIRED; PERMITTED ACTIVITIES.**

A. It shall be unlawful for any person, firm, association, corporation or other entity to open, occupy or break the surface of the ground within the boundary of any public highway, roadway, alley, sidewalk, footpath or other public right-of-way, except for the purposes set forth in subsection .2 herein and after first having obtained a permit to do so from the Designated City Officer or Designated City Engineer or their agents.

B. The Designated City Officer or Designated City Engineer or their agents may issue a permit authorizing the opening, excavation, or occupation of areas within the boundary of any public highway, roadway, alley, sidewalk, footpath or other public right-of-way only for the following purposes:

1. Laying, repairing, replacing, or connecting public water or sewer pipes, drains or conduits undertaken by the Sewer Authority or by any other entity with prior approval and under the express direction of the City.

2. Laying, repairing, replacing, or connecting pipes, drains or conduits of public utilities or other public service companies.

C. Setting, planting, replacing, or removing telephone or telegraph poles, streetlights, or traffic control signs.

D. No permit shall be issued to perform an opening or excavation of any City highway, roadway, alley or other public right-of-way that was constructed, reconstructed or resurfaced fewer than five (5) years prior to application for a permit under this Part, unless the applicant agrees in writing to overlay or pave the surface of the public right-of-way, from curb to curb and intersection to intersection, to the satisfaction of the Designated City Engineer. The city may grant an exception to this Section in the case of an emergency in which the requirements of public health or safety require such an exception.

### **SECTION 3. PERMIT AND PLANS REQUIRED.**

A. It shall be unlawful for any person to open or to make any excavation of any kind in any of the streets or the street right-of-way in the City without first securing a permit therefor from the City and satisfying the other applicable requirements consistent with the regulations as hereinafter provided.

B. No permit for opening or excavating in a street for the purpose of laying, constructing, extending, replacing, or relocating a water line, gas line, sanitary sewer line, storm sewer line, electrical or communication cable or conduit or other similar facility shall be issued until a plan showing the proposed location thereof has been approved by, the Designated City Officer or Designated City Engineer or their agents. Such a permit, when issued, shall require the applicant to furnish, upon completion of the work, as-built plans showing the exact location of the facilities.

### **SECTION 4. PERMIT APPLICATION.**

Before such permit is issued and said work is begun, a written application on a blank form to be furnished for that purpose by the City of Wilkes-Barre or its agents must be filed with the City, setting forth the purpose for which the said highway, road, street, avenue, lane, alley, sidewalk or footpath is to be opened, excavated or occupied and the location of the said proposed work, and in such application the applicant shall agree to assume all liability for all or any damages to person or property accruing to the public or to the said City which may or might result from the opening, excavation or occupying of said highway, road, street, avenue, lane, alley, sidewalk or footpath.

A. Any person desiring to open or excavate in any street in the city shall file an application with the Designated City Officer or Designated City Engineer or their agents on forms provided by the city. Such application shall contain the following information:

- (1) The name and address of the applicant.
- (2) The exact location of the proposed opening or excavation.
- (3) The approximate size and depth of the proposed opening or excavation.
- (4) The proposed dates and times of commencing and completing the work.
- (5) The method and progression of performing the work.
- (6) The purposes of the proposed opening or excavation.
- (7) Such other information as the Engineer may deem pertinent.

- (8) The applicant shall also be responsible for providing the serial number from the Pennsylvania One Call System to the City
- B. Such application shall contain a statement, which shall be subscribed to by the applicant, to the effect that the applicant will comply with all relevant ordinances of the city (including this Article) and laws of the Commonwealth of Pennsylvania, and that the applicant will protect and save harmless the city in accordance with subsection C.
- C. Every person to whom a permit is issued or by whom any opening or excavation is made shall assume all risks and be liable for all injuries or damages occasioned by the opening or excavation of the street or by the failure to properly protect the same, to backfill the same, to restore the surface or to maintain the surface or by any other action or inactions in connection therewith. Such person shall indemnify and serve harmless the City, its officials, and employees of and from any such liability. In addition, such person shall submit to the Designated City Officer or Designated City Engineer or their agents, at the time of applying for a permit, a certificate or certificates of insurance for public liability and property damage, including blasting insurance where applicable, in the minimum coverage amount of \$1,000,000.00. A satisfactory certificate of insurance confirming such liability insurance coverage must be filed with the City before any work shall be conducted.
- D. Upon completion of the Work, the applicant shall give written notice thereof to the City.
- E. Upon completion of the Work authorized by the Permit, the City Designated Engineer or (Roadmaster.) shall inspect the Work and, when necessary, enforce compliance with the conditions, restrictions and regulations prescribed by the Permit. Where any settlement or defect in the Work occurs, if the applicant shall fail to rectify any such settlement or other defect within thirty (30) days after written notice from the City to do so, the City may do the work and shall impose upon the applicant the costs thereof, together with an additional twenty (20%) per centum of such costs for administrative fees.
- F. Before the issuance of a permit, the applicant shall make payment to the City in sums set forth by the City.

## **SECTION 5. ISSUANCE OF PERMIT; APPLICABILITY.**

- A. Upon being satisfied that the application is in proper form and upon receipt from the applicant of the fee prescribed by SECTION 6 hereof and the certificates of insurance prescribed by SECTION 6 hereof, the Designated City Officer or Designated City Engineer or their agents shall issue a permit. Permits shall be issued by the City 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. Such permit shall apply only to the specific work described in the application, shall expire on the date and time when the work is proposed to be completed and may contain such conditions or limitations as the Designated City Officer or



Designated City Engineer or their agents deems necessary for the protection of persons and property.

- B. Any person who receives a permit may be required, at the discretion of the Designated City Officer or Designated City Engineer or their agents, to provide visual proof of the condition of the street or streets subject to excavation prior to the commencement of the excavation. Proof of condition of the area subject to excavation shall be in the form of photographs or video of the entire area.
- C. A permit may be issued to the applicant after all the requirements therefore have been satisfied. If the application is disapproved, written notice of disapproval together with reasons therefore shall be given by the City Designated Engineer to the applicant.
- D. Responsibility to Contact Utilities. The work authorized by any permit issued hereunder is subject to all the provisions of the Underground Utility Line Protection Law, Act of December 10, 1974, P.L. 852, No. 287, I et seq., as amended or supplemented from time to time. It shall be the applicant'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 city and their office addresses may be obtained from the Recorder of Deeds of Luzerne County, Pennsylvania.

## **SECTION 6. FEES; LIABILITY INSURANCE.**

- 1. Before the issuance of a permit, the applicant shall make payment to the City in sums set forth by the city for the following:
  - A. For openings or excavations in any highway, road, street, avenue, alley, sidewalk, or footpath.
  - B. For the erection, setting or planting of any pole in the public right-of-way.
  - C. For the occupancy of a highway, avenue, street, or sidewalk with building or other materials.
- (1) No such permit shall authorize the occupying of more than one-third of the width of the roadway between curbs, nor shall the occupied area exceed in extent the dimensions of the frontage of the premises about to be built upon or repaired, except that when no objection is made by the adjoining property owners and the space is not to be used for storage of materials other than those to be used in construction, the permittee shall be permitted to occupy an additional 30 feet on each side of the building frontage for which the permit is granted.
- (2) Provision shall be made by the applicant for such a permit for always maintaining a clear and unobstructed passage along the sidewalk at least 6 feet in width and a free passage for water in the gutter.

(3) No building or other materials or other obstruction shall at any time be placed on the highway within 25 feet of any fire hydrant.

(4) All the materials or other obstructions occupying the highway shall be removed prior to the expiration of the time for which the permit was issued or for which it was renewed.

2. If, while reviewing an application, the Designated City Officer or Designated City Engineer or their agents determines that additional inspection work shall be required by either the City Designated Engineer or DPW Supervisor, an inspection deposit may be required to cover any and all additional costs related to the inspection of the work covered by the permit. Any such funds remaining with the City after the work has been certified complete by the Designated City Officer or Designated City Engineer or their agents shall be released to the applicant.

3. No permit provided for under the provisions of this Section shall be issued until the applicant shall first file with the Designated City Officer or Designated City Engineer or their agents a certificate showing that he carries public liability insurance.

Minimum insurance shall be:

(1) Liability of one million dollars (\$1,000,000) for personal injury or death per individual with a limit of three million dollars (\$3,000,000) for each occurrence for bodily injury.

(2) Liability of five hundred thousand dollars (\$500,000) for property damage.

A. Evidence of insurance in the form of a certificate or letter executed by a duly authorized representative of the applicant's insurance carrier shall be submitted to the city no later than January 15. Said evidence of insurance must include the provision that the city shall be given proper advance notice of at least thirty (30) days of cancellation or any material alterations in the applicant's policy. The City shall be added as an additional insured to the policy.

#### 4. FEE SCHEDULE

Fees shall be as follows:

##### Permits

Processing and issuing a permit

\$100.00 ea.

Issuing road closure permit \$150.00 ea.

Testing:

Direct cost of testing laboratory x 1.2 for review and administration.

Inspection:

Inspection First hour (minimum inspection) \$85.00/hr.

Second hour or hours thereafter \$85.00/hr.

Cost of regular pave cuts:

- (1) Black top per square foot: \$7.27
- (2) Concrete per square foot: \$3.65
- (3) Tree Lawn per square foot: \$2.92

Penalties

- (1) Unauthorized cutting of new pavement, per square yard: \$5,000.00
- (2) Failure to obtain a permit, each: \$1,500.00
- (3) Noncompliance, per day, per offense: \$1,500.00
- (4) Removal , alteration, burial of a limestone or monument  
and failure to report same, per offense: \$1,500.00
- (5) Failure to restore test borings, each: \$ 150.00

City Designated Engineering management fees incurred by the City shall be paid within thirty (30) days of billing, in addition to the hourly rates provided above.

Inspection fees between the hours of 5:00 p.m. and 7:00 a.m. will be subject to a surcharge of 20%.

Inspection fees beyond eight (8) hours in a day will incur a premium surcharge of fee times 1.5%. No additional surcharge will be applied.

## **SECTION 7. EMERGENCY SITUATIONS**

- A. In the case of any leak, explosion or other accident in any subsurface pipe, line, conduit, construction or apparatus or otherwise is in such condition as to immediately endanger the

property, life, health or safety of any individual, it shall be lawful for the person owning or responsible for such pipe, line, conduit, construction or apparatus to commence an opening or 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 Article are fully complied with. If any such emergency condition shall not be immediately attended to by the owner or person responsible for such pipe, line, conduit, construction or apparatus, the city, after such notice as it shall deem necessary under the circumstances of the case, may proceed to have the work necessary and required by such emergency done and charge the cost thereof to such owner or person.

- B. Whenever the exigencies of public health or safety require that immediate repairs be made and the procurement of a permit prior to the commencement of the work is impracticable, it shall be lawful for the work to be begun without a permit, provided that an application for said permit is filed and the proper fee paid within 48 hours from the time when the emergency arose, and, provided further, that any person(s) and/or corporation beginning said work under the provisions of this Section shall do so subject to the conditions and obligations imposed by this Part upon any person(s) and/or corporation opening or excavating public highways, etc., as though an application for a permit had been filed.
- C. An emergency contact number will be provided by the city so that an inspector can be dispatched to the site of the emergency repair. An inspector will be present to inspect the construction, backfill and permanent pavement work for all emergency repairs.

**SECTION 8. REQUIREMENTS FOR OVERLAYING TRAFFIC LANE(S) AND ENTIRE DISTURBED AREA; LIMITING THE NUMBER OF PATCHES AND PAVEMENT JOINTS.**

- A. When a longitudinal opening longer than ten (10) feet and wider than three (3) feet is made in the street pavement, the applicant shall overlay the traffic lane(s) in which the opening was made for the entire length of street that was opened.
- B. When two (2) or more transverse trench openings are made in the street pavement less than one hundred (100) feet apart, the applicant shall overlay the traffic lanes in which the openings were made for the entire length of the street between such openings.
- C. When four (4) or more openings are made by the same applicant in the street pavement less than one hundred (100) feet apart, the City Designated Engineer or such other agent or representative of the City shall require the applicant to overlay the entire disturbed area.
- D. When the opening is to be closer than three (3) feet from the edge of the existing pavement, the opening shall be extended to the edge of pavement.

- E. When the permitted opening is to be closer than five (5) feet from the edge of an existing patch or patches in the pavement, the restoration shall be extended to include said patch.
- F. When the permitted opening is in a street sixteen (16) feet wide or less, then the applicant shall overlay the entire street width for the entire length of the opening.
- G. The overlay conditions within this Section may be waived by the City if the City is scheduled to perform full road paving within the next eighteen months from date of application.

## **SECTION 9. CONSTRUCTION REQUIREMENTS.**

The following construction requirements shall apply to all openings or excavations in streets of the city:

- A. Any person who shall Open or excavate any street in the City shall thoroughly and completely refill the opening or excavation in such a manner as to prevent any settling thereafter and shall restore the surface to the same condition or better as it was before the opening or excavation.
- B. Unless otherwise set forth in this Ordinance, all construction processes and material specifications shall be in accordance with City specifications and Pennsylvania Department of Transportation Publication 408, as amended.
- C. No work shall begin until all utility companies having facilities in the area have been notified. The work shall be conducted so as not to interfere with water mains, sewers or their connections with the house or any other subsurface lines or construction until permission of the proper authorities in connection with such subsurface lines or construction shall have been obtained. Any damage to such lines or construction shall be repaired immediately and shall be reported to the owner thereof.
- D. The surface shall conform to the proper grade and be of the same surface covering s the part of the street immediately adjoining the opening.
- E. Any applicant test boring or drilling into any City street for location of leaks or venting of leaks shall be required to backfill in accordance with SECTION 9. L herein.
- F. The applicant shall be responsible for replacing all pavement markings that are removed or damaged. All material shall be in conformance with Pennsylvania Department of Transportation Publication 408 (Latest Edition).
- G. Temporary Paving shall be placed and maintained for a minimum of 60 days and a maximum of 180 days. Temporary Paving shall be thoroughly bound and compacted, installed flush with the surface of the adjoining paving. Such temporary paving material and thicknesses shall be in accordance with Pennsylvania Department of Transportation Publication 408 (Latest Edition). An alternate temporary paving consisting of two (2) inches of cold patch or two (2)

inches of Superpave binder (19 mm) may be used on a case-by-case basis if approved by the City Designated Engineer. Trenches shall remain unpaved for no longer than five (5) business days after backfilling and shall not remain unpaved during any weekend or any holiday officially observed by the City, unless otherwise directed by the City Designated Engineer.

- H. Permanent Paving shall be thoroughly bound and compacted, installed flush with the surface of the adjoining paving within ten (10) business days after receiving authorization from the City Designated Engineer. Such permanent paving material and thicknesses shall be in accordance with Pennsylvania Department of Transportation Publication 408 (Latest Edition). All temporary paving material shall be removed from trenches prior to placement of the permanent paving base course.
- I. Wherever practicable, tunneling shall be used as a construction method in preference to disturbing the surface of the street, and the DPW Supervisor or Designated City Engineer may so specify on the permit. No tunneling shall be used unless the express direction or approval of the DPW Supervisor or Designated City Engineer is endorsed on the permit. The backfilling of a tunnel excavation shall be made only in the presence of the City, its Engineers or inspector designated by it, and shall be done only in a method approved by the City, its engineers or by the inspector designated by the City.
- J. The use of steel plates to cover open excavations shall always be prohibited between the dates of October 15th and April 15th. Between the dates of October 15th and April 15th, cold patch stone backfill shall be required. The applicant shall be responsible for maintaining the stone backfill and cold patch in a manner acceptable to the City, its Engineers, or by the inspector designated by the City.
- K. Openings shall be made in the street surface by sawing to neat lines. Excavated material shall be immediately placed in trucks and removed from the construction site.
- L. All openings or excavations shall be backfilled with PennDOT 2A modified stone aggregate compacted in maximum six (6) inch layers if vibratory compaction equipment is used. Backfill stone aggregate to a level not to exceed the existing pavement depth or to a level necessary to accommodate the required bituminous pavement trench restoration section. Provide a minimum of one (1) foot cutbacks in existing pavement around the limits of the excavated area. The City may require limits of cutbacks to exceed one (1) foot at their discretion as necessary to achieve satisfactory restoration in the best interest of the City. The bituminous pavement restoration shall consist of 1 1/2 inches of Superpave wearing course, 9.5mm and a minimum of four and one half (4 1/2) inches of Superpave binder course, 25mm. The depth of Superpave binder course shall be increased to match the existing depth of bituminous pavement if the overall depth exceeds 6 inches. The maximum placement thickness per lift of Superpave binder course, 25mm, shall be 6 inches. Equivalent Marshall mixes may be substituted, when approved by the City Designated Engineer. All pavement joints shall be sealed with rubberized joint sealing material. When wearing course is placed adjacent to curb to form bituminous gutter, seal with hot bituminous material of the class and

type designated for wearing course and extend to 6 inches from the curb, applied evenly. The use of PG 64-22 is permitted.

- M. No opening or excavation in any street shall extend from the curb line into the street a distance greater than one (1) foot beyond the center line of the street before being backfilled and the surface of the street restored to a condition safe and convenient for travel.
- N. No more than five hundred (500) feet longitudinally shall be opened in any street at any one (1) time.
- O. Monuments of concrete, iron or other lasting material set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point or a permanent survey benchmark within the City shall not be removed or disturbed or caused to be removed or disturbed unless permission to do so is first obtained in writing from the City. Permission shall be granted only upon condition that the applicant pays all expenses incident to the proper replacement of the monument.
- P. When the work performed by the applicant interferes with the established drainage system of any street, adequate provision shall be made by the applicant to provide proper drainage to the satisfaction of the City.
- Q. Access to private driveways shall be provided except during working hours when construction operations prohibit provision of such access. The applicant shall be responsible for notifying property owners whose driveway access will be inhibited. Free access must be always provided to fire hydrants.
- R. In the excavation of any street, the applicant shall take all necessary and reasonable precautions to ensure that the street always remains in a safe and passable condition for the traveling public. Such precautions may include, but are not limited to, the use of signs, barriers, lanterns and all other warning devices sufficient to alert the traveling public of possible dangers relative to the excavation.
- S. The applicant shall be responsible for contacting the Engineer to obtain all necessary inspections. Work shall not proceed until the Engineer has inspected and given his approval of the following work: when excavation starts, when excavation is ready for backfilling and before backfilling is done, when backfilling work is completed, when the temporary paving has been installed and when the street is ready for permanent paving.
- T. Every person to whom a permit is issued or by whom any opening or excavation is made shall take every necessary and reasonable precaution to keep the street in a safe and passable condition, both day and night, using guards, barriers, lights and other devices.

- U. In the case where a bituminous pavement overlay is warranted, the applicant shall remove existing wearing surfaces by milling to a minimum depth of 1" to accommodate placement of a 1" bituminous wearing course.
- V. Trenching shall not be permitted across the improved area of a Road unless authorized by the Permit.
  - 1. Trenching across the improved area of a Road may be authorized by the Permit where drilling, boring, driving or tunneling are not feasible because:
    - a. The subsurface is solid rock.
    - b. There are other facilities located longitudinally under the improved area and their location precludes methods other than trenching.
    - c. Adjacent development in a very congested urban area makes the construction of a tunneling or boring shaft impossible.

## **SECTION 10. MAINTENANCE OF DISTURBED AREA.**

The applicant shall maintain the portion of the street disturbed by the opening or excavation for a period of twenty-four (24) months from the date the backfilling is completed at a proper grade and condition free from ridges and depressions. Such maintenance work shall be done as often as may be necessary to guarantee proper restoration of the surface and proper maintenance of the disturbed area.

### **A. TIME PERIODS FOR COMPLETION OF PAVE CUTS**

For small area pave cuts (those twenty-five (25) feet or less in length), the utility or contractor shall be required to complete the backfilling within forty-eight (48) consecutive hours of the initial cut during the normal working week, excluding holidays and weekends. Extension time may be allowed upon appeal to the DPW Supervisor or Designated City Engineer provided that the contractor substantiates sufficient reasons for the extension required. Work on long cuts (those over twenty-five (25) feet in length) shall proceed in a continuous manner in accordance with safety precautions. Permits for long cuts or capital improvements will not be granted during the months of November through March except by written permission from the DPW Supervisor or Designated City Engineer. The utility or contractor shall coordinate planned cuts in the municipal streets with the paving program of the city as they become available. The city will strive to provide a paving program for a one-year period to the utilities prior to February 15 of each year. Changes in the utilities' schedule of planned cuts shall require confirmation from the DPW Supervisor or Designated City Engineer. Changes in the municipal paving program will be



submitted to all utilities as soon as possible to permit the utilities to adjust their respective schedules accordingly.

**A. MISCELLANEOUS WORK PROVISIONS**

All excavations shall be commenced and completed using a reasonable workforce. In congested areas and the central business district, the city may limit work to other than normal daytime working hours. At the cessation of work, adequate steel plates shall be placed over the excavation while it is not being worked to ensure full traffic flow. The maximum length of any opening in the roadway shall be two hundred (200) feet unless otherwise permitted, in writing, by the City Designated Engineer or DPW Supervisor.

**B. EXCAVATED MATERIAL**

In peak traffic areas as determined by the DPW Supervisor or Designated City Engineer, all excavated material shall be removed daily at the cessation of work. All gutters and drainage devices shall be kept clean of all debris and excavated material, Hydrants adjacent to the work shall be, always, readily accessible to fire apparatus and no material or obstructions shall be placed within fifteen (15) feet of any hydrant.

**C. SUITABILITY OF MATERIALS**

The suitability of material to be used as backfill shall be determined by the DPW Supervisor or Designated City Engineer. All materials not conforming to the requirements of this Article, whether in place or not, shall be rejected. Such materials shall be removed promptly from the worksite,

**D. DISPOSAL OF WASTE MATERIAL**

Material which is unsuitable, and any surplus of excavated material shall be considered waste and shall be disposed of by the utility or contractor beyond the project limits at an approved or permitted site in accordance with all applicable federal, state and local regulations. In no case shall waste material be left at the worksite.

**F. FILL MATERIAL**

- a. The DPW Supervisor or Designated City Engineer shall be the judges of the stability and suitability of the fill material. In no case will excessively wet or dry material be allowed as fill material. Fill must be compacted to a dry density at least equal to ninety-eight percent (98%) of the maximum dry density attained by the Modified Proctor Test, ASTM D1557, latest revision,

Method C or Method D, as designated by the DPW Supervisor, or City Designated Engineer.

- b. PennDOT 2A Coarse Aggregate, AASHTO #8 Stone or special bedding material as may be required by the particular Utility's bedding/conduit envelope specifications, as approved by the DPW Supervisor or Designated City Engineer, shall be deposited in the trench beneath and simultaneously on both sides of the pipe for the full width of the trench to a height of at least six (6) inches above the top of the pipe, placed and hand-tamped to fill completely all spaces under and adjacent to the pipe. The contractor shall procure the required approved material for backfilling around the pipe at no cost to the city.
- c. Succeeding layers of backfill shall be placed utilizing PennDOT 2A Coarse Aggregate.
- d. Whenever suitable material (PennDOT 2A Coarse Aggregate) exists within the upper four (4) feet of the finished grade of the paved or traveled portions of the street or roadway and is removed by the excavation, the contractor may stockpile, and place said material as backfill in the upper Four (4) feet of the finished grade. the DPW Supervisor or Designated City Engineer shall be the judges of the suitability of such material for reuse within the excavated trench area, and all costs associated with any required testing to substantiate the suitability of said material shall be the sole responsibility of the Utility/Contractor.
- e. As an alternative, 250 psi flowable fill may be used. Flowable fill shall be in accordance with PennDOT Publication 408, Section 220 (Latest Edition) with a compressive strength not less than 150 psi.

#### **G. BACKFILLING REQUIREMENTS**

A. The DPW Supervisor or Designated City Engineer must be notified at least 12 hours in advance of placing any backfill for inspection purposes. No backfill shall be placed without a City designated inspector present. In backfilling, six-inch layers shall be placed in the deepest portion of the backfill, and as placement progresses, each six- inch layer shall be horizontally constructed, Compaction operations shall be continued using mechanical tampers until each layer of fill is compacted to a dry density at least equal to ninety-eight percent (98%) of the maximum dry density attained by the Modified Proctor Test, ASTM D 1557, latest revision, Method C or D method, as designated by DPW Supervisor or Designated City Engineer.

B. Backfilling shall be done in such manner as to obtain compaction through the entire length of backfill not less than that which exists adjacent to the excavation, but in no case less than the compaction requirements noted above. The method of backfilling shall be consistent with good engineering practice. Backfilling shall

begin as soon as practical after the pipe or other construction has been placed and shall thereafter be executed as rapidly as protection of the balance of the work will permit.

C. Depositing of backfill shall be done so the shock of falling material will not injure the pipe or adjacent structures.

D. All deficiencies in the quality of material for backfilling the trenches or for filling depressions caused by settlement shall be supplied by the contractor.

E. In all cases, the contractor shall blade and compact the roadway after the trench has been backfilled so that it shall be always passable to traffic. The contractor shall always maintain the roadway in a condition acceptable to the Designated City Engineer or DPW Supervisor until final approval of the entire work by the city.

F. The contractor shall remedy, at his own expense, any defects that appear in the backfill for a period of two (2) years following compaction.

#### **H. PERMANENT PAVEMENT REQUIREMENTS**

a. The DPW Supervisor or Designated City Engineer must be notified in advance of placing any permanent pavement for inspection purposes. No pavement shall be placed without a City designated inspector present.

b. Where the excavation is in a paved surface, the pavement shall be restored with not less than 6 inches of 2A Subbase, 4 1/2 inches of 25 mm Superpave Base Course or the full depth of the adjacent permanent bases, whichever is greater, and 1 1/2 inches of 9.5 mm Superpave Wearing Course. All materials and work shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Sections 350 and 409, respectively. Prior to replacement of the pavement, one foot (1') outside of each edge of the opening shall be sawed the full depth of pavement and stone base in a neat straight line (1-foot cutback). The detached material shall be removed without damaging the adjacent pavement. The final pavement joint between the new and existing pavement shall be sealed with PG 64-22 or other sealant approved by the DPW Supervisor or Designated City Engineer to a width of 4 inches on either side of the joint. The DPW Supervisor or Designated City Engineer shall be contacted to verify the sealant material to be used for all pave joints, in case the required sealant designation changes from that specifically provided herein. In cases where pave cuts are made between December 1 and April 15, the pavement restoration shall consist of cold patch or similar temporary material, as approved by the DPW Supervisor or Designated City Engineer. Final pavement restoration shall be completed as specified hereinabove during the next paving season, but in no event later than July 1st, unless prior approval is received from the DPW Supervisor or Designated City Engineer. Maintenance of the temporary patch shall be the responsibility of the contractor.

c. When a longitudinal opening longer than 100 linear feet is made in the pavement, the entire roadway width shall be milled and overlaid with 9.5 mm Superpave within the area of the opening. When four (4) or more transverse openings are made within 100 feet linear feet of pavement, the entire roadway width shall be milled and overlaid with 9.5 mm Superpave within the total opening length including those areas unexcavated. Overlay shall consist of 1 1/2 inches (minimum) of 9.5 mm Superpave Wearing Coarse. A milled paving notch, with a minimum 10 feet transition, shall be provided at each end of the overlay.

d. When any street is overlaid, the Applicant/Permittee shall construct new ADA curb ramps at each affected intersection. ADA ramp designs must be in accordance with current PA DOT standards and must be submitted to the Designated City Engineer for approval prior to construction.

## **I. SIDEWALK CURB RESTORATION REQUIREMENTS.**

A. The DPW Supervisor or Designated City Engineer must be notified in advance of placing any permanent pavement or concrete for sidewalks or curbing for inspection purposes. No pavement or concrete for sidewalks or curbing shall be placed without a City designated inspector present.

B. Where the removal of a portion of a curb, sidewalk, or curb and gutter is required to perform work, the curb, sidewalk, or gutter shall be restored as follows:

1. Asphalt sidewalks shall be a minimum of 2" of 9.5 mm Superpave Wearing Coarse or the thickness of the adjacent materials, whichever is greater.
2. Asphalt curbs shall meet the requirements of Penn DOT Publication 408 Specifications (Latest Edition), Section 636. The minimum allowable length of a replaced curb shall be 4 feet.
3. Concrete sidewalks shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Section 676. The minimum allowable length of a replaced concrete sidewalk shall be 4 feet.
4. Concrete curbs shall meet the requirements of PennDOT Publication 408 Specifications (Latest Edition), Section 630, The minimum allowable length of a replaced curb shall be 4 feet.
5. Stone curbs shall be replaced in kind. The minimum length of replaced curbs shall be 4 feet.

6. Where curbing and/or sidewalks are composed of other materials (brick, pavers, granite, flagstone, etc.) every attempt should be made to save the original materials and replace them during restoration.

7. The replacement of all walks, curbs, gutters, etc. shall be made in-kind in accordance with the above-noted specifications.

#### **J. MACHINERY TO BE USED**

Power-driven concrete saws or air hammers shall be used on all cuts in Portland-cement- based pavements. The cuts must be of sufficient depth to provide a smooth edge, No pavement busters, such as drop hammers, hoe rams and the like, shall be used without the written permission of the DPW Supervisor or Designated City Engineer.

#### **K. RESPONSIBILITY FOR DAMAGE TO UNDERGROUND FACILITIES**

In the event a cut is made and, upon inspection, damage to another utility's underground facility is discovered, it shall be the responsibility of the party making the cut to contact the DPW Supervisor or Designated City Engineer and all concerned pertinent utilities to allow the utility to have their respective representatives inspect the condition before any backfilling is begun. The Contractor conducting the excavation work shall be responsible for all damages incurred in connection with his operations.

#### **L. COMPLIANCE WITH STATUTES, RULES, AND REGULATIONS**

All contractors shall ensure compliance with the provisions of all applicable and relevant, state, local and federal statutes, rules and regulations.

#### **M. INSPECTION AND TESTING**

The Designated City Engineer shall inspect all cuts, backfilling, pavement restoration and curb/sidewalk restoration work that occur within the City's right of way in connection with any permits issued under this Ordinance. An inspection fee shall be charged for this inspection (See Fee Schedule.) Such inspection fees shall constitute acceptance of work performed by the contractor, but it is understood that such acceptance does not relieve the utility of any responsibility under this Article throughout the guaranty period.

To ensure proper testing, the Utility or Contractor may be required to retain an independent testing company meeting the following requirements:

- i. Maintains a facility that is AMRL and CCRL certified and meets the minimum requirements of ASTM E-329.
- ii. Has the ability to provide field testing technicians that have the appropriate ACI, NICET, and NECEPT certifications for testing of the work being performed as follows:

<u>TYPE of WORK</u>	<u>REQUIRED CERTIFICATIONS</u>
Permanent Backfill	NICET Level 1 Soils and QC Nuclear Regulatory Certified
Permanent Asphalt Paving	NICET Level 1 Asphalt and NECEPT  Bituminous Field Test Technician
Permanent Concrete (Sidewalks or Curbs)	NICET Level 1 Concrete and NECEPT Concrete Field Test Technician

Has the ability to mobilize for contractor requests within one (1) hour of being notified.

Has the ability to submit Testing Reports to the Designated City Engineer upon completion of work.

All costs associated with all testing shall be borne solely by the Utility or Contractor and will not be included within any permit costs or fees. The Utility or Contractor shall contract separately with the independent testing company.

For all excavations within City Right-of-Ways, the Independent Testing Company may be required to conduct the required compaction tests for permanent backfill at a minimum frequency of one test per 100 linear feet of pipe trench or part thereof at vertical intervals of 2 feet starting 2 feet above the pipe, This work will be required by the Designated City Engineer due to suspect compactions methods of the Utility or Contractor.

For all concrete work within City Right-of-Ways, the Independent Testing Company shall take cylinders and conduct compression tests as well as slump and air entrainment tests in accordance with ACI 301. Test results shall be submitted to the Designated City Engineer. The Testing Company shall utilize the following guidelines unless directed otherwise by the City or the Designated City Engineer:

- 1 . Five concrete test cylinders will be taken for concrete placed each day. Two cylinders will be broken at 7 days and two at 28 days with one held in reserve. Follow ASTM C 31 and C 39. One additional test cylinder will be taken during cold weather and be cured on site under same conditions as concrete it represents.
2. One slump test will be taken for each set of test cylinders taken. Follow ASTM c 143.

3. One air-entrainment test will be taken for each set of test cylinders taken for air-entrained concrete. Follow ASTM C 173 or C 231.

#### **SECTION 11. RESPONSIBILITY FOR CORRECTION OF UNSATISFACTORY OR INCOMPLETE WORK; RESPONSIBILITY FOR DEFECTS OCCURING WITHIN TWENTY-FOUR (24) MONTHS.**

- A. In the event that any work performed by or for a permit holder shall, in the opinion of the City or its Engineers, be unsatisfactory and where that work is not corrected in accordance with the City's instructions within the time fixed by it, or in the event that the work for which the permit was granted is not completed within the time fixed by the City, the City may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost of the work and materials to the applicant.
- B. When any earth, gravel, or other excavated material is caused to roll, flow, or wash upon any street, the applicant shall cause the same to be removed from the street within twenty-four (24) hours after deposit. In the event the earth, gravel, or other excavated material so deposited is not removed, the City shall cause the removal and the cost incurred shall be paid by the applicant.
- C. If within twenty-four (24) months after the restoration of the surface as herein provided, defects shall appear therein resulting from defective backfilling by the applicant or its contractor or otherwise related to the applicant's work, then the applicant shall reimburse the City for the cost of all necessary repairs to the permanent paving.
- D. Payment for all work done by the City under the provisions hereof shall be made by the person made liable therefore within thirty (30) days after a bill therefor is sent to such person by the City. Upon failure to pay such charges within such time, the same shall be collectible by the City by an action at law or in the manner provided by law for the collection of municipal claims.

#### **SECTION 12. OPENING NEWLY PAVED SURFACES.**

All such persons and utility companies shall make all water, gas, sewer, or other connections as well as any repairs thereto which would necessitate the opening or excavation of said street within 90 days from the giving of such notice, unless such time is extended, in writing, by the Designated City Engineer or DPW Supervisor. New paving shall not be opened for a period of five (5) years after the completion thereof, except in case of emergency only, the existence of which emergency and the necessity for the opening of such paving to be determined by the Designated City Engineer. If any person seeks to open or excavate a street within one year after the completion of the paving thereof for any reason other than an emergency as above stated, the applicant shall make written application to the Mayor, and a permit shall be issued only after

express approval of the Mayor and only upon payment of a permit fee as shall be set, from time to time, by the City.

### **SECTION 13.CONDITIONS FOR LAYING AND EXTENDING UTILITY LINES.**

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 City until the plan therefor shall have been first filed with the City and such plan, and the exact location of such main or line, is approved by the City. The City shall not approve the location of any such main or line at a depth of less than thirty (30) inches from the surface of the street unless it is clear to the City that locating the same at a depth of more than thirty (30) inches from the surface is impossible or impractical.

### **SECTION 14. EXPIRATION AND RENEWAL OF PERMIT; EXHIBIT.**

1. Permits shall be issued by the Designated City Officer or Designated City Engineer or their agents and shall not be operative for more than 60 days from the date of issue. Permits may be renewed for a like period upon payment of a renewal fee as established by the City.

2. The permit shall always be kept in the possession of a competent person engaged in the work and, upon demand, shall be exhibited to any police officer or properly authorized employee of the City, County or State.

### **SECTION 15. BACKFILLING; TEMPORARAY AND PERMANENT PAVING.**

1. All breaks or openings shall be refilled by the applicant for the permit, to the approval of the DPW Supervisor or Designated City Engineer without raising the surface of the highway, road, street, avenue, lane, alley, sidewalk or footpath, due allowance being made for the structure being placed in the trench. All refilling must be done with suitable materials thoroughly compacted by puddling or hard tamping in uniform layers not exceeding 6 inches in depth and all surplus dirt must be removed from the job.

2. Materials used in backfilling, temporary and/or permanent paving shall conform to City specifications promulgated by the Designated City Engineer.

3. Permanent paving shall be constructed, weather permitting, 60 days after the installation of the temporary paving. If, within two years after the installation of the permanent paving, defects appear therein resulting from defective backfilling by the applicant, the applicant shall reimburse the City for the cost of all necessary repairs to the permanent paving.



4. Each person issued a permit shall submit to the City, not later than 30 days after completion of the permitted construction (or any part thereof, if required by the City), two paper copies and one electronic copy of as-built map or maps and engineering specifications as set forth by the City depicting and certifying the location of the facilities constructed. Engineering specifications and electronic and paper maps shall be submitted in a format and include the information required by the City. If the maps are not provided electronically in the required format, then the person shall reimburse the City for the cost of converting paper maps into electronic form or the cost of converting electronic maps in another format into the required format.
5. Depositing of backfill shall be done so the shock of falling material will not injure the pipe or adjacent structures.
6. The DPW Supervisor or Designated City Engineer must be notified in advance of placing any permanent pavement for inspection purposes. No pavement shall be placed without a City designated inspector present.
7. All deficiencies in the quality of material for backfilling the trenches or for filling depressions caused by settlement shall be supplied by the contractor. In all cases, the contractor shall blade and compact the roadway after the trench has been backfilled so that it shall be always passable to traffic. The contractor shall maintain the roadway in a condition acceptable to the DPW Supervisor and/or Designated City Engineer at all times until final approval of the entire work by the city. In cases where pave cuts are made between December 1 and April 15, the pavement restoration shall consist of cold patch or similar temporary material, as approved by the DPW Supervisor or Designated City Engineer. Final pavement restoration shall be completed as specified hereinabove during the next paving season, but in no event later than July 1st, unless prior approval is received from the DPW Supervisor and/or Designated City Engineer. Maintenance of the temporary patch shall be the responsibility of the contractor.
8. When a longitudinal opening longer than 100 linear feet is made in the pavement, the entire roadway width shall be milled and overlaid with 9.5 mm Super pave within the area of the opening. When four (4) or more transverse openings are made within 100 feet linear feet of pavement, the entire roadway width shall be milled and overlaid with 9.5 mm Super pave within the total opening length including those areas unexcavated. Overlay shall consist of 1 1/2 inches (minimum) of 9.5 mm Super Pave Wearing Coarse. A milled paving notch, with a minimum 10 feet transition, shall be provided at each end of the overlay

9. When any street is overlaid, the Applicant/Permittee shall construct new ADA curb ramps at each affected intersection. ADA ramp designs must be in accordance with current PA DOT standards and must be submitted to the Designated City Engineer for approval prior to construction.

10. The contractor shall remedy, at his own expense, any defects that appear in the backfill for a period of twenty-four (24) months following compaction.

## **SECTION 16. SAFETY PRECAUTIONS.**

- A) During the progress of work, the applicant shall provide and maintain such barricades, warning signs and flag persons as may be deemed necessary by the city to prevent accidents to the public and/or adjoining tenants. Minimum precautions must include, but should not be limited to, advance warning signs on all approaches to the work, safe crossing for pedestrians a minimum of each three hundred (300) feet and barricades with flashers on each exposed side at fifty-foot intervals. All precautions shall be in accordance with the Manual of Uniform Traffic Control Devices, as adopted by the United States Department of Transportation, Federal Highway Administration, 1971 Edition, Part IV, Traffic Controls for Street and Highway Construction and Maintenance Operations (latest edition). All materials, openings or excavations made or obstructions created under such permits must be properly marked from sunset to sunrise, from the roadway in both directions, the exact location and limits of said work or obstruction, and at all times must be properly guarded.
- B) Maintenance and protection of traffic during Road Work shall be conducted in accordance with the requirements of the Pennsylvania Department of Transportation, as set forth in Publication No. 43 and Publication No. 90 (latest edition).
- C) The permittee shall provide and maintain all necessary precautions to prevent injury or damage to persons and property in accordance with instructions furnished by the PA DOT District Office. A traffic control plan shall be submitted to and approved by the Designated City Engineer before detouring any traffic.
- D) Warning signs shall be placed in advance of the actual operation in such a manner as to be visible to the traveling public, and substantial barricades with adequate illumination shall be provided and maintained for any open trench or hole in the improved area. Blinking lights and/or barricades shall be used for overnight protection of area.
- E) Designated employees shall be assigned by the permittee to direct one lane traffic. Flagmen shall be provided as specified in the permit and in accordance with Publication No. 43 and Publication No. 90.

**SECTION 17. RESPONSIBILITIES OF PUBLIC UTILITIES AND PUBLIC SERVICE COMPANIES.**

The filing of an application by a public utility, public service company and the issuance of a permit for activities permitted under this Part shall constitute an agreement on the part of said applicant that it will at any time thereafter, upon notice from the Designated City Engineer, at its own expense, make such change in location or construction of the concerned facilities as may be required by the City.

**SECTION 18. RESPONSIBILITIES OF PROPERTY OWNERS.**

1. The owner or owners of any lot, parcel, tract of land or premises fronting or abutting on an affected public street, road or avenue within the City of Wilkes-Barre upon which a grade has heretofore or hereafter been established shall, upon receipt of 60 days written notice from the City, at their respective costs and expense, begin to construct, repair and maintain the curbing and/or sidewalk or foot walk in front of and along the property owned by them or on the part of said public street, road or avenue abutting their respective properties.
2. The notice shall be sent by registered mail by the Designated City Officer or Designated City Engineer to the last known address of the individual or individuals, association or corporation in whose name the title to the lot, parcel or tract of land or premises appears on public record to be owned, and if such registered mail is returned unclaimed, then and in that event such notice shall be given by posting one copy of the same on the land or premises involved. Upon failure of any owner or owners to comply with the provisions of this Part and to commence the construction of said curbing, sidewalk or foot walk or repair and maintain the same within 60 days after the mailing of said notice and to complete fully such construction, repair and maintenance within 60 days after the date of said notice, the City of Wilkes-Barre shall enter upon said premises and construct, pave, repair or maintain the curbing, sidewalk or foot walk and enter the cost thereof, together with 10 percent additional, as a lien against the said lot, parcel, tract of land or premises.
3. All curbing, sidewalk or foot walk construction or repair shall be performed in accordance with specifications referenced in SECTION 10-I and SECTION 21

**SECTION 19. EFFECT OF PERMIT FEES.**

No permit fee paid under this Part shall be in lieu of any annual license fee now required to be paid or which may at any time be required to be paid by ordinance of the City of Wilkes-Barre.

## **SECTION 20.**

### **CLOSING OF STREETS.**

It shall be unlawful for any person, firm, association, or corporation to close any public highway, road, street, avenue, lane or alley in the City of Wilkes-Barre unless and until a permit for this purpose has been obtained from the DPW Supervisor, Designated City Officer or Designated City Engineer or their agents.

A. One (1) lane of traffic must be able to always pass unobstructed. Flag persons must always be posted at the limits of work to direct traffic through the work area, and all established traffic patterns must be maintained at all times. If all other means of traffic control have been exhausted, the city may permit a road to be completely closed temporarily, only with the consent of the Chief of Police and the Fire Chief, when an emergency exists, the Police and Fire Departments shall be notified. An application form for a permit to close a street will be available from the city; the completed application, bearing the signatures of the above-mentioned officers, shall be returned to the applicant and shall constitute a permit. The Applicant/Contractor must notify the Luzerne County Communications Center of any local closure for construction activity at (570) 819-4916 (non-emergency contact number), prior to the implementation of any such closure. A penalty shall be imposed for failure to notify the Police Chief, Fire Chief and Luzerne County Communications Center.

## **SECTION 21.      HIGHWAY IMPROVEMENTS; STANDARD SPECIFICATIONS.**

Standard specifications for highway improvements shall be designated and approved by the Designated City Engineer.

## **SECTION 22.      EQUIPMENT DAMAGING ROADWAY**

- A. To protect the pavement and shoulders of existing Road surface, all equipment shall have rubber wheels or runners and shall have rubber, wood or similar protective pads between the outriggers and the surface unless otherwise authorized by the permit.
- B. If other than rubber-equipped machinery is authorized for use, the pavement and shoulders shall be protected by the use of matting, wood or other suitable protective material having a minimum thickness of four (4) inches, unless the permit requires the permittee to repave the roadway full width.
- C. If the equipment damages the pavement or shoulders of the Roadway, the permittee shall restore the pavement or shoulders to their former condition, at the permittee's expense.

## **SECTION 23. APPROVAL BY ENGINEER**

Approval by the Designated City Engineer of all or part of any permitted Work shall not constitute acknowledgement that the Work was performed in accordance with the Permit, nor shall such approval of the inspector act as a release of the permittee or waiver by the City of its right to seek performance or restitution from the permittee.

## **SECTION 24. CITY STANDARDS**

Work is to conform to City standards. The Work shall be done at such time and in such manner as shall be consistent with the safety of the public and shall conform to all requirements and standards of the City. If at any time it shall be found by the City that the Work is not being done or has not been performed properly, the permittee, upon being notified in writing by the City, shall immediately take the necessary steps, at its own expense, to place the Work in condition to conform to such requirements or standards. In case any dispute arises between the permittee and the City's inspector, the City's inspector shall have the authority to suspend Work until the question at issue can be referred to and be decided by the Designated City Engineer.

## **SECTION 25. TEMPORARY DRIVEWAYS**

Whenever a construction or demolition operation requires the movement of a vehicle from the property during the construction period, it shall be the responsibility of the permittee to install and maintain a stone-based driveway on the premises to prevent the tracking of mud and other debris onto the public Roadway. In the event that mud, or other debris is transmitted onto the Roadway, it shall be the responsibility of the permittee to remove said mud and debris immediately from said Roadway.

## **SECTION 26. SAVED FOR FUTURE USE.**

## **SECTION 27. REMEDIES.**

In the event any person violates the provisions of this Article or the terms and conditions of any permit issued hereunder, the DPW Supervisor or the Designated City Engineer may order a cessation of the work, order the performance of additional or corrective work by or on behalf of the applicant and at the applicant's expense, revoke the permit, institute such legal or equitable actions as may be appropriate, institute an action for the imposition of a fine under SECTION 28 hereof or take such other actions as may be deemed necessary under the circumstances. The above remedies may be pursued simultaneously or consecutively. No person who has violated the provisions of this Article and has failed or refused to remedy such violation shall be eligible for the issuance of any other permit hereunder until such violation has been remedied.

## **SECTION 28. VIOLATIONS AND PENALTIES.**

Except for the express penalties provided for in Section 6. herein, any person, whether as principal, agent or employee, who shall violate or assist in the violation of any of the provisions of this Article shall, upon conviction thereof before a District Justice, pay a fine of not less than six hundred (\$600.00) dollars, not more than one thousand (\$1,000) dollars and, in default of the payment of such fine and the costs of prosecution, shall be sentenced to not more than thirty (30) days imprisonment in the Luzerne County Jail.

- A. Acknowledgment of guilt. Any person charged with violating any provision of this Article may sign an acknowledgment of the offense committed, either before or after the beginning of suit, and pay to any duly authorized agent of the city the maximum penalties provided Wilkes-Barre City, together with costs accruing to that date. Such person shall receive a printed receipt therefore, which shall bear the imprint of the Seal of the city which shall be evidence of full satisfaction of the offense committed.
- B. Penalties. Any person, firm or corporation who shall violate any provision of this Article shall, upon conviction thereof, be sentenced to pay a fine and/or penalty of not more than six hundred dollars (\$600) plus cost, or, in default of payment of such fine and costs, shall be subject to imprisonment for a term not to exceed thirty (30) days. Every day that a violation of this Article continues shall constitute a separate offense.
- C. Civil action. In addition to the foregoing, said city may pursue such other and additional remedies as may be authorized by law.
- D. In addition to all the remedies the city may impose the following:
  - 1. It shall be illegal for any person, partnership, corporation, or other legal entity (collectively "person") to violate the terms of this Ordinance and a person violating same shall be prosecuted under the rules of procedure for summary proceedings before district justice. Any conviction of a violation of any section or subsection of this Ordinance shall result in the imposition of a fine of six hundred dollars (\$600.00) plus costs or in default of payment of said fine and costs the offender may be sentenced to a term of imprisonment subject to Pa R Crime P. 456 (c) and 42 Pa C.S. 9730 (b). A separate offense under this Ordinance shall be deemed to occur for each day for which a violation occurs. Nothing herein is intended to impede or restrict the prosecution of any criminal offense for any person continuing to violate the terms of this ordinance or any order to stop or desist from any illegal conduct or from being charged with any separate offense under the criminal codes or otherwise. In addition to the penalties provided herein, the City may sue at law or in equity to enjoin violations herein and in addition to damages may recover reasonable attorney's fees, court costs, court reporter's fees, and other

expenses of litigation by appropriate suit at law or in equity against the person, partnership, corporation, or other legal entity found to have violated this ordinance, or the orders, rules, regulations, and permits issued hereunder.

2. In addition to assessment penalties and liens, under subsection (1), any person who violates or permits a violation of this Ordinance, upon being found liable therefore in a civil enforcement proceeding before a district justice or magisterial district judge, shall pay a fine and/or penalty of six hundred dollars (\$600.00) per violation, plus all court costs, including reasonable attorney's fees incurred by the City in the enforcement of this Ordinance. Each day the violation exists shall constitute a separate offense, in any case where a penalty for a violation has not been timely paid, and the person against whom the penalty was imposed is found to have been liable therefore in civil proceedings, the violator shall be liable for the penalty imposed, including additional daily penalties for attorney's fees incurred by the City in the enforcement proceedings. If the violator neither pays nor timely appeals the judgment, the City may enforce the judgment pursuant to the applicable rules of civil procedure or as otherwise permitted by law.

3. In addition to all the remedies, the City is authorized to exercise and reserves all rights of enforcement and remedies for Municipal Claims and Tax Liens as permitted by law.

4. In addition to or in lieu of a civil action before a district justice or magisterial district judge, or Court, the city may enforce this Ordinance in equity. The appropriate officers or agents, including, City or Code Officer of the City are hereby authorized to seek equitable relief, including injunctions, to enforce compliance herewith.

5. The City shall be exempt from the payment of costs in any civil case brought to enforce this ordinance.

6. Each day a violation occurs shall be a separate offense.

7. The reasonable attorney's fees shall be at the rate of one hundred and twenty-five dollars (\$125) per hour. Said sum may be amended by the City, from time to time.

## **SECTION 29. WORK DONE WITHOUT AN INSPECTOR**

Any construction, backfill or permanent pavement work performed without the knowledge or presence of a City authorized inspector present shall be removed and replaced under the observation of a City authorized inspector at the cost of the contractor performing the work. The removal and replacement of any uninspected work will be at no cost to the city.

**SECTION 30. MAJOR IMPROVEMENTS OF SERVICES AND/OR LINE REPLACEMENT BY UTILITIES; PROCEDURES FOR NEW PAVEMENT CUTS**

Upon notification from the city of a planned street repaving, resurfacing or reconstruction, all utilities will be required to test their lines and service and to schedule necessary capital improvements or new main lines and service connections prior to resurfacing or reconstruction.

Thereafter any cuts which will be permitted in new pavement and any permits issued for the same shall be subject to the following:

- A. The pavement shall be considered new for a period of five (5) years from the date of final and complete placement of the new pavement.
- B. Any utilities or contractors who make cuts in new pavements shall be required to make permanent restoration and repaving and resurfacing of said openings in pavements. Permanent restoration must be completed within thirty (30) days of the initial cut. Any delay or failure of restoration will be reported to the pertinent utility, and repairs by the utility will begin within twenty-four (24) hours after notification. Upon failure of the utility to repair the cut in a satisfactory manner, the city shall have the option to do the work or to contract to complete the work and bill the utility for the costs of permanent restoration, plus twenty percent (20%). In addition, penalties for noncompliance shall be levied against the utility or contractor. All backfilling of new pavement cuts shall be in accordance with the backfilling requirements and provisions set forth in this Article. Prior to the placement of the base course, the existing base and surface must be exposed twelve (12) inches on each side of any depressions that may have developed, Restoration of base pavements shall consist of 25mm Super Pave Base Course for the full depth of the adjacent permanent base or for a depth of six (6) inches, whichever is greater. The wearing course or topcoat shall be placed at a minimum depth of one and one half (1 1/2) inches and shall be 9.5 mm Super Pave Wearing Course and shall be rolled to conform to the existing road and the edges sealed, Surface treatments such as sand or chip seals are prohibited. On long cuts (those greater than twenty-five (25) feet in length), surface finishing must be rolled with not less than a six-ton roller, small cuts may be finished with a mechanical tamper or vibrator. All openings in the new pavement, regardless of size, must be permanently restored.
- C. The permanent restoration of special-type pavements such as concrete, brick, Belgian block, cobblestone, gutters, or tiles, shall consist of relaying the original wearing course in accordance with the original installation specifications in such a manner as to prevent settlement or other determination.



- D. Whenever any utility or contractor shall make cuts in new pavement for purposes of replacing a main line on a street or part thereof or for purposes of making any capital improvements or improving or upgrading an existing system, or when any utility or contractor shall for any purposes, except emergency purposes, make a cut or cuts in new pavement totaling ninety (90) square feet or more within any block in the City, the utility shall be required to backfill and permanently restore, refinish, mill and repave the entire width of said street from curb to curb for the entire length of the block or blocks of said street or streets where there is located any pave cut or cuts or parts thereof with said backfilling and restoring, refinishing, milling, and repaving to be done in accordance with the provisions of this Article. (The purpose of this provision is to encourage utilities to replace their main lines and make capital improvements or improve or upgrade their systems prior to new repaving to prevent subsequent cutting of new pavement.)
- E. The utility shall be required to notify the DPW Supervisor or Designated City Engineer prior to commencement of permanent restoration. Such permanent restoration must be commenced and completed promptly. Any delay or failure of restoration will be reported to the pertinent utility, and such work shall commence by the utility within twenty-four (24) hours after notification, upon failure of the utility to restore the street in a satisfactory manner, the city shall have the option to do the work or to contract to complete the work and bill the utility for the costs of permanent restoration, plus twenty percent (20%). In addition, penalties for noncompliance shall be levied against the utility or contractor.

### **SECTION 31. REPLACEMENT OF PAVEMENT MARKINGS.**

The utility and/or its contractor must replace, in kind, all pavement markings damaged or removed by pave cuts and work incidents thereto. All markings must be replaced within five (5) days after permanent restoration. Should the contractor fail to replace the same, the city shall contract to have the necessary repairs made and bill the utility for the costs of the work, plus a twenty percent (20%) penalty.

### **SECTION 32. REPLACEMENT OF TRAFFIC CONTROL DEVICES.**

Electronic traffic control devices and ancillary equipment damaged or removed because of pavement excavation or work incident thereto must be replaced by the utility or its contractor, in kind, in whole or in part as required the DPW Supervisor or Designated City Engineer. The city shall contract to have the necessary repairs made and bill the utility.

### **SECTION 33. REPLACEMENT OF PROPERTY PINS OR MONUMENTS.**

All property pins or survey control monuments damaged or altered, because of the contractor's work, shall be replaced at the contractor's expense by a Registered Pennsylvania Professional Land Surveyor.

#### **SECTION 34. UTILITY CONNECTIONS.**

The City of Wilkes-Barre provides by this Article for the laying, renewing and repairing of all gas, water or other pipes or conduits in any street before the paving, repaving or repairing of the same and for making the necessary house connections with said pipes and also for the necessary house connections and branches with and leading into main or lateral sewers, provided that in no case, except as a sanitary measure, of which the city shall be the judge, shall the City of Wilkes-Barre require such house connections to be extended further from such sewers or from such gas, water or other pipes or conduits than to the inner line of the curbstone of such corporations, persons and owners affected and, in default of compliance therewith, cause said pipes to be laid, renewed or repaired and said connections made and collect the costs of paving and repairing all pipes or conduits with interest; and the cost of the sewer connections shall be a first lien against the land for whose benefit such connections are made. A separate lien may be filed therefore, or such sewer connection costs may be included in any lien filed for the costs of such street improvement, and the lien and the proceedings thereon shall be as in the case of other municipal liens.

#### **SECTION 35. DETERMINATION OF LINES AND GRADES FOR STREET CONSTRUCTION OR RECONSTRUCTION**

The Designated City Engineer shall have the final decision for determination of lines and grades for street reconstruction. This decision shall be based on good engineering practice and municipal standards. The determination by the Designated City Engineer shall be final.

#### **SECTION 36. REQUIRED UTILITY LINE DEPTHS**

The following minimum depths (to the top of the pipe or conduit) for pipes and conduits are assigned to the utilities operating under this Article, unless specific site conditions warrant lesser depths, and then only as approved by the Designated City Engineer:

- A. Gas lines shall be a minimum of thirty (30) inches below grade.
- B. Water service lines shall be a minimum of thirty-six (36) inches below grade; a water main shall be a minimum of five (5) feet below grade.
- C. Electric lines and conduits shall be a minimum of twenty-four (24) inches below grade.
- D. Telecommunication lines and conduits shall be a minimum of thirty-six (36) inches below grade.

### **SECTION 37.        ADDITIONAL UTILITY PLACEMENT PROVISIONS**

Aerial installations of electric power transmissions and telecommunications lines suspended from supporting poles having their base and/or support wires within the public right-of-way and interfering with a roadway construction, reconstruction or repair project shall be located upon written order from the Designated City Engineer, to a point specified therein. The Designated City Engineer may require the utility to place its aerial facilities underground where it is deemed necessary or desirable. Hereafter, aerial installations shall be placed subject to approval by the Designated City Engineer . The Designated City Engineer shall assign horizontal corridors on a case-by-case basis for all new construction. All gate boxes, shutoff valves and other regulating devices underground for individual customers for gas, water, steam, electric and telecommunications lines shall be located inside the inner line of the curbstone or, in the case where no curbing exists, to a point specified by the Designated City Engineer or his agent.

### **SECTION 38.        CITY RESPONSIBILITY IN UTILITY RELOCATION**

- A. An existing utility right-of-way is owned by the utility, as opposed to the city, and interferes with a municipal construction project; and,
- B. Utility relocation may be necessary for the installation, maintenance, or repair of municipally owned or operated utility systems, such as, the municipal sanitary and/or storm sewer systems, or where the installation or modification of a municipally owned or operated utility is a part of a roadway construction project.
- C. In the limited instance above, where both A and B apply, the Utility shall be responsible for costs and fees under this Ordinance.

### **SECTION 39.        UTILITY RELOCATION PROCEDURES**

- A. Upon receipt of a letter from the Designated City Engineer authorizing the start of physical work, the utility shall commence work within thirty (30) days unless otherwise stated by the DPW, Designated City Officer, or Designated City Engineer with reasonable cause shown in order to clear the construction area. The utility shall perform the relocation work in accordance with the approved plan of the Engineer. The utility shall ensure compliance with the provisions of all relevant local, state, and federal acts, rules and regulations.
- B. Utility relocation shall be accomplished by the utility to assure its completion prior to the commencement of roadway construction. Areas of utility relocation work, which cannot be accomplished prior to the start of construction but can be accomplished simultaneously without restricting the roadway project contractor, may be done concurrently with the contractor's operations when approved by the Engineer and the city's contractor.

- C. It is acknowledged that field conditions occasionally necessitate revision of the utility relocation plan. It shall be the responsibility of the utility to report and justify such revisions and to correct any data on file with the Designated City Engineer.

The utilities are required to obtain the contractor's concurrence prior to such revisions within the right-of-way of the project under construction. Minor modifications to the relocation plan may be made without prior approval of the Designated City Engineer. All such changes shall be brought to the attention of the project engineer and shall be noted in the daily inspection report.

#### **SECTION 40. AUTHORIZATION OF DESIGNATED CITY ENGINEER AND MUNICIPAL STREET DEPARTMENT**

The City provides by this Article that the responsibility and authority for the administration and enforcement of this Article shall rest in the office of the Designated City Engineer and/or DPW Supervisor.

#### **SECTION 41. ACTIONS UPON NONCOMPLIANCE**

When work performed by a utility or contractor under this Article is found in violation of the same, the contractor or utility may be given the opportunity to make corrections as required by the city. If the corrections are not completed in the specified time or not completed as specified, the city may suspend all work, whether completed or in progress, in noncompliance with this Article and take appropriate safety precautions. All work performed or contracted by the city to attain compliance in this regard shall be billed to the utility or contractor, plus a twenty percent (20%) penalty. In addition, a penalty for noncompliance shall be imposed.

#### **SECTION 42. RESUMPTION OF SUSPENDED WORK**

The utility shall actively resume work upon order from the city or Designated City Engineer after suspension.

#### **SECTION 43. PROVISION FOR PENALTY**

If the utility or contractor fails to make adequate corrections to work found in noncompliance with this Article in the time specified, a penalty shall be imposed until said corrections are completed to specifications.

#### **SECTION 44. NONISSUANCE OF PERMITS**

- A. The city reserves the right to bar any contractor or his employee from working within the municipal limits whose work is found in noncompliance with this Article. The city reserves the right to refuse issuance of a permit to any applicant who fails to maintain pave cuts in accordance with this Article or who failed to pay sums due to the city within thirty (30) days from the date of billing.

B. The city reserves the right to refuse issuance of a permit to cut new pavement.

#### **SECTION 45. DESIGNATION OF RESPONSIBLE AGENT**

Every public utility shall file with the city a designation, in writing, of the name and the post: office address of a person within the Commonwealth of Pennsylvania upon who service of any notice, order or process may be made under this Article, such designation may, from time to time, be changed by like writing, similarly filed.

#### **SECTION 46. GUARANTEE OF WORK**

The Applicant/Permittee shall guarantee and maintain his work for twenty-four (24) months from the completion of the restoration work. Within this twenty-four (24) month period, upon notification from the City of necessary correction work required, the applicant/permittee shall correct or cause to be corrected all restoration work required within five (5) calendar days of receipt of the notification. The Designated City Engineer shall determine the extent of restoration required and the method of correction. All work not completed within this five (5) day period, or within any extension of time granted by the City for just cause, may be completed by the City. The City shall invoice the applicant/permittee for all costs incurred by the City in performance of this work. Payment not made within thirty (30) days of the invoice date will be chargeable against the posted bond or cash deposit, including all fees and costs involved in the collection of this payment.

#### **SECTION 47. EFFECT ON EXISTING CONTRACTS AND OBLIGATIONS**

All litigation, hearings, investigations, and other proceedings, whatsoever, pending under any act repealed by this Article, shall continue to remain in full provisions of this Article. All orders, rules or regulations issued or filed under any act repealed by this Article, and In full force and effect for the term issued or until revoked, vacated or modified under the provisions of this Article, and all existing contracts and obligations entered into or created under any act repealed by this Article, and in force and effect upon the effective date of this Article, shall remain in full force and effect, except for any matters relating to future fees for permits and permanent pavement restoration fees, which shall be governed by those fees set forth in this Article.

#### **SECTION 48. CONSTRUAL OF CITY ACTIONS.**

- A. Neither the issuance of a permit hereunder nor the taking of any other actions hereunder shall be construed as an express or implied acceptance by the city of the dedication of any street.
- B. The provisions of this Ordinance shall not apply to the installation of utility poles.
- C. Approval by the City's inspector(s) of all or part of any permitted Work shall not constitute acknowledgment that the Work was performed in accordance with the Permit, nor shall such

approval of the inspector act as a release of the permittee or waiver by the City of its right to seek performance or restitution from the permittee.

**SECTION 49. FULL FORCE AND EFFECT.**

All other articles, sections, and provisions of the Ordinances of Wilkes-Barre City shall remain in full force and effect as previously enacted and amended.

**SECTION 51. REVISIONS.**

The City Council of the City of Wilkes-Barre does hereby reserve the right, from time to time, to adopt modifications of, supplements to, or amendments of its Ordinance.

**SECTION 52. ENFORCEMENT.**

Enforcement of the provisions of this chapter shall be jointly shared by any police department serving the City, including the State Police, City Administrator, Designated City Officer, DPW Supervisor, and City Designated Engineer.

SEVERABILITY.

The provisions of this ordinance are severable. If any part of this ordinance is declared to be unconstitutional, illegal or invalid, the validity of the remaining provisions shall be unaffected thereby. It is the intention of the Council of the City of Wilkes-Barre that this ordinance would have been adopted had such unconstitutional, illegal or invalid part not been included.

REPEALER.

All ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed. All ordinances not specifically amended hereby remain in full force and effect.

Passed finally by the Council of the City of Wilkes-Barre on \_\_\_\_\_  
\_\_\_\_\_, 2024.

This ordinance shall become effective ten (10) days after final passage by the City Council of the City of Wilkes-Barre.

Attest:

\_\_\_\_\_

Cathy Payne, City Clerk