

CONNELLSVILLE TOWNSHIP

ORDINANCE NO. 2024-2

STREET OPENING, TUNNELING, BORING, AND EXCAVATION ORDINANCE

AN ORDINANCE OF THE TOWNSHIP OF CONNELLSVILLE DEFINING AND REGULATING STREET OPENING, TUNNELING, BORING, AND EXCAVATION; SETTING FORTH REQUIREMENTS FOR PERMIT APPLICATIONS, FORMS, AND FEES AND THE APPROVAL AND ISSUANCE OR DISAPPROVAL THEREOF; REQUIRING NOTIFICATION OF UTILITIES; FIXING RESPONSIBILITY FOR RESTORATION OF OPENINGS AND SURFACES AND DEFECTS THEREFROM; ESTABLISHING REQUIREMENTS AND SPECIFICATIONS FOR WORK UNDER PERMIT; AUTHORIZING EMERGENCY WORK; PROHIBITING REMOVAL OR DESTRUCTION OF TREES AND SHRUBBERY; ESTABLISHING LIMITATIONS UPON EXCAVATIONS AFTER STREET IMPROVEMENTS AND CONDITIONS FOR LAYING AND EXTENDING UTILITY LINES; AUTHORIZING THE TOWNSHIP OF CONNELLSVILLE TO DO WORK AND COLLECT COSTS; REQUIRING POSTING OF BONDS; SETTING FORTH A SCHEDULE OF FEES; AND PRESCRIBING PENALTIES FOR VIOLATION.

WHEREAS, pursuant to Section 2322 of the Second-Class Township Code, 53 P.S. § 67322, a second-class township has the power to regulate and require permits for the opening, tunneling, boring, or excavation of streets; and

WHEREAS, pursuant to Section 2308 of the Second-Class Township Code, 53 P.S. § 67308, public roads should be kept in repair and reasonable clear of all impediments to easy and convenient travel; and

WHEREAS, pursuant to Section 2326 of the Second-Class Township Code, 53 P.S. § 67326, a second-class township has the power to regulate obstructions and nuisances on public roads and require damages to be repaired; and

WHEREAS, pursuant to Section 2310 of the Second-Class Township Code, 53 P.S. § 67310, certain restrictions are placed on the closing of public roads and the designation of detours; and

WHEREAS, pursuant to Section 2325 of the Second-Class Township Code, 53 P.S. § 67325, the removal of shrubs and trees by second class townships and others is limited; and

WHEREAS, the Board of Supervisors of the Township of Connellsville, Fayette County, Pennsylvania, desires to regulate street opening, tunneling, boring, and excavation within the boundaries of the Township of Connellsville

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

Section 1. Permit Required to Making Openings or Excavations.

It shall be unlawful for any person to open, dig up, break, tunnel, bore, undermine, or to make any excavation of any kind in any of the streets in the Township of Connellsville, or to place, deposit, or leave upon any of the streets in the Township of Connellsville any earth or other excavated material obstructing or tending to interfere with the free use of such street, without first securing a permit therefor, as hereinafter provided.

Section 2. Application for Permit.

Any person who shall desire to make any opening, tunnel, boring, or excavation in any of the

streets in the Township of Connellsville, or to place, deposit, or leave upon any of the streets in the Township of Connellsville any earth or other excavated material obstructing or tending to interfere with the free use of the street, shall make application to the Board of Supervisors of the Township of Connellsville in writing for that purpose. Such application shall be made upon forms to be furnished by the Township of Connellsville, if such forms are available, and shall set forth a) the name and address of the applicant, b) the exact location of the proposed opening, tunnel, bore, or excavation, and the approximate size thereof, c) the date of commencement and the date of completion of the opening, tunnel, bore, or excavation, d) all plans showing the proposed opening, tunnel, bore, or excavation, the dimensions or the elevations of both the existing ground prior to said opening, tunnel, bore, or excavation and the opened, tunneled, bored, or excavated surfaces, e) other such data as may reasonably be required by the Board of Supervisors or the Township Engineer. Such application shall also contain, and the submission of such application shall evidence and confirm, an agreement on the part of the applicant that the work shall be done in full compliance with the ordinances of the Township of Connellsville and the laws of the Commonwealth of Pennsylvania in relation thereto, and that the applicant shall well and truly save, defend and keep harmless the Township of Connellsville from and indemnify it against any and all actions, suits, demands, payments, costs, and charges for or by reason of the proposed opening or excavation, and all damages to persons or property resulting in any manner therefrom or occurring in the prosecution of the work connected therewith, or from any other matter, cause or thing relating thereto.

Provided that where any digging or opening of trenches or excavations shall be made in any improved street maintained by the Pennsylvania Department of Transportation, a Highway Occupancy Permit must be obtained from the Department of Transportation.

And further provided, however, that the title owner of a property immediately adjacent to and bordering any grass-plot or sidewalk of the Township shall not be required to obtain a permit for the digging or opening of trenches or excavations of such grass-plot or sidewalk, but shall be required to notify the Township Secretary at least three (3) days in advance of any digging or opening of trenches or excavations.

Section 3. Permit Fee.

Before any permit shall be issued to open, tunnel, bore, or excavate any street in the Township of Connellsville, the applicant shall pay a permit fee in the amount fixed according to the schedule set forth in Section 19 herein, and its amendments.

Section 4. Issuance of Permits Restricted.

Permits shall be issued only to persons furnishing public utility services or the owner or owners of the real property adjoining the location where such opening or excavation is to be made, unless the applicant sets forth on the application good cause for the making of the opening, tunnel, boring, or excavation.

Section 5. Information Contained on Permit.

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

Section 6. Permit Approval.

Approval of any application and issuance of any permit shall occur only upon the approval of two (2) or more members of the Board of Supervisors of the Township of Connellsville. A permit may be issued to the applicant after all the requirements therefore have been met. If the application is disapproved, written notice of disapproval together with reasons therefore shall be given to the applicant.

Section 7. Responsibility to Contact Utilities.

When work authorized by the permit is subject to all of the conditions, requirements and provisions of the laws of the Commonwealth of Pennsylvania, in particular, the Act of December 10, 1974, P.L. 852, No. 287, Sec. 1, et seq. (73 P.S. Sec. 180), as amended or supplemented from time to time, it shall be the applicant's responsibility to contact utilities that have recorded their facilities in compliance with said Act. A partial list of utilities providing services in the Township of Connellsville and their office addresses may be obtained from the Fayette County Recorder of Deeds.

Section 8. Refilling Opening or Excavation; Restoration of Surface; Responsibility for Defects Occurring Within Two Years.

Any person who shall open, tunnel, bore, or excavate any street in the Township of Connellsville shall thoroughly and completely refill the opening, tunnel, bore, or excavation in such a manner as to prevent any settling thereafter, and shall restore the surface to the same condition as it was before the opening, tunneling, boring, or excavation, and such restoration shall be in accordance with the specifications of the Department of Transportation of the Commonwealth of Pennsylvania which are hereby adopted as Specifications of the Township of Connellsville for restoration of surfaces of streets in the Township of Connellsville, as restored; the surface shall conform to the proper grade and be the same surface covering as the part of the thoroughfare immediately adjoining the opening. If within two (2) years after the restoration of the surface as herein provided, defects shall appear therein, such defects shall be conclusive evidence of defective backfilling by the applicant, and the applicant, or its surety, shall reimburse the Township of Connellsville for the cost of all necessary repairs to the street.

Section 9. Responsibility of Permit Holder for Certain Work; Right of the Township of Connellsville to do Certain Work; Charges Therefor.

All other work in connection with openings, tunnels, borings, or excavations in any street, including excavation, protection, refilling and temporary paving, shall be done by or for the person to whom or which the permit has been issued at his or its expense, and all such work shall be subject to the provisions of this ordinance and to the supervision and approval of the Board of Supervisors of the Township of Connellsville, provided that the Board of Supervisors of the Township of Connellsville may, if they deem it necessary, to be proper performance of the work, require that cutting of the surface of streets and the backfilling of all excavations therein shall be done by the Township of Connellsville, in which event the applicant shall pay the actual cost of the work performed by the Township of Connellsville.

Section 10. Requirements for Work; Correction of Unsatisfactory Work; Completion of Incomplete Work.

(1) No opening, tunnel, bore, or excavation in any street shall extend from the curb line into the highway beyond the center line of the street before being refilled and the surface of the highway restored to a condition safe and convenient for travel.

(2) No more than five hundred (500) square feet shall be opened within any street at any one time.

(3) The work of excavation shall be so conducted as not to interfere with the water mains, sewers or their connections, with the houses, or any other subsurface lines or constructions, until permission of the proper authorities in connection with such subsurface lines or constructions shall have been obtained.

(4) No tunneling or boring with an opening of more than one (1) square foot shall be allowed without the express approval of the Board of Supervisors of the Township of Connellsville and permission therefore endorsed upon the permit. The backfilling of a tunnel or boring excavation shall be made only in the presence of an agent, representative, or employee of the Township of Connellsville, or with the express written waiver of such presence, and shall be done only in a method

approved by the Board of Supervisors of the Township of Connellsville.

(5) All openings, tunnels, borings, or excavations shall be backfilled promptly with modified 2A stones and thoroughly compacted in layers, each of which layers shall not exceed eight (8) inches in depth. Backfilling shall be placed to within ten (10) inches of the surface.

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

(7) On an asphalt street, any cut over 2 feet must be repaired by paving curb to curb, with a minimum of 4 inches of binder (19 mm) and a minimum of 2 inches of wearing course (

(8) During the making of any opening, tunnel, bore, or excavation in the street, every necessary and reasonable precaution shall be taken by the applicant and the parties making the same to keep the street in a safe and passable condition, both day and night, by guards, barriers, lanterns and other devices, and all excavating permits granted hereunder are granted under and subject to the express condition that the person to whom the same is issued shall indemnify, save and keep harmless the Township of Connellsville from any loss in damages, or otherwise whatsoever, which may or shall be occasioned at any time by the said opening, tunnel, boring, or excavation, or by any leak, explosion or other injury from any pipe, apparatus, conduit, or any other matter placed in the said opening, tunnel, boring, or excavation. The applicant shall take appropriate measures to assure that during the performance of the opening, tunneling, boring, or excavation traffic conditions as nearly normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public, provided that the Board of Supervisors of the Township of Connellsville may permit the closing of streets. The applicant shall erect and maintain suitable barriers to confine earth from trenches or other openings, tunnels, borings, or excavations and to keep such earth from encroaching upon highways. The applicant shall construct and maintain adequate and safe crossings over openings, tunnels, borings, and excavations and across highways under improvement to accommodate vehicular and pedestrian traffic at all street intersections.

(9) The applicant shall notify the Board of Supervisors of the Township of Connellsville when the opening, tunnel, boring, or excavation is ready for backfilling, before any backfilling is done, when backfilling work is completed, when the temporary paving has been installed and when the street has been permanently restored so that inspections may be made. The supervisors, engineer, employees, and other officials of the Township of Connellsville shall make such inspections as are reasonably necessary in the enforcement of this ordinance. The Board of Supervisors or the Township of Connellsville shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this ordinance. It shall be the responsibility of the applicant to pay the Township engineer directly any and all fees incurred by the Township engineer in connection with his inspection or responsibilities under this ordinance. The Township engineer shall invoice applicants directly for his services, consistent with the schedule of fees, as amended from time to time, for said work.

(10) The applicant shall always and at its own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. The applicant shall at its own expense shore up and protect all buildings, walls, fences, or other property likely to be damaged during the progress of the opening, tunneling, boring, or excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure to protect properly and carry out the work.

(11) The applicant shall not suffer or permit to remain unguarded at the place of opening, tunneling, boring, or excavation any machinery, equipment, or other device having the characteristics

of an attractive nuisance likely to attract children and hazardous to their safety or health.

(12) The applicant shall conduct and carry out the opening, tunneling, boring, or excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The applicant shall take appropriate measures to reduce to the fullest extent practicable in the performance of the opening, tunneling, boring, or excavation work, noise, dust, and unsightly debris and during the hours of 10:00 p.m. and 7:00 a.m., and shall not use, except with the express written permission of the Board of Supervisors of the Township of Connellsville or in case of an emergency as herein otherwise provided, any tool, appliance, machinery, or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of neighboring property.

(13) In the event that any work performed by or for a permit holder shall, in the opinion of the Board of Supervisors of the Township of Connellsville be unsatisfactory and the same shall not be corrected in accordance with their instructions within the time fixed by them, or in the event that the work for which the permit was granted is not completed within the time fixed by the Board of Supervisors of the Township of Connellsville, the Township of Connellsville may proceed to correct such unsatisfactory work or complete any such work not completed, and charge the cost thereof, plus twenty (20) percent to the applicant.

Section 11. Emergency Openings.

In the case of any leak, explosion or other accident in any subsurface pipe, line, construction or apparatus, it shall be lawful for the person owning or responsible for such pipe, line, construction, or apparatus, to commence an excavation to remedy such condition before securing a permit, provided that application for a permit shall be made immediately and not later than the next business day thereafter, and that all other provisions of this ordinance 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, construction, or apparatus, the Board of Supervisors of the Township of Connellsville, after such notice as they shall deem necessary under the circumstances of the particular case, shall proceed to do the work necessary and required by such emergency, and charge the same on the basis of cost plus twenty (20) percent to such owner or person.

Section 12. Restrictions Regarding Trees and Shrubbery.

The permission herein granted does not confer upon the applicant the right to cut, remove or destroy trees or shrubbery within the legal right of way except under specifications, regulations and conditions as the Township of Connellsville may from time to time prescribe.

Section 13. Work Necessitating Opening, Tunneling, Boring, or Excavation to be Done Prior to Street Improvement and Not Until Five Years Thereafter; Exception.

The Board of Supervisors of the Township of Connellsville shall give timely notice in person or by publication to all persons owning property abutting on any street within the Township of Connellsville about to be paved or improved, and to all public utility companies operating in the Township of Connellsville, and all such persons and utility companies shall make all water, gas, electric, or sewer connections, as well as any repairs thereto which would necessitate excavation of the said street within thirty (30) days from the giving of such notice, unless such time is extended in writing for cause shown by the Board of Supervisors of the Township of Connellsville. New paving shall not be opened, tunneled, bored or excavated for a period of five years after the completion thereof, except in case of emergency, the existence of which emergency and necessity for the opening, tunneling, boring, or excavating of such paving to be determined by the Board of Supervisors of the Township of Connellsville. If it is sought to open, tunnel, bore, or excavate a roadway within five (5) years after the completion of the paving, applicant shall make written application to the Township of Connellsville, and a permit for such opening shall be issued only after express approval of the Board of Supervisors of the Township of Connellsville, and subject to such conditions and other

requirements and assurances as are requested by the Board of Supervisors of the Township of Connellsville.

Section 14. Applicant Responsibility for Future Relocation of Work.

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

Section 15. Conditions of Laying and Extending Utility Lines.

No new water, sewer, steam or gas main, 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 Township or Connellsville until the plan therefor shall have been first filed with the Board of Supervisors of the Township of Connellsville and such plan and the exact location of such main or line, approved by them. The Board of Supervisors of the Township of Connellsville shall not approve the locating of any such main or line at a depth less than thirty (30) inches from the surface of the street unless they shall be convinced that locating the same at a depth of more than thirty (30) inches from the surface is impossible or impractical.

Section 16. Bond Required.

No person, company, corporation or association shall open, tunnel, bore, or excavate any street without first giving to the Township of Connellsville a bond, in form and substance acceptable to the Board of Supervisors of the Township of Connellsville and the Township solicitor, with a trust or surety company authorized to do business in the Commonwealth of Pennsylvania and acceptable to the Board of Supervisors of the Township of Connellsville as surety for a minimum period of twenty-four months after the completion of the opening, tunneling, boring, or excavation and in the sum determined by the schedule of fees, set forth in Section 19, and its amendments, conditioned for the faithful performance of these provisions and also for any and all damages, claims, demands, suits, costs, and counsel fees occasioned or arising from the opening, tunneling, boring, excavation, or closing of said streets. The Board of Supervisors of the Township of Connellsville reserves the right to eliminate the necessity of a bond, upon review of the proposed opening, tunneling, boring, or excavation, and upon the approval of two (2) or more members of the Board of Supervisors.

Section 17. Payment for Work Done by the Township of Connellsville.

Payment for all work done by the Township of Connellsville under the provisions hereof shall be made by the person made liable therefor under the provisions hereof within thirty (30) days after a bill therefor is sent to the person by the Township of Connellsville. Upon failure to pay such charges within such time, the same shall be collectible by the Township of Connellsville by a civil action at law or in the manner provided by law for the collection of municipal claims.

Section 18. Permit Holder to Remove and Dispose of Excess Excavated Materials.

All excess of excavated materials on any street shall be promptly removed from the street by the applicant and shall be properly and lawfully disposed of at the expense of the applicant. The Board of Supervisors of the Township of Connellsville reserves the right to designate the manner and place of disposal of any and all excess excavated materials, including the surfacing materials removed from such street. At the completion of the opening, tunneling, boring, or excavation work, or earlier if deemed necessary by the Board of Supervisors, all streets and private property involved therewith shall be thoroughly cleaned of all rubbish, excess earth, rock, and other debris resulting from such work. All cleanup operations shall be completed at the expense of the applicant and shall be completed to the satisfaction of the Board of Supervisors

Section 19. Schedule of Permit and Other Fees. – Detailed Fee Schedule is attached.

(1) Inspection and supervision fee for Connellsville Township supervisor, roadmaster, other Township employee to be billed as needed for time spent: \$25.00 to \$50.00 per hour, as determined by the Board of Supervisors of Connellsville Township;

(2) Inspection and supervision fee for Connellsville Township engineer to be billed as needed: for time spent: \$75.00 to \$150.00 per hour, as determined by the Connellsville Township engineer;

(3) Fee schedule per lineal foot for tunneling or boring: \$40.00 per lineal foot for up to a nine-inch (9") diameter bore or tunnel, and an additional \$5.00 per lineal foot for each one inch increment in diameter that the bore or tunnel exceeds a nine inch (9") diameter, with all increases being rounded up to the nearest inch;

(4) Fee schedule for bond required: \$20.00 per square foot or linear foot, with a minimum bond amount of \$5,000.00; provided, however, that (a) public utilities that anticipate performing multiple projects requiring the opening, tunneling, boring, or excavating of streets in the Township of Connellsville in a single calendar year may secure a bond in the amount of \$50,000.00 to cover all of its projects during such calendar year, and (b) any person that anticipates performing large or multiple projects requiring the opening, tunneling, boring, or excavation of streets in the Township of Connellsville in a single calendar year may request in writing and, for good cause shown and upon the approval of two (2) or more members of the Board of Supervisors, be permitted to secure a bond in an amount less than that otherwise required to cover all of his projects during such calendar year. A bond is also required for the use of Township roads to transport heavy equipment to access worksites. Any damage to the roads is the responsibility of the company who has the permit.

(5) The Schedule of Permit and Other Fees and the attached fee scheduled are able to be changed by resolution.

Section 20. Insurance.

The applicant and its contractor, prior to commencement of opening, tunneling, boring, or excavation work hereunder, shall furnish the Board of Supervisors of the Township of Connellsville with satisfactory written evidence that the applicant and its contractor each has in force and will remain in force during the performance of the opening, tunneling, boring, or excavation work and the period of the permit, public liability and property damage insurance in an amount sufficient to indemnify and save harmless the Township of Connellsville from all liability for damages or injury done to persons or property which may be incurred by reason for such opening or any failure to properly protect, maintain, barricade, light, backfill, or properly effect the same. The insurance shall not be in an amount less than \$1,000,000.00 for injury to persons and \$3,000,000.00 for injury to property.

Section 21. Liability of Township of Connellsville.

This ordinance shall not be construed as imposing upon the Township of Connellsville, its supervisors, engineer, roadmasters, or any official or employee thereof, any liability or responsibility for damages to any person injured by the performance of any opening, tunneling, boring, or excavation work performed by any applicant, or its contractors, nor shall the Township of Connellsville, its supervisors, engineer, roadmasters, or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of permits granted or inspections authorized hereunder or the approval of any opening, tunneling, boring, or excavation work.

Section 22. Penalties.

Any person, association, firm, or corporation who shall violate any provision of this ordinance, shall, upon being found liable therefor in a civil enforcement proceeding, pay a civil fine set by the Board of Supervisors of the Township of Connellsville of not more than \$600.00 plus costs and reasonable attorney's fees, and in default of the payment of such fines and costs to imprisonment for not more than ninety (90) days. Every day that a violation of this ordinance continues shall constitute a

separate offense or occurrence.

Section 23. Contractors.

All provisions of this ordinance applicable to applicants or permittees shall be equally applicable to the contractors and agents of such applicants or permittees. Applicants and permittees and their contractors and agents shall each be liable for any violation of the provisions of this ordinance.

Section 24. Enforcement.

The provisions of this ordinance may be enforced by any code enforcement officer, zoning officer, or supervisor of the Township of Connellsville, or any official of the Township of Connellsville appointed from time to time by resolution of the Board of Supervisors, or by any police officer having authority within the Township of Connellsville (including officers of the Pennsylvania State Police).

Section 25. Applicability.

The provisions of this ordinance shall not apply to laying sidewalks or curbs. The permit and requirements and specifications for work performed therewith of this ordinance shall not be applicable to any opening, tunneling, boring, or excavation work under the direction of the Township supervisors, roadmasters or employees, or by any contractor of the Township of Connellsville performing work for and on behalf of the Township of Connellsville necessitating the opening, tunneling, boring, or excavation of streets.

Section 26. Repealer.

All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

Section 27. Severability.

If any sentence, clause, section, or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Board of Supervisors of the Township of Connellsville that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included herein.

Section 28. Effective Date. This ordinance shall take effect and be in full force and effect five days from and after the date of its final passage and adoption.

ORDAINED AND ENACTED by the Board of Supervisors of the Township of Connellsville at a duly assembled public meeting held the 28th day of August, 2024.

ATTEST:



Secretary, Darla Hann

BOARD OF SUPERVISORS, CONNELLSVILLE
TOWNSHIP, FAYETTE COUNTY,
PENNSYLVANIA



Todd Miner, Chairman



Tim Upton, Vice Chairman



Donald Hann, Supervisor